



Mr Edward Santow
Human Rights Commissioner
Australian Human Rights Commission

Dear Mr Santow,

AIIA's Submission on the consultation on AI Governance and Leadership

The members of the AIIA commend the Australian Human Rights Commission for its leadership in stimulating a discussion between stakeholders, including government, business, industry, research institutes, civil society and other interested parties, on the impact of Artificial Intelligence (AI) on Australian society. Our members agree that AI has the potential to be a significant contributor to Australia's continued economic growth. Additionally, it has the potential to address a number of government service delivery challenges, especially in the social services sector such as service provision to an aging population and the implementation of the National Disability Insurance Scheme.

AIIA members are committed to developing Australia's digital ecosystem. It supports the creation of a favourable business environment where Australian industries are empowered to innovate and deploy AI solutions, and contribute to Australia's overall productivity.

However, members caution against fast-tracking the development of new AI governance and regulatory frameworks based on the assumption that existing frameworks are inadequate in addressing the challenges posed by AI products and services. The main challenge being faced by Australian businesses seeking to explore or grow the provision of AI products and services is not the lack of regulatory frameworks.

Rather the two clear challenges being faced by businesses are:

1. The inability to access the relevant local skills to develop and implement AI products and services; and
2. Access to clear and transparent research and development taxation programs that foster an environment of innovation, support commercialisation and export of high-quality Australian AI products and services.

Therefore, developing training and education programs for skills development should be a priority for ensuring a thriving and innovative AI sector in Australia. These skills range from social policy skills, (e.g. legal, privacy, security, ethics and human rights) to the technical (cyber security, data analytics, coding and hacking). Professionalisation of AI skills is something that can also be considered in this context.

Government is also struggling with ensuring the right digital skills are accessible to transform service delivery. In its *Digital Delivery of Government Services Report, June 2018*, the Finance and the Senate's Public Administration References Committee noted its concern, "that the APS is unable to do much" of the digital work required to transform government. Furthermore, it noted,

"On its current trajectory, the APS risks becoming exclusively a cadre of generalist managers who no longer have the requisite policy and technical skills to conduct the business of government" (para. 1.58).

Equally important is certainty and clarity on research and development tax incentive programs to encourage businesses, ranging from start-up enterprises to multinational companies, undertaking AI research and development activities in Australia. For example, the current AusIndustry guidance for software developers wanting to claim the R&D tax incentive does not reflect the agile software development practices of industry.

The notion of "trust" is also becoming a challenge for both industry and government in delivering digital services. Therefore, AIIA members anticipate it will also be a challenge for AI products and services delivered either by government or industry.

Both government and industry need to earn trust from their consumers in the delivery of digital products and services. This trust has been eroded through recent failures in successful implementation of Australian government digital transformation projects. Industry has also attracted criticism for data and privacy breaches. According to subsequent reviews of key Australian government digital transformation projects such as Robodebt, a consistent lack of capability, poor research and development, and a failure to embrace principles of co-design have contributed to deficiencies in the delivery of these projects. In the case of data and privacy breaches by industry, it is the failure to comply with existing legal frameworks that has caused consumer distrust.

It is against this backdrop that AIIA members question the need for new governance and regulatory frameworks, and the creation of a new organisation. There is existing national and state-based legislation that encompasses privacy and privacy protections, data sovereignty, data use and disclosure, human rights, equality and diversity, anti-discrimination, fair trading, cyber security, and the right to inclusive and accessible products and services. These legislative frameworks are supported by organisations that monitor and administer the legislation, and are further complemented by the Commonwealth Ombudsman.

AIIA members recommend that government give further consideration to existing governance and regulatory frameworks in order to test their relevance and application to AI products and services.

Similarly, existing organisations should be considered first for their ability to deal with any new challenges that might be posed by AI products and services.

About the AIIA

The Australian Information Industry Association (AIIA) is Australia's peak member body for the digital industry. AIIA is a not-for-profit organisation that has pursued activities since 1978 to stimulate and grow the digital ecosystem, in order to create a favourable business environment and drive Australia's social and economic prosperity.

AIIA does this by providing a strong voice in representing its members' policy priorities, creating a sense of community through events and education, fostering collaboration between industry and government, and curating compelling content and relevant information.

