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29 April 2022

Digital Technology Taskforce
Department of Prime Minister & Cabinet
Email: digitaltechnologytaskforceinbox@pmc.gov.au

Dear Sir/Madam

ISSUES PAPER, POSITIONING AUSTRALIA AS A LEADER IN DIGITAL ECONOMY REGULATION – AUTOMATED DECISION MAKING AND AI REGULATION

The Australian Industry Group (Ai Group) welcomes the opportunity to make a submission to the consultation on the Issues Paper, *Positioning Australia as a leader in digital economy regulation – Automated Decision Making and AI Regulation*, by the Department of the Prime Minister & Cabinet (PM&C) via the Digital Technology Taskforce.

Our members are businesses of all sizes and many sectors across Australia. Rapidly advancing technologies including artificial intelligence (AI) are producing waves of wider innovation across the economy as businesses and individuals build new social practices and business models upon them. Ai Group's members are grappling with these changes in different ways and with different levels of readiness and capability. The collective impact of these changes is part of the Fourth Industrial Revolution.

COVID-19 has also highlighted how interconnected many businesses are and digital technologies has been an enabler for many businesses to remain open and sustainable. This unstable environment presents an opportunity for industry to emerge more globally competitive by taking fuller advantage of Industry 4.0 and digitalisation. AI can play a timely and important role in this discussion.

For the purposes of this consultation, our submission provides preliminary comments regarding regulatory matters related to AI and automated decision making (ADM). As this consultation progresses, we look forward to further development and understanding of material issues and underlying causes (if any), followed by an exploration and assessment of potential options to address these including regulatory impact and cost benefits assessment.

We would also welcome our continued inclusion in further consultations and the opportunity to work closely with the Government, and relevant members covering a wide range of sectors and other stakeholders that may be impacted by AI and ADM.

1. Ai Group submission on AI Action Plan

We have raised in previous submissions that, at this relatively early stage of Australia's involvement in AI, positive measures from Government are critical. Australia is not a leader in AI, where it is still behind its peers overseas in terms of AI investment – more can be done to make us globally competitive, with Government assistance.¹ This is why we publicly expressed our support for the Government's AI Action Plan (as well as supported by the revised Digital Economy Strategy announced as part of the Federal Budget 2021). If well implemented, there is an opportunity to also ensure better integration and connections with all the various initiatives and a more holistic and strategic approach to help achieve a vision for AI in Australia.

For the purposes of the PM&C's consultation, our submission on the AI Action Plan discussed in particular (amongst other things) the role for Government to support the uptake and use of AI

¹ For instance, see Stanford University Human-Centered Artificial Intelligence, "The AI Index 2022 Annual Report" (March 2022), pp. 154-7, <https://aiindex.stanford.edu/report/>.

technologies in Australia, what can be done to reduce barriers (including regulatory) to AI adoption in Australia, and how we can lower the barriers to entry for businesses and government developing, piloting or assessing the value of AI while ensuring appropriate consumer safeguards. We consider that our previous position still stands, are pertinent to this consultation and will likely address several questions raised in the Issues Paper. We therefore strongly encourage the PM&C to consider our previous submission on the AI Action Plan.²

2. Other interrelated regulatory reforms

The Issues Paper rightly acknowledges other initiatives that may be interrelated with AI and ADM, and the digital economy more broadly. In this regard, we have made various submissions on regulatory reforms, which may be relevant to this consultation. These cover not only specific topics about AI, but other digital related matters including Consumer Data Right (CDR), critical infrastructure security, cyber security, digital platforms, online safety and privacy. Please refer to Appendix A to this submission for a list of our previous submissions (2019 to 2022).

3. Coordinating regulatory body

We have most recently highlighted the importance of a more coordinated approach towards a range of digital and cyber related reforms including the critical infrastructure security reforms.³

In particular, we noted that proper stakeholder consultation on these interrelated reforms could include assessing the merits of establishing a central regulatory body under a central government department such as the PM&C that can properly coordinate between the various regulators responsible for developing codes and regulations. This could provide a more holistic approach including understanding the cumulative regulatory impacts and costs on affected stakeholders who may be subject to multiple regulations related to online activities, which can act as a collective barrier to business digital investment and global competitiveness. The PM&C also plays an important role, providing oversight of the Digital Economy Strategy, Australian Data Strategy and Critical Technologies Blueprint and Action Plan, so this coordinating approach could be another advantage.

The impact of introducing regulatory reforms need to also be properly considered against other Government initiatives that are designed to help boost industry capability, investment and competitiveness. If regulatory reforms result in a negative impact on the objectives and benefits of these other initiatives, these will need to be publicly accounted for. This includes broader initiatives such as the Government's deregulation/red tape reduction policy, COVID-19 economic recovery and sovereign industrial capability agendas, as well as meeting the visionary challenge set by Government for Australia to become a digital economy leader by 2030.

Other measures may also include transitional assistance for companies to meet new forms of regulatory compliance that may impact on an expanded range of businesses. For example, businesses may need to increase or upskill personnel capability to help them properly meet new regulatory obligations. This will be especially important for companies that are not traditionally subject to these types of reforms, which will need as much assistance as possible. It is important to note that this is not necessarily about just providing funding to deliver practical uplift support to large technology businesses, but also about SMEs and wider industry that may be impacted.

4. Additional considerations

In addition to the above, the following were specific points based on member feedback to this consultation that may benefit through further review and consultation:

- Applicability of existing regulations and laws: Any action or practice prohibited by anti-discrimination laws should continue to be prohibited when it involves an ADM system. Whether a decision is fully rendered by a human or a determination is assisted by an automated AI system, impermissibly biased or discriminatory outcomes should never be

² Ai Group submission on Australia's AI Action Plan Discussion Paper (1 December 2020), <https://www.aigroup.com.au/news/submissions/2020/australias-artificial-intelligence-action-plan/>.

