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Dear Sir/Madam,

Positioning Australia as a Leader in Digital Economy Regulation: Automated Decision Making and AI Regulation Issues Paper (Paper)

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 40,000 governance and risk management professionals from the listed, unlisted, public and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as not-for-profit organisations and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with the Department of Prime Minister and Cabinet, Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Our activities in this area

Governance Institute members have a strong interest in digital technology policy and take the governance and risk management of Artificial Intelligence (AI) and Automated Decision Making (ADM) in all sectors very seriously. As a membership organisation, we have advocated for some time for digital transformation and modernisation in many areas of corporate regulation, including supporting virtual and hybrid AGMs, digital document execution, digital shareholder communications and the introduction of Director IDs. Many of our members work as governance and risk professionals in a range of organisations that are part of or connect with the digital economy, from the largest listed companies responsible for critical infrastructure to small businesses and not-for-profits. They are actively considering the industry and economy-wide implications of AI, ADM, data and technology governance, cyber security, and digital transformation.

We also produce a range of thought leadership and industry guidance in relevant areas. In recent years we have published Good Governance Guides about cloud services, digital transformation, digital trust, technology strategy, technology governance, cyber security, data as an asset and the ethical use of AI.

A 2021 Governance Institute report identified data privacy and cyber security as two of the biggest challenges associated with technological disruption facing boards of directors into the future.¹ Our 2020 report *Future of the Risk Management Professional* identified cyber security, AI and digital disruption as key trends likely to impact on risk management professionals by 2025.² We also collaborated in 2020 with CSIRO Data to compile a report on digital trust that examined key privacy and consumer data issues. We have also made submissions on a range of consultations on digital themes including *Australia's 2020 Cyber Security Strategy* and the *Digital Australia Strategy 2030*. Governance Institute also contributes to the international debate on digital technology and data governance issues in its capacity as a division of The Chartered Governance Institute, an international body with over 30,000 members worldwide.

Executive summary

- Governance Institute members welcome the opportunity to make this submission on the critical issues of ADM and AI. They support the Government's aims of working towards the safe and responsible development of new and emerging technologies, including AI and ADM.
- These technologies create clear opportunities in fields such as: medicine, the environment, emergency response, logistics, finance, law, government services and defence. It is important to facilitate AI and ADM development which boosts productivity, but is also inclusive, human centric and benefits Australian society more broadly.
- These technologies offer the opportunity for the creation of high-quality jobs, particularly for young people moving into the workforce. However, they also pose hurdles for industry around re-skilling and supporting the current workforce transitioning into new roles in new fields.
- There are challenges which relate to the emergence of AI and ADM. It is important that Australian organisations use high quality data in their development of these technologies as the use of inaccurate or poor-quality data can lead to issues such as bias and adverse outcomes for individuals.
- Governance Institute's members support the current principles-based approach to the regulation of AI and ADM. *Australia's AI Ethics Principles* should continue to form the foundation of this principles-based framework.
- Governance Institute supports the development of further guidance and resources for organisations to follow and implement these principles. These resources should include information to assist organisations to conduct impact assessments prior, during and after developing new AI and ADM. It is important that organisations establish proper governance systems around their use of these technologies. This is particularly critical initially in the technology development process as issues with AI and ADM can escalate if they are not identified and resolved early.
- Our members recommend a harmonised approach to AI and ADM regulation across jurisdictions. It is important that the development of these technologies is not overregulated and that there is not duplication of legislation with connected policy areas such as Privacy, Data, Cybersecurity and Security of Critical Infrastructure.
- Governance Institute's members also recommend that if it is decided that a specialist regulator is needed in this area, it must be properly resourced and funded with qualified and trained staff, so that matters can be resolved quickly, efficiently and fairly.
- Finally, Governance Institute would support the use of regulatory sandboxes to promote innovation and the development of new AI and ADM.

General Comments

Our members operate in a broad range of sectors including: the health services, financial services, law, accounting, management, government, charities and not-for-profits. Many of these

¹ See [Future of the Board](#), Governance Institute of Australia, 2021.