The AIIA National Board and its State Councils embody the diversity of the Australian digital economy, encompassing large Australian businesses, multinationals, and small and medium sized businesses.

AIIA's members include organisations such as Apple, Adobe, Cisco, Deloitte, DXC, Gartner, Google, IBM, Infosys, KPMG, Lenovo, Microsoft, Oracle, Optus, Qlik, Salesforce and Telstra, national companies such as Australian Data Centres, Canberra Data Centre, Data#3, KTM Capital, Information Professionals, Technology One, and Small to Medium Enterprises including Silverstone Edge, SME Gateway and Zen Enterprise and start-ups such as OKRDY.

While AIIA's members represent around two-thirds of the technology revenues in Australia, more than 90% of our members are SMEs.

Q1. What should be the main goals of government regulation in the area of artificial intelligence?

Based on their experience in developing and implementing AI products and services including for government, AIIA members believe that the main goals of government regulation in AI should be twofold:

1. Government should build upon and augment existing legal frameworks to supporting stable and long-lasting benefits from AI. This approach also has the advantage of allowing government to fully leverage the depth of experience and capability of organisations, such as that of the Australian Human Rights Commission, in administering Australia's anti-discriminatory legislation. Furthermore, it mitigates the risk of over regulating which can have the effect of limiting both innovation and participation by all members of Australian society.
2. Develop AI Principles and Standards that build upon experience and recognise industry and regulatory frameworks. For example, through the Information Technology Industry

Council (ITI), the tech industry has already aligned itself to a set of principles and policies¹ to guide AI developments. These include, but are not limited to:

- a. **Promoting responsible development and use**, through integrating principles into the design of AI technologies beyond compliance with existing laws;
- b. **Investing in and enabling the AI ecosystem**, by encouraging robust research and development to foster innovation in areas of cyber-defence, data analytics, robotics, human augmentation, natural language processing, interfaces and visualizations; and
- c. **Promoting lifespan education and diversity**, by addressing the implications of AI on the existing and future workforces and leveraging public private sector partnerships that prioritise diversity and inclusion.

For their part, AIIA members are currently considering the adoption of a set of principles of ethics in AI (building on internationally agreed principles such as the ITI).

AIIA members are also currently working with **JTC1 – Joint Technical Committee 1 / SC 42²**, the joint committee of the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC), to bring countries together to work on international standards relevant to AI.

Additionally, AIIA members recommend that in developing AI products and services consideration should be given to the following:

- a. **Co-designing:** ensuring collaboration between government, industry, academia and civil society to minimise bias and maximise trust in the development of AI products, and services for Australians;
- b. **Education:** Australians should be educated about the benefits and risks of AI in a manner that is respectful of the genuine potential for disruptive change and the implications of such change (positive and negative);
- c. **Iterating:** developers should adopt an iterative approach supported by user research in developing both AI policy and AI regulatory frameworks which are consistent with global best practice;
- d. **Equity, Diversity and Inclusivity:** Inclusion and accessibility should be kept at the forefront of all AI activities - AI has enormous positive potential for enhancing inclusion for those traditionally marginalised; and
- e. **Transparency:** trust in AI in the public domain will only be achieved through a strong commitment to transparency of policy, decision making and regulatory development. The AIIA strongly advocates for continuous disclosure of challenges and concerns associated with emerging AI issues (such as bias);

¹ <https://www.itic.org/public-policy/ITIAIPolicyPrinciplesFINAL.pdf>

² https://www.iec.ch/dyn/www/f?p=103:7:0::::FSP_ORG_ID:21538

- f. **Principles based regulatory framework** – AIIA members recommend a Principles based approach rather than one that is regulatory focussed. Principles can evolve along with advancements in AI technology.

Additionally, as AI research and implementation is currently largely being driven by industry, with industry also taking the lead in developing global standards. Therefore, it is important that industry is engaged in discussions on AI and human rights on an ongoing basis including through associations such as the AIIA.

[Navigating Artificial Intelligence Summit on 6 June 2019](#)

In order to stimulate discussions on the key issues in AI, the AIIA is hosting a flagship event on 6 June 2019 in Canberra to explore the challenges, opportunities and potential pitfalls that our AI-aligned future may present. The Summit will bring together AIIA members, experts in AI, policymakers and business to continue this important discussion. The AI Summit provides a platform for global and local experts from industry, research institutes, start-ups and government agencies to engage in a dialogue on AI.

