

19 July 2023

Department of Industry, Science and Resources

By upload

Dear sir/madam

Safe and responsible AI in Australia

The Insurance Council of Australia¹ (Insurance Council) welcomes the opportunity to contribute to the development of safe and responsible artificial intelligence (AI) practices in Australia. Beyond the general comments below, responses to specific questions in the *Safe and responsible AI in Australia: Discussion paper* (Discussion paper) are provided in the appendix.

The general insurance industry plays a critical role in protecting the financial well-being of individuals, households and communities. AI provides the potential for insurers to deliver this critical function in more efficient and effective ways. Like other sectors, there are diverse potential AI use cases in general insurance, from more interactive and tailored engagement with consumers to more efficient automation of claims handling processes. While recognizing the potential that AI holds, we also acknowledge the importance for AI technology to be harnessed in a way that is safe and consistent with the principles of our consumer protection framework.

The Insurance Council welcomes the Government's focus on governance mechanisms to ensure AI is used safely and responsibly. We recognise the foundations already in place, such as Australia's AI Ethics Principles, together with a range of recent initiatives and Government investments to support the responsible development and use of AI. To build on these, we recommend that Australia also elevate "pro-innovation" alongside "safe and responsible" as a principle to drive Australia's AI framework. We suggest a public pro-innovation principle from the Government will help retain our existing capabilities whilst also attracting international capital and talent. As above, AI is bringing significant benefit to the Australian economy. Ensuring the global AI ecosystem knows Australia is pro-innovation will support Australia's desire to be a global leader in AI.

The Insurance Council gives in principle support for a risk-based approach to regulating AI. While AI encapsulates novel ways in which technology and data is used, many of the potential risks or consumer harms are likely to be addressed in existing consumer protections. When considering the appropriate regulatory landscape for emerging technologies like AI, the focus should be on whether their application could result in new risks or harms and exploit or create gaps in the existing regulatory framework, not only whether risks or harms are possible in the absence of any regulation. Absent this approach, it is likely that AI-specific regulation will overlap or create inconsistencies with existing consumer protection and other regulations. We therefore strongly suggest that identified risks of AI be assessed in the context of the existing regulatory framework and this may also facilitate identification of current regulatory requirements that may benefit from guidance in terms of their application to AI.

¹ The Insurance Council is the representative body for the general insurance industry in Australia, representing approximately 89% of private sector general insurers. As a foundational component of the Australian economy the general insurance industry employs approximately 60,000 people, generate gross written premiums of \$59.2 billion per annum and on average pays out \$148.7 million in claims each working day (\$38.8 billion per year).

We submit that regulation should be technology neutral. It is not clear in the Discussion Paper if the Government will consider regulation specific to AI products or to specific use cases. We suggest the Government should focus on minimising specific risks in line with the suggested risk-based approach to regulation. Where there is unacceptable risk, we note this may potentially involve restricting or banning practices likely to result in unacceptable consumer harms regardless of the technology used. We note the example cited in the Discussion paper of social scoring proposed to be banned in the EU.

The Insurance Council acknowledges that AI development and regulation is an ongoing process. We welcome further engagement with the Government to ensure Australians benefit from AI generally and are protected from any harms that may arise in the general insurance context. To continue this discussion, please contact Mr Eamon Sloane, Policy Advisor, Policy and Regulatory Affairs, at esloane@insurancecouncil.com.au or 0423 671 072.

Regards



Andrew Hall
CEO and Managing Director

Appendix: Discussion paper responses

Do you agree with the definitions in this discussion paper? If not, what definitions do you prefer and why?

We note that the definitions offered on page 5 of the Discussion paper are limited and offer some broad comments on further definitions of relevance.

While not specifically raised in the discussion paper, the Insurance Council would be concerned by the inclusion of prescriptive definitions in any future regulation. Regulation focusing on definitions of products or mechanisms, such as AI-specific regulation, may become outdated as technology develops. Ensuring coverage under existing regulations, such as consumer protection laws, will mitigate the risk of AI regulation which may become outdated.

Additionally, we note the importance of Australia's interoperability within the international AI ecosystem. Given this, it is important that any AI associated definitions adopted in regulation by the Australia Government do not hinder this interoperability. We consider that technology neutral regulation can help to avoid such issues and may mitigate the risk of Australia falling out of step with the international AI ecosystem.

What potential risks from AI are not covered by Australia's existing regulatory approaches? Do you have suggestions for possible regulatory action to mitigate these risks?