² See [Future of the Risk Management Professional](#), Governance Institute of Australia, 2020.

sectors are increasingly using AI and ADM to improve the efficiency and quality of their services. Rather than focussing on particular impacts on any one sector, our members have taken into account a range of considerations relevant to governance and risk management and the wider economy, in line with our vision of 'strengthening society through governance excellence'. We have commented on the issues in the paper of most relevance and importance to our members.

We note that AI and ADM technologies are increasingly being implemented both nationally and globally. Price Waterhouse Coopers estimates that AI will contribute more than \$US15.7 trillion dollars to the global economy by 2030.³ It is critical that Australian organisations are able to innovate and adapt to these global changes. The growth of these technologies offers significant opportunities in productivity, economic growth and efficiency across a broad range of business sectors. Our members observe that AI and ADM technologies often offer opportunities for higher quality jobs, particularly for young people moving into the workforce. These jobs offer high work satisfaction and less manual labour. However, the emergence of jobs in new fields creates challenges for industry relating to re-skilling the current workforce to adapt to new technology. It is important that workers are appropriately supported in transitioning to any new roles created.

There have been difficulties which continue to occur with the emergence of AI and ADM. Our members observe that the use of inaccurate or poor-quality data can cause significant issues and lead to adverse outcomes for individuals. A recent example was provided by Swiss and American academics in the US Journal of American Medical Informatics Association.⁴ They found that AI models using data that reflected existing racial bias in healthcare delivery could lead to adverse outcomes for minority groups. It is critical that Australian organisations use high quality data in their development of AI and ADM to ensure that outcomes are fair, unbiased and accurate.

It is also important that diversity is considered in the development of AI and ADM and that new technology is inclusive. Technology companies should be encouraged to include diverse stakeholders in their risk assessment and design processes. The employment of staff from diverse backgrounds would also be beneficial. Digital equality is also critically important for Australia to become a leading digital economy and it is important that the increasing use of AI and ADM does not exacerbate existing issues such as the digital divide. The digital divide excludes Australian businesses and individuals who cannot access fast and reliable internet, for affordability, connectivity, speed and extent of access, bandwidth issues, digital literacy or any other reasons. The most recent Australian Digital Inclusion Index (ADII) report found that the number of Australians highly excluded from digital services is reducing but still remains substantial.⁵ It is important that all Australians participate in and are included in the development of AI and ADM.

Question: Are there actions that regulators could be taking to facilitate the adoption of AI and ADM?

Governance Institute's members consider that the current principles-based approach to the regulation of AI and ADM is appropriate. A principles-based approach is: nonprescriptive, focused at a high level on governance and risk management, does not delve into operational or overly technical matters, is sufficiently flexible and adaptable to account for a wide variance of technology use and maturity levels across the sectors, is broad enough so as to be capable of remaining relevant in the face of rapid changes in the development of AI and ADM without the need for constant revision. Their preference is to build on the current principles-based approach in *Australia's AI Ethics Principles*. These principles outline the key outcomes organisations should

³ *Sizing the prize - What's the real value of AI for your business and how can you capitalise*, Price Waterhouse Coopers, 2017, p. 3.

⁴ *Bias at warp speed: how AI may contribute to the disparities gap in the time of COVID-19*, Journal of the American Medical Informatics Association, 2021, p. 190.

⁵ *Measuring Australia's Digital Divide, Australia's Digital Inclusions Index*, Telstra and Industry Organisations, 2021, p. 5.

consider in developing innovative AI including human centred AI, transparency, accountability, fairness, privacy, safety and contestability.⁶

Governance Institute supports the development of further guidance and resources for organisations to follow and implement these principles. These resources should include information to assist organisations to conduct impact assessments prior, during and after AI and ADM development. It is critical that organisations establish proper governance systems around their use of these technologies. This is particularly important initially in the technology development process as issues with AI and ADM can escalate if not identified and resolved early. The resources should also include information around the use of data. Data management continues to be challenging for many organisations. Data can be overly broad and expensive. Information to guide industry about best practice related to data ownership, accountability and identification of high-quality data would assist organisations.