Q2. Considering how artificial intelligence is currently regulated and influenced in Australia:

Q2a. What existing bodies play an important role in this area?

Within existing regulatory frameworks, there is a proliferation of organisations with a range of coercive and non-coercive powers and responsibilities for administering existing laws. Some of these organisations and their powers are listed below. Consequently, AIIA members believe the case for founding a new body with specific responsibility for AI is yet to be established.

| Body | Role it plays |
|---|---|
| Office of the Australian Information Commissioner | <p>Provides oversight of privacy functions and freedom of information functions that are conferred by the Privacy Act 1988 (Privacy Act), and Freedom of Information Act 1982 (FOI Act) respectively. The OAIC has a role in reviewing FOI decisions made by agencies and ministers under the FOI Act and is also responsible for government information policy functions, conferred on the Australian Information Commissioner under the Australian Information Commissioner Act 2010 (AIC Act).</p> <p>The OAIC has an important role to play for the protection of privacy as AI systems become more powerful and potentially able to re-identify individuals who legally, are entitled to remain anonymous, or have their personal information de-identified or destroyed. The OAIC has the power to conduct investigations, take</p> |

| Body | Role it plays |
|--|--|
| | enforcement action and order compensation to affected individuals for privacy-related misdemeanours. |
| (Interim) National Data Commissioner | <p>The National Data Commissioner's role is to implement a simpler data sharing and release framework to improve social and economic outcomes for Australians while safeguarding data, which will be critical to the success of the AI industry in Australia.</p> <p>The National Data Commissioner and associated National Data Advisory Council (NDAC) provides an important foundational role in advising on the ethical use of data, community expectations, developing best practice and keeping track of industry and international developments.</p> <p>The pre-cursor to AI products and service is data. The National Data Commissioner has a role to play ensuring that the data is inclusive.</p> |
| Australian Human Rights Commission | <p>Leads the promotion and protection of human rights in Australia. Its primary objective is to ensure human rights values play a part of everyday life and language and to empower all people to understand and exercise their human rights. Importantly, the AHRC has the authority to investigate alleged discrimination, (including discrimination as to age, disability, race and gender) which will be a key consideration for upholding ethical standards in AI applications.</p> <p>The AHRC has a critical role in ensuring that Australians are educated about AI and its implications, both positive and negative; ensuring users or beneficiaries of AI products and services are fully informed about any risks and are provided rights under data regimens to understand how data about them is used in the provision of services. Organisations, both public and private, will continue to rely on the AHRC to continue its public and international dialogue on the issue of ethics in technology to inform emerging principles, frameworks and potential standards.</p> |
| The Treasury | <p>Treasury's role in administering the reforms to the <i>R&D Tax Incentive</i> and the 2018 <i>Innovation and Science Australia 2030 Strategic Plan</i> to enhance the additionality, integrity and fiscal affordability provides a foundation for future AI targeted R&D TI programs.</p> <p>Treasury must ensure the economy supports the development of inclusive and accessible AI products and services.</p> |
| Department of Industry, Innovation and Science | The role of the Department of Industry, Innovation and Science in progressing incentives like the R&D tax incentive is also critical to stimulating industry investment in AI products and services. |

| Body | Role it plays |
|---|--|
| | The role of the Department as Chair of the Interdepartmental Committee on AI will be critical in ensuring that government AI products and services model best practice and is accessible and inclusive in both design and delivery. |
| Australian Chief Scientist | Australia's Chief Scientist provides high-level independent advice to the Prime Minister and other Ministers on matters relating to science, technology and innovation. They also hold the position of Executive Officer of the National Science and Technology Council to identify challenges and opportunities for Australia that can be addressed, in part, through science. |
| Standards Australia | Standards Australia is already working with the joint committee of the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) (called <u>JTC1 – Joint Technical Committee 1 / SC 42</u>) to bring countries together to work on the international standards relevant to AI. |
| Head, Australian Cyber Security Centre | <p>The Australian Cyber Security Centre (ACSC) is the Australian Government's lead on national cyber security. It brings together cyber security capabilities from across the Australian Government to improve the cyber resilience of the Australian community and support the economic and social prosperity of Australia in the digital age.</p> <p>In July 2018 the ACSC became part of the Australian Signals Directorate (ASD), which became a statutory agency. Australian Government cyber security expertise from CERT Australia and the Digital Transformation Agency moved into the ACSC.</p> |
| Australian Competition and Consumer Commission (ACCC) | <p>The role of the ACCC is to enforce the <i>Competition and Consumer Act 2010</i> (Cth) and a range of additional legislation with a view to promoting competition and fair trade in markets to benefit consumers, businesses, and the community. The ACCC also regulates national infrastructure services.</p> <p>The ACCC is responsible for product safety, product liability, mandatory standards, issuing safety notices and administering recalls. As AI products and services are brought to market in Australia, the ACCC will have a role to play to ensure those products and services are safe, reliable and without design flaws in order to protect the interests and safety of consumers.</p> |

