Australian
Chamber of Commerce
and Industry
ABN 85 008 391 795
T: +61 2 6270 8000
info@acci.com.au
www.acci.com.au

26 July 2023

Technology Strategy Branch
Department of Industry,
Science and Resources

Via email: DigitalEconomy@industry.gov.au

Response to the 'Safe and Responsible Artificial Intelligence (AI) in Australia' discussion paper.

About ACCI

The Australian Chamber of Commerce and Industry (ACCI) is Australia's largest and most representative business association. Our members are all state and territory chambers of commerce, which in turn have 430 local chambers as members, as well as over 70 national industry associations. Together, we represent Australian businesses of all shapes and sizes, across all sectors of the economy, and from every corner of our country.

Our members have a strong interest in the regulation and risk management of activities in relation to data, digital technology and cyber security.

ACCI also maintains strong international connections with participation in the Business at OECD (BIAC) Digital Economy Committee and ICC's Global Digital Economy Commission.

General Comments

ACCI welcomes the opportunity to comment on the 'Safe and Responsible Artificial Intelligence (AI) in Australia' discussion paper.

In considering our positions on appropriate governance of this emerging area, we would stress the importance of maintaining harmonisation with international frameworks where possible in order to ensure the ongoing growth trajectory of this sector for Australian businesses.

ACCI would note that in 2019, the OECD introduced the OECD Principles on Artificial Intelligence. While not legally bound to the OECD AI Principles, Australia as an adherent agreed to look to use these as a guide for policy. We would encourage the government to continue to align progressive AI work to these principles and the framework for classifying systems.

Definition of AI

ACCI is supportive of the government using internationally recognised and widely adopted definitions. The discussion paper references the International Standards Organisation (ISO) definition. As noted above, ACCI would preference alignment

Canberra
Commerce House
24 Brisbane Avenue
Barton ACT 2600

to relevant OECD definitions in order to remain consistent with international work and to maintain our ability to benchmark against other countries.

Governance options

As acknowledged in the paper, due to the rapid pace of technological development a complex and piece-meal approach to regulation and governance has occurred. Section 3 of the discussion paper provides a summary of the current regulatory landscape noting that there are several 'general regulations' and several 'sector-specific regulations' in Australia that address AI.

Although our members would agree that the regulatory environment is complex, to date members have not indicated any specific concerns with existing regulation (e.g. compliance challenges or ambiguity) that is not already under review (e.g. privacy law) or the subject of recent reviews (discrimination law). We would stress that the more complex the regulatory environment, the more difficulty businesses face with compliance, compliance costs and administration and barriers to investment and innovation.

In order to avoid adding to the complexity, and given that AI is still evolving rapidly and many of its opportunities and risks are not yet fully understood, ACCI would urge governments to, in principle, start with voluntary initiatives rather than regulatory. Any rush to further legislate too early could place Australia out of step with our international colleagues and place potentially undue burdens on businesses, stifling innovation in Australia. That is not to say however, that we wouldn't support proactive 'guardrails' where identified risks and consultation with industry deem them appropriate.

In responding to the options across the governance spectrum for AI presented in Figure 3, ACCI provides the following:

Option	ACCI response
Ethical Principles	Support maintaining voluntary ethical principles and note that more could be done to further promote the existing work. For example, companies designing, deploying and implementing AI technology should ensure that datasets are regularly tested and retested to avoid algorithmic bias to ensure public trust.
Technical Standards	Support voluntary technical standards.
Regulatory Principles	Do not see the need nor additional benefits for this at this point in time. Where specific sectoral regulatory approaches already exist (e.g., in health – TGA regulation of software as a medical device) the sectoral regulator should engage with the industry on whether the existing approach appropriately optimises the benefits of innovation and does not unnecessarily constrain adoption of beneficial technologies.

Register of AI or ADM applications	In principle we support exploring a voluntary register in more detail. It may operate in some ways similar to IP and be a vehicle for increased collaboration. Further consultation would be needed, particularly in relation to whether the information provided would be public or private and to what level of detail. A clear net benefit case would also need to be established.
Certification	Not appropriate at this stage.
Accreditation	Not appropriate at this stage.
Regulator forums	Greater intergovernmental information sharing on AI would be beneficial and likely to reduce duplication of activities and over-regulation. In particular, Federal and State Governments should establish consistent approaches to addressing emergent issues such as privacy protection in relation to training data.
Regulatory sandboxes for AI	Establishing a regulatory sandbox is supported as it is a good mechanism to bring together regulators with industry to streamline products to market and identify areas of risk or unknowns. The sandbox would enable better understanding of how regulation interacts with new technologies and help refine this interaction where necessary. ACCI believes this role could be undertaken by the Responsible AI Network (RAIN) and Department of Industry, Science and Resources given their current remit.
Public education and awareness	Support. Particularly raising awareness of 'low sophistication' level applications of AI such as customer service, rostering, supply-chain management, applications etc.
Industry Codes of Conduct	Industry should be left to develop its own industry Codes of Conduct as the need is identified and on a voluntary basis.
New Ai laws / prohibitions	Not supported at this stage. There is an emerging need for clarity however, on whether AI models can be trained on copyrighted content, even in the public domain and where compensation considerations are appropriate.

Many of the risks associated with AI, at this stage in the evolution of the technology, are adequately covered by existing regulation, including privacy law, Australian consumer law, online safety, competition law, copyright law and discrimination law. Creating an AI-specific regulation is likely to be duplicative and overlap existing general and sector-specific regulation. An exception would be where it is designed to consolidate the various components of these other regulations that relate to AI. Even then, comprehensive consultation would need to be undertaken first to test the feasibility of this without creating an additional burden on business or regulators, or creating further confusion.

Tiered regulation and sector-specific initiatives

The three-tiered regulation model should be maintained but better articulated, whereby general regulation is complemented by more targeted sector-specific regulation and guidance.

A sector-led approach is already seen in Australia through regulators for therapeutic goods, food, vehicles, airline safety, financial services and work health and safety (WHS).

With greater formalised co-ordination and information sharing across government, existing regulators could be more formally charged with conducting risk assessments and providing organisations within their respective sector's guidance to assist them to implement responsible and ethical AI practices and mitigate key risks. An example of this approach is the Centre for Work Health and Safety developing a WHS Management Tool for AI and an AI WHS Risk Assessment Tool.

This is particularly relevant for those sectors which are rapidly deploying AI and have the potential to impact large areas of the community, workforce or economy, such as use of AI in healthcare, security and human resources. Identifying key sectors would further assist in identifying high-risk use cases within those sectors, validating tailored responses for each, while boosting public trust in those sectors and technologies.

Fundamentally, we advise the Government not simply to consider the advent of artificial intelligence as presenting risks that need to be viewed through the prism of safety and responsibility, but as a new field of innovation enabling unprecedented opportunities to use digital technologies to improve social and economic outcomes. It is increasingly understood that addressing some of the risks of AI could be done with AI, such as protecting against cybersecurity threats, misinformation and bias. For Australia to capture those benefits, regulation and governance needs to be seen in the context of the large social and economic opportunity that AI present.

We thank you for your consideration of our feedback.

Should you require any additional information or clarification of any points contained within, please contact Jennifer Low, Director Health, Safety, Resilience and Digital Policy at jennifer.low@acci.com.au or Tanya Roy, Policy Adviser Health, Safety, Resilience and Digital Policy at tanya.roy@acci.com.au.