



Ai Group Limited
Level 5, 441 St Kilda Road
Melbourne VIC 3004 Australia
PO Box 7622
Melbourne VIC 3004 Australia
Telephone: 03 9867 0111
www.aigroup.com.au
ABN 81 632 926 099

Submission Response to the Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings

Introduction: We appreciate the opportunity to provide feedback on the "Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings." While we commend the Australian Government's proactive approach to addressing the potential risks associated with AI, we believe that the proposed regulatory framework must strike a balance between innovation and public safety without imposing undue burdens on companies, especially SMEs.

The Australian Industry Group (Ai Group) is a peak national employer organization representing traditional, innovative, and emerging industry sectors. We have been acting on behalf of businesses across Australia for 150 years. Our membership includes businesses of all sizes, from large international companies to family-run SMEs (Small and Medium Enterprises), operating across a wide cross-section of the Australian economy. Ai Group has represented Australian businesses as they have engaged with every major change in technologies and processes of work, including electrification, mechanization, digitization, and the application of online and internet technologies. Increasing digitization and the evolution of AI are the latest major changes with potential impacts on the world of work in Australia, bringing both positives and potential areas of adjustment in their implementation.

General Comments: The proposals paper provides a comprehensive overview of the need for mandatory guardrails in high-risk AI settings. However, we are concerned that the proposed regulations may be overly burdensome for SMEs, potentially stifling innovation and competitiveness. It is crucial to adopt a risk-based approach that considers the unique challenges faced by smaller enterprises and provides flexibility in compliance. It should also be recognised that impact from the use of AI is not the only risk that Australian employers are attempting to manage in their workplaces.

Specific Feedback:

1. Defining High-Risk AI:

- While we support the principles-based approach to defining high-risk AI settings, we recommend providing additional guidance on how these principles should be applied in practice. Clear examples and case studies would help organizations better understand the criteria for high-risk AI.

Defining all AI related risk as equally high or a binary proposition with all consequences equally catastrophic is not consistent with existing risk management models and is not particularly helpful to either industry or consumers in making informed decisions.

A good analogy of communicating risk in a way that individuals can understand and act upon is the nationally consistent way that Fire Risk Ratings are categorized and communicated.

- The inclusion of general-purpose AI (GPAI) models in the high-risk category is understandable given their potential for unforeseen risks. However, we suggest

further elaboration on the indicators for defining GPAI models as high-risk, such as technical capabilities and potential impacts. AI models that have application across multiple industries may be considered general purpose, despite have very limited useability.

2. Mandatory Guardrails:

- **Accountability and Governance:** We agree with the need for organizations to establish and publish accountability processes. However, it is essential to ensure that these requirements are scalable and do not disproportionately impact SMEs. Simplified reporting and compliance mechanisms should be considered for smaller enterprises.
- **Risk Management:** The requirement for a risk management process is critical. We recommend that the government provide templates or frameworks to assist organizations, particularly SMEs, in developing their risk management strategies.
- **Data Stewardship:** Ensuring data quality and provenance is fundamental to the reliability of AI systems. We support the proposed measures but suggest including specific guidelines on managing biases in training data that are practical and achievable for SMEs. Any requirement would also need to be aligned with other data governance obligations.
- **Testing and Monitoring:** Continuous testing and monitoring are vital to maintaining the performance and safety of AI systems. We propose that the government establish a centralized repository for reporting and sharing testing results and significant incidents, which would reduce the burden on individual companies. We are concerned that as outlined in the paper, ongoing responsibilities to monitor the performance of individual systems ties two commercial entities together longer than would be usually warranted. This also creates a potential barrier to entry for SMEs as builders of AI .
- **Transparency:** Informing end-users about AI-enabled decisions and interactions can be useful for building trust. We support proposed transparency measures but suggest developing standardized methods for labeling AI-generated content that are not overly complex for businesses to implement or consumers to understand and respond to. Transparency requirements should also be domain specific and may not be applicable in time critical situations such as emergency situations.
- **Contestability:** Establishing processes for individuals to challenge AI-enabled decisions in circumstances where there is no human oversight is important for ensuring fairness. We recommend that organizations be required to provide clear and accessible channels for lodging complaints and seeking redress, with simplified procedures for SMEs.
- **Record Keeping:** Maintaining comprehensive records is necessary for accountability. We suggest that the government provide guidance on the types

of records that should be kept and the duration for which they should be retained, with consideration for the capabilities of SMEs and with regard to existing record-keeping requirements as required by law.