Q2(b) What are the gaps in the current regulatory system?

The existing legislative framework – whether it be directed to the protection of the personal information of Australians, or to ensure Australians do not experience discrimination – needs to be viewed through the lens of AI. For example, existing anti-discriminatory regulatory frameworks may not in all instances translate well for use in the adjudication of discriminatory biases arising from AI design and use.

Therefore, in order to maintain public trust, Australia’s regulatory environment must have the agility and flexibility to address issues as quickly as they emerge, and to do so in a fully transparent manner. Therefore, the existing legislation that may be applicable to and automated decision-making, will need to be fully interrogated to identify any gaps. However, this assumes that the skills set required to undertake this interrogation is available in existing government organisations.

Therefore, AIIA members emphasise the need to consider augmenting the capabilities of existing bodies and engage in discussion on amending existing legal frameworks before enacting new legislation.

Responsible Innovation Organisation:

AIIA’s members do not believe that a business case has been made for the establishment of a new Responsible Innovation Organisation (R.I.O).

Q3. Would there be significant economic and/or social value for Australia in establishing a Responsible Innovation Organisation?

Further research supported by relevant data needs to be undertaken in order to build a business case that demonstrates the significant economic value for Australia in establishing an R.I.O. As noted above, it may be that existing organisations are able to fulfil this role with additional investment in resources and funding for educating consumers.

Q4. Under what circumstances would a Responsible Innovation Organisation add value to your organisation directly?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the business case for a separate entity. In the immediate short term, the endorsement of AI principles and contribution towards global standards will achieve the best results for industry. This activity can be undertaken by existing organisations such as the Department of Industry, Innovation and Science through allocation of additional resources.

Q5. How should the business case for a Responsible Innovation Organisation be measured?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the case for a separate entity dedicated to regulating AI.

The Business Case for the organisation itself must be measured on the following:

- cost and benefit analysis;
- the ability of existing organisations e.g. OAIC, Commonwealth Ombudsman, and/or the Australian Human Rights Commissioner to take on the additional function of monitoring activities related to the development of AI products and services;
- identify the resources that would be required to augment existing bodies (technical, legal, ethics, consumer rights experts) as against funding the establishment of a new organisation;
- consumer, industry, research institutes and government views on the utility of such an organisation; and
- a clear understanding of how a new organisation will contribute to increasing national productivity measured by sectoral impacts on the GDP and foster the development of and trust in the AI industry in Australia;
- risk of AI governance during a period of rapid disruptive transition; and
- other criteria determined by user (consumer and businesses) research.

Q6. If Australia had a Responsible Innovation Organisation:

Q6(a) What should be its overarching vision and core aims?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the case for a separate entity.

Q6(b) What powers and functions should it have?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the case for a separate entity.

Q6(c) How should it be structured?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the case for a separate entity.

Q6(d) What internal and external expertise should it have at its disposal?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the case for a separate entity.

Q6(e) How should it interact with other bodies with similar responsibilities?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the case for a separate entity. Additionally, the business case should also consider the benefit of interacting with industry bodies such as AIIA.

Q6(f) How should its activities be resourced? Would it be jointly funded by government and industry? How would its independence be secured?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the business case for an R.I.O. Such a business case should also consider options for resourcing and funding the R.I.O.

Q7(g) How should it be evaluated and monitored? How should it report its activities?

Noting the comments above, AIIA members recommend further research and analysis be undertaken to test the business case for an R.I.O before setting up criteria for the evaluation, monitoring and reporting activities of the proposed R.I.O.

Yours sincerely,

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18 March 2019