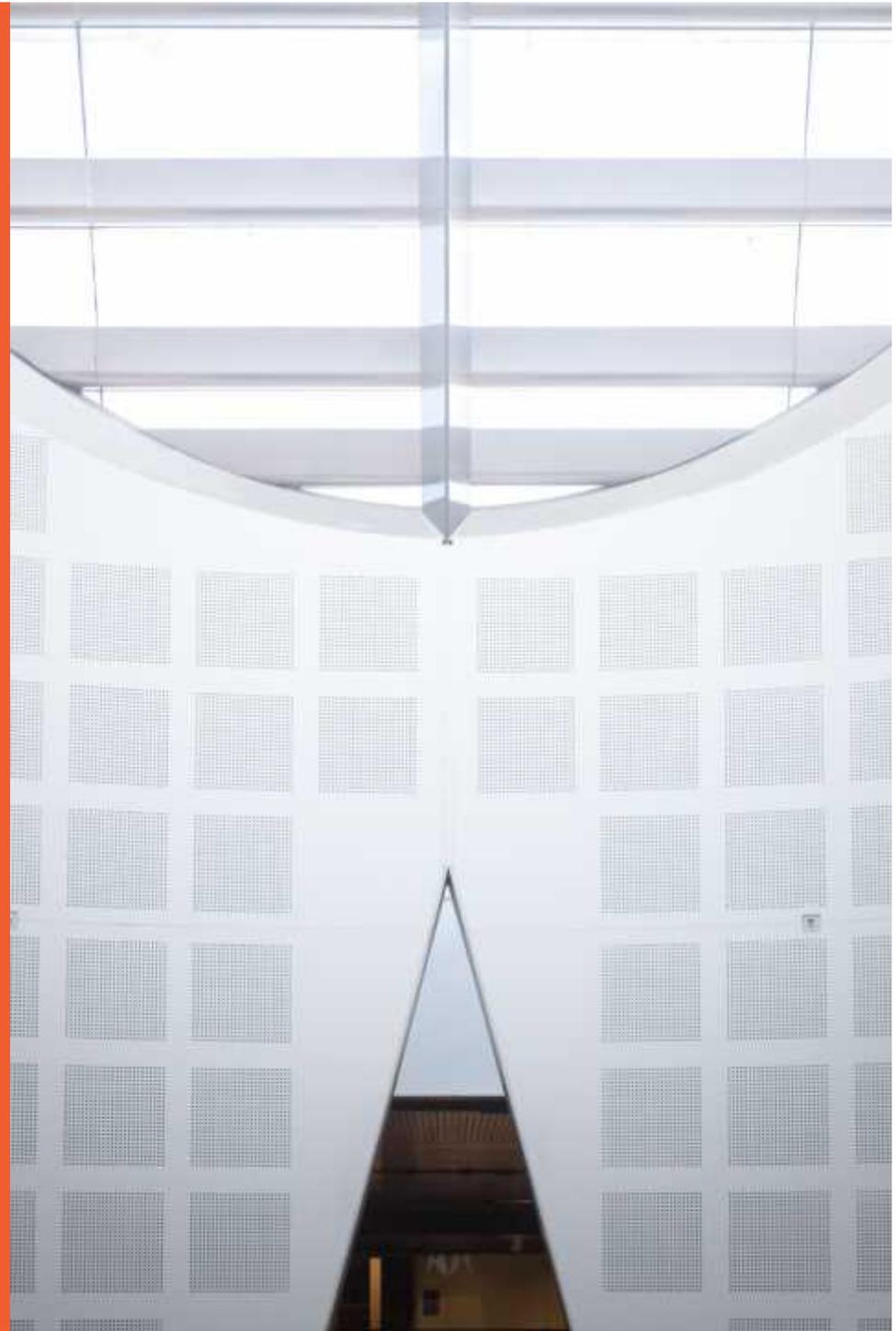


# Automation in Social Security: Implications for merits review?

**Em. Prof Terry Carney AO**  
Sydney Law School



# Outline

## I. INTRODUCTION

## II. ONLINE CHANGES TO CHARACTER OF REVIEW MATTERS?

1. Computational 'jargon in' equals computational 'jargon out'?
2. Contextual features matter?
3. The powers and procedures of the tribunal matter?
4. Machine learning is a different order challenge?