- **Conformity Assessments:** Conducting conformity assessments is a valuable quality assurance mechanism. We propose that the government develop a certification program to recognize organizations that comply with the mandatory guardrails, with a tiered approach that considers the size and resources of the company.

3. **Regulatory options to mandate guardrails:**

- We recommend a blend of Option 1 and Option 2. While a Framework approach would provide some consistency and efficiency in amending relevant regulatory frameworks and legislation, certain domains, Workplace Relations in particular, require a specific approach to avoid unintended consequences.

Potential Economic Impact on SMEs: The proposed guardrails could have significant economic implications for SMEs. While the intent of the guardrails is to ensure the safe and responsible use of AI, the compliance costs associated with these regulations could be substantial for smaller enterprises. SMEs often operate with limited resources and may find it challenging to meet the stringent requirements outlined in the proposals paper. This could lead to several potential economic impacts:

1. **Increased Compliance Costs:** SMEs may need to invest in additional resources, such as hiring compliance officers or consultants, to navigate the regulatory landscape. This could divert funds from other critical areas, such as research and development or business expansion.
2. **Competitive Disadvantage:** The regulatory burden could disproportionately affect SMEs, making it difficult for them to compete with larger enterprises that have more resources to allocate towards compliance. This could stifle innovation and reduce the overall competitiveness of the SME sector.
3. **Market Entry Barriers:** The stringent requirements could create barriers to entry for new and emerging SMEs, limiting their ability to bring innovative AI solutions to market. This could hinder the growth of the AI industry and reduce the diversity of AI applications available to consumers.
4. **Operational Disruptions:** SMEs may face operational disruptions as they implement the necessary changes to comply with the regulations. This could impact their ability to deliver products and services efficiently, affecting their bottom line.

To mitigate these potential economic impacts, we recommend that the government consider the following measures:

- **Provide Financial Support:** Offer grants or subsidies to help SMEs cover the costs associated with compliance. This could include funding for training programs, technology upgrades, and consultancy services.
- **Simplify Compliance Processes:** Develop streamlined compliance processes and provide clear, practical guidance tailored to the needs of SMEs. This could include



templates, checklists, and online resources to help SMEs navigate the regulatory requirements.

- **Phased Implementation:** Introduce the regulations in phases, allowing SMEs more time to adapt and comply. This could help reduce the immediate financial burden and give SMEs the opportunity to gradually integrate the necessary changes into their operations.
- **Engage with SMEs:** Establish a dedicated task force to engage with SMEs and gather feedback on the proposed regulations. This could help identify specific challenges faced by SMEs and inform the development of targeted support measures.

Potential Benefits of the Proposed Guardrails for SMEs: While the proposed regulations may present challenges for SMEs, they also offer several potential benefits:

1. **Enhanced Trust and Credibility:** By complying with the mandatory guardrails, SMEs can demonstrate their commitment to the safe and responsible use of AI. This can enhance their reputation and build trust with customers, partners, and investors.
2. **Improved Risk Management:** The proposed regulations encourage SMEs to implement robust risk management processes. This can help them identify and mitigate potential risks associated with AI, reducing the likelihood of adverse incidents and improving overall business resilience.
3. **Access to New Markets:** Compliance with the mandatory guardrails can help SMEs meet international standards and regulatory requirements. This can facilitate access to new markets and create opportunities for growth and expansion.
4. **Competitive Advantage:** SMEs that proactively adopt the proposed regulations can gain a competitive edge over those that do not. By demonstrating their commitment to ethical AI practices, they can differentiate themselves in the market and attract customers who prioritize responsible AI use.

Commercial-in-Confidence Challenges: The proposed guardrails, particularly those related to sharing testing data and ongoing monitoring of AI systems' performance, present significant commercial-in-confidence challenges for all businesses. These challenges include:

1. **Confidentiality of Proprietary Information:** Sharing detailed testing data and performance metrics may require companies to disclose proprietary information that is critical to their competitive advantage. This could expose sensitive business information to competitors and undermine the intellectual property rights of vendors.
2. **Data Security and Privacy:** SMEs may face challenges in ensuring the security and privacy of the data they share, particularly if the data includes sensitive customer information or trade secrets. There is a risk that shared data could be accessed or misused by unauthorized parties, leading to potential legal and reputational consequences.
3. **Resource Constraints:** SMEs often operate with limited resources and may lack the capacity to implement robust data-sharing and monitoring processes. The additional burden of complying with these requirements could divert resources away from core business activities and hinder the growth and innovation of SMEs.

4. **Compliance Costs:** The costs associated with implementing and maintaining data-sharing and monitoring processes can be substantial for SMEs. This includes costs related to technology upgrades, staff training, and legal compliance. These costs could disproportionately impact smaller enterprises and create barriers to entry for new and emerging SMEs.