The Insurance Council is not currently aware of any gaps in the existing regulatory regime specific to AI use in the general insurance industry. As above we encourage the Government to clarify the coverage of existing regulation to identify gaps or address uncertainties. We would also anticipate that potential risks will be identified as AI use cases develop.

Are there any further non-regulatory initiatives the Australian Government could implement to support responsible AI practices in Australia? Please describe these and their benefits or impacts.

The Insurance Council welcomes the recognition in the discussion paper of the range of regulatory and self-regulatory mechanisms which may be appropriate in addressing new risks associated with AI. As further AI use cases emerge, we anticipate guidance material on how existing regulatory obligations apply in relation to specific use cases is likely to be useful. In this context, we note as an example, the Guidance Resource on AI and insurance pricing developed by The Actuaries Institute and Australian Human Rights Commission, which is non-binding.² The Government should consider how it can support work of this nature that will assist industry. We note this suggestion may be considered regulatory, but it is important to consider how industry and researchers can be assisted to get their development and use of AI right, before falling foul of the law.

Do you have suggestions on coordination of AI governance across government? Please outline the goals that any coordination mechanism could achieve and how they could influence the development and uptake of AI in Australia.

The Insurance Council recommends the Government consider establishing a central AI expertise body (Expert Body), modeled on the United Kingdom's Office for Artificial Intelligence and AI Council. The Expert Body would house the Government's expertise and advise other parts of the Government on regulating and engaging with AI. Any department or agency seeking to regulate AI would need to

² Australian Human Rights Commission and Actuaries Institute. December 2022. *Guidance Resource: Artificial Intelligence and discrimination in insurance pricing and underwriting.*

consult the Expert Body. The Expert Body would then make public recommendations to which the department or agency would have to respond in their development of AI regulation. This system would create public accountability for regulators, helping to limit the proliferation of overlapping regulation and ensuring regulation remained sensible and within the Government's risk appetite.

A non-centralised, uncoordinated model carries risks. The financial services sector is acutely aware of and currently experiencing the problems arising from a lack of coordination in policy delivery across government. For example, insurers currently have overlapping specific and general cyber security obligations across multiple regulators which in practice increase complexity and compliance costs. As the Government considers the governance of AI, there are lessons to be learnt from the development of cyber security regulation. A whole-of-government approach to AI regulation does not necessarily require a single regulator but it must consider a formal mechanism to ensure that policy actions are coordinated across regulators, which the Expert Body can provide.

The Expert Body should support regulators to produce authoritative guidance material with regarding AI, as the Australian Prudential Regulation Authority and Australian Securities and Investment Commission already do. Authoritative guidance material would limit the need to wait for the development of case law, which can hinder innovation. As an example, proposals contained within the *Privacy Act Review: Report 2022* (Privacy Act Review) that would see the Office of the Australian Information Commissioner (OAIC) issue guidance material.³

The Expert Body would employ people with existing backgrounds in AI or AI policy and consult with AI expertise in the private sector and academia. We consider that an early implementation of this approach may mitigate the risk of regulators competing for AI talent in a tight labour market. Multiple regulators entering the AI labour market is likely to distort the market and drive costs up for government and private industry.

We recommend two initial tasks for the Expert Body. The first would be to help the Government set its risk appetite and develop a national risk statement or similar. The national risk statement would inform the Expert Body's recommendations to government departments or agencies. It would also help non-governmental entities to understand the Government's expectations regarding their development and deployment of AI.

The second task is to examine existing regulation and other reforms or strategies (such as the Privacy Act Review and industry codes) impacting the development and deployment of AI with a view to identifying gaps and uncertainties and making recommendations to the Government on how those regulations could be made clearer and drive better AI-related outcomes for Australians. The development of guidance material, as discussed above would contribute to this solution.

What initiatives or government action can increase public trust in AI deployment to encourage more people to use AI?

While Australia is already reaping the benefits from AI applications, much of the ongoing, public discourse around AI is focused on the potential threats to humanity. As the Discussion Paper acknowledges, public trust and confidence in AI is low. While some of these concerns are not unreasonable, there is the potential for the discourse to manifest in unnecessarily negative consumer sentiment towards all AI applications. Negative consumer sentiment makes it difficult for firms and governments to invest in and deploy AI applications that will improve the lives of Australians and/or

³ Attorney-General's Department. *Privacy Act Preview: Report 2022*. The Privacy Act Review contains multiple proposals that would see the OAIC develop practical guidance, including templates for privacy policies and collection notices.

drive productivity gains and economic growth. While it is incumbent on the Government to keep Australians informed of and protected from harmful AI applications, the Government also has a role in acknowledging beneficial AI applications.