## III. ONLINE ('VIRTUAL') JUSTICE CHALLENGES

## IV. CONCLUSION

# I. INTRODUCTION

- AI is just another technology
- Changes both the character of the 'matters' and how they are adjudicated (on-line tribunals are looming)
- AI covers everything from digitisation to automation to machine learning...
- Centrelink effectively fully digitised 10 years ago, so AAT1 already routinely presented with print-off of computer dumps
- AI is both boon (efficiency/accuracy) and bane (robo-debt)
- So must do professional design and have full/proper policy-audits

## II. CHANGED 'DECISIONAL' CHARACTER' OF MATTERS?

- Jargon in = jargon out: Centrelink ADEX/MultiCal debt 'explanations' are for the cognoscenti only...; file notes ditto
- So AAT members need considerable sleuthing skill sets and 'paper' files beat e-file papers hands down
- Context matters: Example of ability of pre-amalgamation SSAT to discover 'unknown unknowns'
- AI more prone than human systems to 'drop the explanatory reasons' (robo-debt interactions with supposed debtors a classic — with ADEX held back and useful only to cognoscenti anyway...).
- So EU/UK insistence on 'plan B' right to human?
- Not everyone is [H]APPY with smart-phone notices/uploads (ParentsNext); shifts decisions to 'virtual spaces'; harder for AAT to know if hardware/software/network 'fail' or SS clients

## Decisional Character Continued

- Tribunal powers & procedures matter: SS(A)A 1999 example of AAT powers to direct debt recalculation
- So new technological challenges posed by shifts in character of matters for review call for reconsideration of tribunal powers and procedures
- Machine learning is a different/much larger challenge: It replicates and 'beats' human; algorithms are very complex (3<sup>rd</sup> party contractor commercial-in-confidence issues)
- Superficially attractive EU/UK 'right to have a human review of machine learning outcomes' may prove empty (decision-maker defers to AI outcome).
  - Already so for Centrelink ADEX debt calculations (mere 'automation' of the Rate Calculator steps) so more so for machine learning
- Morse speculation of 'under-shooting' legal potential in rolling out.
  - Hardly the 'Australian way' in light of massive over-shooting of robo-debt?

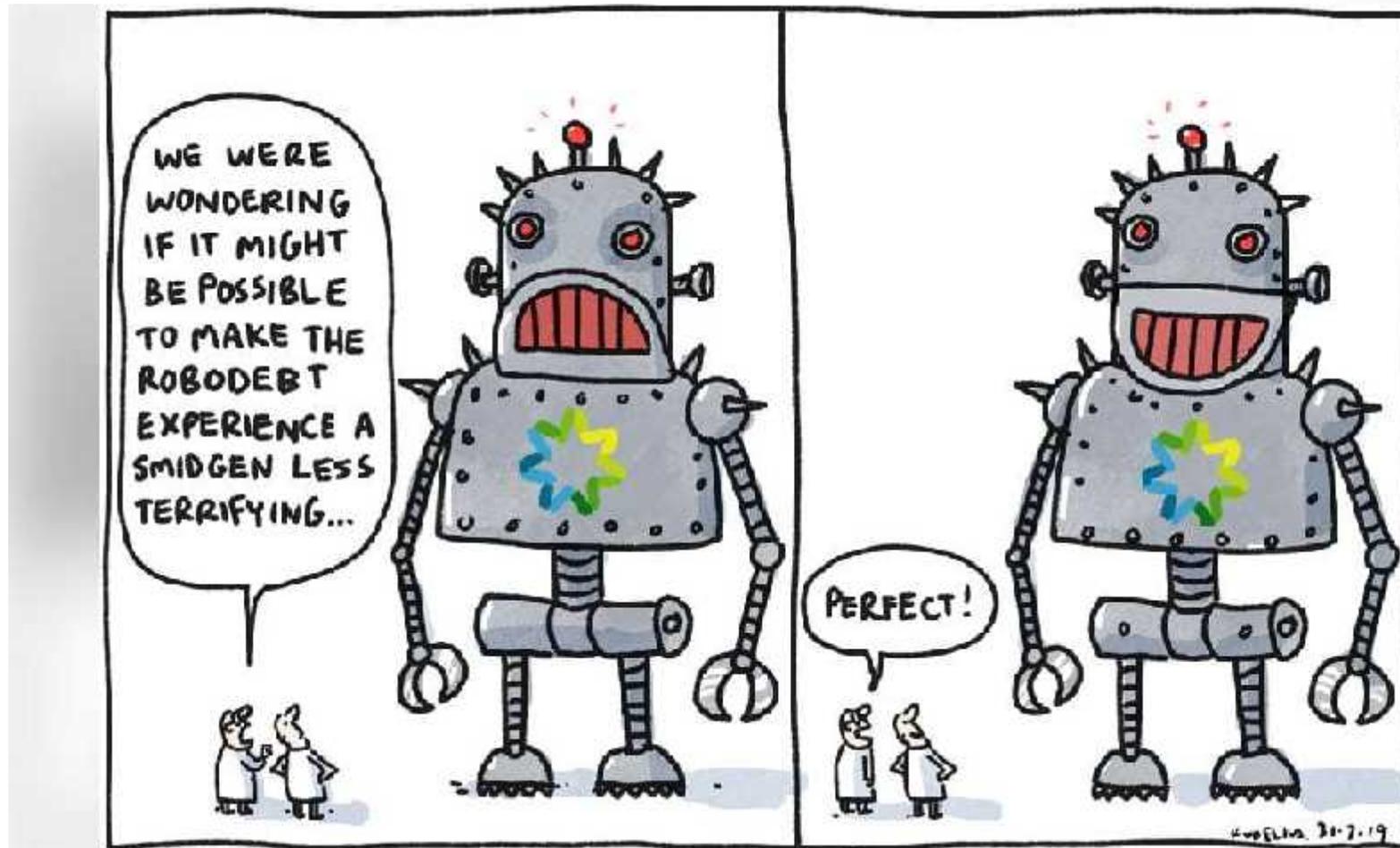
# III. A VIRTUAL TRIBUNAL?