To address these commercial-in-confidence challenges, we recommend that the government consider the following measures:

- **Confidentiality Agreements:** Develop standardized confidentiality agreements to protect proprietary information and ensure that shared data is used solely for regulatory compliance purposes. These agreements should include provisions for data security and privacy to safeguard sensitive information.
- **Data Anonymization:** Encourage the use of data anonymization techniques to protect the privacy and confidentiality of shared data. This can help mitigate the risk of unauthorized access and misuse of sensitive information.
- **Support for SMEs:** Provide targeted support for SMEs to help them implement data-sharing and monitoring processes. This could include funding for technology upgrades, training programs, and consultancy services to assist SMEs in meeting compliance requirements.
- **Simplified Reporting Mechanisms:** Develop simplified reporting mechanisms that minimize the administrative burden on SMEs. This could include the use of standardized templates and online reporting tools to streamline the data-sharing and monitoring process.

International Regulatory Coherence and Alignment to International Standards

In an increasingly interconnected world, the need for international regulatory coherence and alignment to international standards is paramount. As AI technologies continue to evolve and proliferate, ensuring that regulatory frameworks are harmonized across borders is essential for fostering innovation, protecting privacy, and maintaining global competitiveness.

- **Facilitating Cross-Border Data Flows:** International regulatory coherence is vital for facilitating cross-border data flows. In today's digital economy, data is a critical asset that drives innovation and economic growth. However, differing regulatory requirements across jurisdictions can create barriers to the free flow of data, hindering the ability of businesses to leverage global data resources. By aligning with international standards, Australia can ensure that data can move freely and securely across borders, enabling businesses to harness the full potential of AI technologies.
- **Promoting Innovation and Competitiveness:** International regulatory coherence promotes innovation and competitiveness by providing a level playing field for businesses. When regulatory requirements are harmonized, businesses can focus on developing innovative AI solutions without being burdened by conflicting or duplicative regulations. This fosters a more dynamic and competitive market, encouraging investment in AI research and development. Moreover, alignment with international standards can attract foreign investment

and partnerships, further boosting Australia's AI capabilities and economic growth.

- **Addressing Emerging Challenges:** As AI technologies continue to evolve, new challenges and risks will inevitably arise. International regulatory coherence allows for a coordinated and collaborative approach to addressing these challenges. By working together with international partners, Australia can contribute to the development of global standards and frameworks that address emerging issues such as AI ethics, bias, and accountability. This collaborative approach ensures that regulatory responses are comprehensive, effective, and reflective of the latest technological advancements.

Workplace Relations:

The integration of AI tools in the workplace offers significant potential for enhancing productivity, which is central to achieving sustainable economic and income growth. Ai Group's Industry Outlook 2024 found that business leaders are prioritizing investments that lift productivity, such as staff training and improving business processes. Improving the prospects for productivity growth is a national imperative, and adopting AI and other emerging technologies will be a lever for achieving these ends.

Employment projections from organizations such as Jobs and Skills Australia anticipate overall employment growth in Australia. As with each new leap in technology, debates have intensified about the impact of AI. Based on Ai Group's 2024 survey, most businesses foresee that AI will have a neutral effect on headcount. The impact of AI embedded into business operations is expected to drive net headcount increases in 15% of businesses, while 62% expect a net neutral effect, and 23% expect net decreases.

The regulation of workplace relations in Australia is already exceptionally prescriptive and complicated, imposing a significant burden on employers. It is governed by a complex web of Commonwealth, State and Territory legislation dealing with matters such as minimum terms and conditions, industrial relations, anti-discrimination and equality, work health and safety, workplace surveillance, corporations, labour hire licensing, the transition to a net zero economy, migrant worker protections, workers compensation, modern slavery, independent contractor arrangements, intellectual property and other industry or occupation-specific legislation and regulations. Also relevant are industrial instruments (e.g., award and enterprise agreements), individual contractor and traditional legal principles developed through the courts. These legal rights and obligations are interdependent and have typically been carefully developed to balance the consideration of industry and worker interests.

Conclusion: We commend the Australian Government for its efforts to develop a robust regulatory framework for AI in high-risk settings. However, it is essential to ensure that the proposed mandatory guardrails do not impose undue burdens on companies, particularly SMEs. We look forward to continued collaboration with the government and other stakeholders to refine and implement these proposals in a way that supports innovation while ensuring public safety.

Sincerely yours,



Louise McGrath.

Louise McGrath
Head - Industry Development and Policy
Australian Industry Group