There is also the opportunity for the Government to highlight the governance which AI is subject to under existing regulatory frameworks such as privacy and consumer protection laws. The commonly held myth that AI is unregulated should be dispelled. This work should involve improving the clarity and technology neutrality of existing regulatory frameworks. Australians are already familiar with these frameworks; this familiarity should be leveraged to increase public trust in AI. For example, most Australians are aware of existing anti-discrimination legislation. Ensuring anti-discrimination legislation is fit-for-purpose to cover AI systems should be preferred to the creation of further regulation, which may take time to raise awareness of.

Similarly, the Government should make clear what it considers to be unacceptable practices, not unacceptable applications of a particular technology. We refer to the earlier example of social scoring and AI. This will combat the conflation of the entire AI ecosystem with specific harms.

Do you have any suggestions for whether any high-risk AI applications or technologies should be banned completely?

We note our above commentary on banning unacceptable practices, regardless of the underlying technology.

We note Box 4 in the discussion paper which outline potential high-risk AI applications. However, consultation on banning specific applications or technologies should be done after the Government has given firmer indication on its risk appetite as this will inform what constitutes high-risk. We welcome the opportunity to consult with Government on a national risk appetite.

Additionally, the Government will need to consider the best approach to banning and otherwise regulating high-risk AI applications or technologies, noting existing laws and regulations which may already apply.

Do you support a risk-based approach for addressing potential AI risks? If not, is there a better approach?

In principle, we support a risk-based approach. However, as above and below, we note there is significant work to do to develop an approach that industry is comfortable with.

The Insurance Council acknowledges the Government's consideration of a risk management approach to implementation of any potential options, whether regulatory or voluntary. We support this in principle, recognising the need to clearly define risk in the Australian setting whilst acknowledging the breadth and complexity of the current and emerging operating environment. A risk management approach is consistent with models adopted in other jurisdictions (such as the European Union, Canada and New Zealand). We welcome a risk management approach that clearly establishes the Government's risk appetite. We provide further comment on defining the Government's risk appetite in response to questions below. By clarifying the coverage of existing regulation on the AI landscape the Government could highlight where novel risks and practices with unacceptable harms exist. The insurance industry would welcome further consultation on these risks and harms and appropriate regulatory risk management responses.

What elements should be in a risk-based approach for addressed potential AI risks? Do you support the elements presented in Attachment C?

It is unclear how Attachment C would be applied in a national public policy setting, noting it appears intended for an organisational level.

On the contents of Attachment C, the Insurance Council believes that identifying, assessing and mitigating risk, especially in public policy, should be systematic. Attachment C does not present a systemic approach to risk-based governance. In line with above recommendations, the Insurance Council recommends that the Government develop a risk-based approach for public comment.

The Government will need to determine and publicly set its risk appetite. A national risk statement, or similar, on AI together with the Expert Body will help ensure consistency of impact assessments and AI regulation across the Government. This is particularly important given how many sectors of the economy and regulators will interact with and consider AI. A risk statement will also help those in the AI ecosystem to better understand their responsibilities and the Government's approach. The Expert Body should help the Government determine its risk statement.

A national risk statement could then be used by organisations to inform their practices and interactions with regulators, and by regulators to inform potential regulatory reform.

Any risk-based approach also requires risk controls and residual risk monitoring. Attachment C offers some examples of possible risk controls and monitoring but does not present these critical elements of a risk-based approach in a systematic manner. The question of reward relative to risk is also absent, which a risk-based approach should include, noting particularly that AI may be implemented to replace or enhance situations where human competency is limited. It will also be important to consider the existing regulatory environment to avoid inconsistency or duplication.

What do you see as the main benefits or limitations of a risk-based approach? How can any limitations be overcome?

A risk-based approach will allow for freer innovation at the lower end of the risk spectrum and should improve public comfort in the governance framework around uses of AI. However, as noted above, work is required to develop a risk-based approach and the Insurance Council recommends further consultation on the development of any risk-based approach to mitigate the issues and limitation outlined above.

Should a risk-based approach for responsible AI be a voluntary or self-regulation tool or be mandated through regulation?

The Insurance Council suggests that elements of both regulatory and voluntary approaches may be appropriate in the Australian context. We suggest the Government determine the appropriate responses following consideration of existing regulatory requirements and their applications to AI, together with the outcomes of the risk assessment and risk appetite.