- VCAT Sept 2018 engage MODRON; possible 2022 roll out virtual for small claims
- Katrina Palmgren (2018) Churchill Fellow recommends under \$10,000 virtual for Vic Magistrates Crt
- BC Canada, UK and multiple other examples
- Best as an alternative pathway or 'integrated' into current human/paper based systems?
- Dealing with the problem of compositional inequities (those whose tech incompetence disadvantages; those whose disadvantages/vulnerabilities are 'masked' because no face to face to detect)
- Not that Tribunal members are much good at detecting presently (including when deciding to issue oral reasons)
- 1950s Alan Turing test of 'comparing' outputs of AI and human

# IV CONCLUSION

- As Leah Wing 2017 rightly notes, '[t]he ways in which we design ODR systems and manage data within them are central to whether they magnify the risk or the opportunities for access to justice'
- SS special in one important way. Citizens subject to primary decision-making by Centrelink (whether by human hand or by AI) and those aggrieved clients who turn to the AAT for merits review, are disproportionately comprised of vulnerable individuals, whether due to age, location, human capital resources, mental illness, education or other markers
- Long-burn risk that '[c]omputerisation is apt to change the nature of an administrative process, translating public administration from a person-based service to a dehumanised system where expert systems replace officials and routine cases are handled without human input.' (Harlow and Rawlings 2019)

- Much of what has been described is already well in the wind.
- What is canvassed in this paper are some of the ways of further augmenting already disturbing winds of cultural change blowing through the AAT (Lucy 2017)
- Including the way ADR and other initiatives may deteriorate rather than improve the quality of decision-making or distort access to justice (Donoghue 2017)
- Written paper: [Terry.carney@sydney.edu.au](mailto:Terry.carney@sydney.edu.au)



**Kudelka: Australian, 31 July 2019**

# Selected references

- Terry Carney 2018, 'The New Digital Future for Welfare: Debts without legal proofs or moral authority?' (2018) (March) *UNSW Law Journal Forum* 1 <http://www.unswlawjournal.unsw.edu.au/the-forum/>
- Donoghue, Jane. 2017. "The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice." *Modern Law Review* 80 (6):995-1025.
- Harlow, Carol, and Richard Rawlings. 2019. "Proceduralism and Automation: Challenges to the Values of Administrative Law." In *The Foundations and Future of Public Law*, edited by Elizabeth Fisher, Jeff King and Alison Young, forthcoming
- Lucy, Juliet. 2017. "Merits Review and the 21st Century Tribunal." *Australian Journal of Administrative Law* 24 (2):121-139.
- Morse, Susan C. 2019. "When Robots Make Legal Mistakes." *Oklahoma Law Review*:Forthcoming. Available at SSRN: <https://ssrn.com/abstract=3340103>
- Palmgren, Katarina. 2018. "Use of Online Dispute Resolution to Resolve Civil Disputes." Canberra: Winston Churchill Memorial Trust [https://www.churchilltrust.com.au/media/fellows/Palmgren K 2017 Use of online dispute resolution to resolve civil disputes.pdf](https://www.churchilltrust.com.au/media/fellows/Palmgren%20K%202017%20Use%20of%20online%20dispute%20resolution%20to%20resolve%20civil%20disputes.pdf)
- Wing, Leah. 2017. "Artificial Intelligence and Online Dispute Resolution Systems Design: Lack of/Access to Justice Magnified." *International Journal of Online Dispute Resolution* 4 (2):16-20