³ Ai Group submission to PJCIS on critical infrastructure security reforms (25 February 2022): <https://www.aigroup.com.au/news/submissions/2022/submission-to-pjcis-on-critical-infrastructure-protection-bill/>.

considered acceptable but this does not mean that new laws need to be developed for every new technology. Government should merely ensure that existing laws, where they lead to harm and discrimination, should continue to be applicable with respect to AI and ADM.

- Proportionality: If Government were to decide to introduce regulation, Government should adopt a “precision regulation” approach to AI and ADM so that it cautiously targets the issue or potential harm at stake, rather than disrupts the whole potential of AI and ADM with broad and imprecise regulation.
- Standards: Government should refer and ideally promote standards that are globally recognised and would help create consistency and certainty for consumers, communicating to end-users that the AI is trustworthy. It should also incentivise providers and owners to voluntarily embrace globally recognised standards, certification, and validation regimes. One such potential mechanism could be by providing various levels of liability safe harbour protections, based on whether and how an organisation adheres and certifies to globally recognised best practices and standards.
- Global approaches: Complementing internationally recognised standards, it may be worth considering further overseas approaches (rather than reinventing the wheel) to enable regulatory coherence. However, it is important that any overseas approaches are properly assessed, including a cost benefit assessment and whether they are appropriate in the Australian context. A Regulation Impact Statement would be of assistance in this regard.

If you would like clarification about this submission, please do not hesitate to contact me or Charles Hoang (Lead Adviser – Industry Development and Defence Industry Policy, charles.hoang@aigroup.com.au).

Yours sincerely,



Louise McGrath
Head of Industry Development and Policy

Appendix A: List of Ai Group submissions (2019-2022) on interrelated reforms

- AI:
 - Department of Industry, Science, Energy and Resources (DISER) Discussion Paper on AI Action Plan (2020):
https://www.aigroup.com.au/globalassets/news/submissions/2020/diser_ai_action_plan_dec2020.pdf
 - AHRC (Australian Human Rights Commission) Discussion Paper on Human Rights and Technology (2020):
https://www.aigroup.com.au/globalassets/news/submissions/2020/ahrc_human_rights_and_technology_discussion_paper_26mar_2020.pdf
 - Standards Australia Discussion Paper on Developing Standards for AI (2019):
https://www.aigroup.com.au/globalassets/news/submissions/2019/aigroup_submission_standards_australia_ai_standards.pdf
 - DISER Discussion Paper on the Australian AI Ethics Framework (2019):
https://www.aigroup.com.au/globalassets/news/submissions/2019/ai_group_submission_ai_ethics_framework_discussion_paper.pdf
 - AHRC and World Economic Forum White Paper on AI Governance and Leadership (2019):
https://www.aigroup.com.au/globalassets/news/submissions/2019/aigroup_submission_ahrc_whitepaper_ai_governance_and_leadership.pdf
- Consumer Data Right (CDR):
 - Treasury Consultation Paper on Strategic Assessment on Implementation of an Economy-wide CDR (2021):
https://www.aigroup.com.au/globalassets/news/submissions/2021/cdr_strategic_assessment_consultation_paper_1sep_2021.pdf
 - Treasury Issues Paper on Inquiry into the Future Directions for the CDR (2020):
https://www.aigroup.com.au/globalassets/news/submissions/2020/treasury_cdr_inquiry_5jun_2020.pdf
- Critical infrastructure security:
 - Parliamentary Joint Committee on Intelligence and Security (PJCIS) Review of the Security Legislation Amendment (Critical Infrastructure Protection) Bill (SLACIP Bill) (2022):
https://www.aigroup.com.au/globalassets/news/submissions/2022/pjcis_critical_infrastructure_bill_25feb_2022.pdf;
https://www.aigroup.com.au/globalassets/news/submissions/2022/supplementary_sub_pjcis_critical_infrastructure_protection_bill_march2022.pdf
 - Home Affairs Exposure Draft of the SLACIP Bill (2022):
https://www.aigroup.com.au/globalassets/news/submissions/2022/critical_infrastructure_protection_bill_feb2022.pdf
 - PJCIS Review of the Security Legislation Amendment (Critical Infrastructure) Bill (SLACI Bill) (2021):
<https://www.aigroup.com.au/globalassets/news/submissions/2021/sub-41--australian-industry-group.pdf>;
https://www.aigroup.com.au/globalassets/news/submissions/2021/review_security_legislation_amendment_bill_26july.pdf
 - Home Affairs Draft Critical Infrastructure Asset Definition Rules (2021):
https://www.aigroup.com.au/globalassets/news/submissions/2021/home_affairs_draft_critical_infrastructure_assets_definition_rules_13may.pdf
 - Home Affairs Exposure Draft of the SLACI Bill (2020):
https://www.aigroup.com.au/globalassets/news/submissions/2020/home_affairs_critical_infrastructure_security_reforms_exposure_draft_bill_nov2020.pdf
 - Home Affairs Consultation Paper on Protecting Critical Infrastructure and Systems of National Significance (2020):
https://www.aigroup.com.au/globalassets/news/submissions/2020/dept_home_affairs_critical_infrastructure_security_reforms_sept2020.pdf
- Cyber security:
 - Home Affairs Discussion Paper on Strengthening Australia's Cyber Security Regulations and Incentives (2021):