Any guidance should also include information regarding diversity and inclusion in the development of new AI and ADM. The Australian Human Rights Commission's *Human Rights and Technology Final Report* included important information related to the inclusion of people with disabilities in relation to the development of new AI and ADM. The report noted that:

... good technology design can enable the participation of people with disability as never before — from the use of real-time live captioning to reliance on smart home assistants. On the other hand, poor design can cause significant harm, reducing the capacity of people with disability to participate in activities that are central to the enjoyment of their human rights, and their ability to live independently.⁷

Governance Institute supports the development of additional resources to facilitate inclusive AI and ADM.

Question: Are there specific examples of regulatory overlap or duplication that create a barrier to the adoption of AI or ADM? If so, how could that overlap or duplication be addressed?

Governance Institute's members recommend a harmonised approach to AI and ADM regulation across jurisdictions. There is potential for duplication and overlap with interrelated policy areas such as privacy and data protection, cyber security and security of critical infrastructure. These areas of policy are important components of the governance and risk management frameworks of most, if not all, organisations in the modern Australian economy. It is critical that any new legislation is harmonised in relation to these policy areas to ensure clarity and minimise regulatory burden. Reducing regulatory burden allows organisations to innovate, develop new technologies and compete in global markets.

A further issue to consider is the interoperability of Australia's regulations with international regulation. It is important that innovative technologies created within Australia can be developed, industrialised and exported to overseas markets. There are significant opportunities that will continue to arise with the development of AI and ADM technologies and it is critical that Australian organisations are able to compete internationally and become significant innovators in this field.

Question: What are the most significant regulatory barriers to achieving the potential offered by AI and ADM? How can those barriers be overcome?

Governance Institute's members consider that overregulation could provide a barrier to achieving the potential offered by AI and ADM. The development of these technologies can be a challenging

⁶ *Australia's Artificial Intelligence Ethics Framework* Department of Industry Science and Resources. 2022.

⁷ *Human Rights and Technology Final Report*, Australian Human Rights Commission, 2021, p. 14.

area to regulate. Some of these challenges are described in a report released in March 2022 which found that the development of AI can involve particularly complex relationships:

.. many AI products are not produced by a single organisation, but involve a complex web of procurement, outsourcing, re-use of data from a variety of sources, etc. This changes the question of who is in scope, and who should be accountable, for different parts of the AI lifecycle. Notably, smaller 'downstream' providers are likely to save time, resources and maintenance obligations by relying heavily on AI services delivered by the large tech firms such as Google, Microsoft and Amazon. This ...creates substantial issues for regulation of AI through its lifecycle.⁸

Governance Institute supports a principles-based approach as it offers flexibility to address these challenges. However, if it is decided that there is a need for a specialist regulator in this area, it is important that the regulator is properly resourced and funded with qualified and trained staff, so that matters can be resolved quickly, efficiently and fairly.

Question: What specific regulatory changes could the Commonwealth implement to promote increased adoption of AI and ADM? What are the costs and benefits (in general terms) of any suggested policy change?

One approach which has been used in the financial services and other sectors is the use of regulatory sandboxes. A regulatory sandbox is a framework within which participants can test innovative concepts in the market under relaxed regulatory requirements at a smaller scale, on a time-limited basis and with appropriate safeguards in place.⁹ The Australian Energy Market Commission and ASIC have used regulatory sandboxes in the past. A regulatory sandbox could be appropriate to assist innovation with AI and ADM as sandboxes can a) foster innovation, b) provide helpful information for regulators and c) assist product quality and safety for consumers.¹⁰ It is important though that the sandbox initiative is designed carefully. Academic Dan Quan states: 'Consumer groups are right to observe that sandboxes, just like any tool, can be misused or even abused. However, a well-designed and executed sandbox can facilitate innovation and protect consumers, avoiding the pitfalls that concern many critics.'¹¹ Prior to the use of any sandbox there should be an appropriate cost benefit analysis conducted.

If you wish to discuss any of the issues raised in this submission, please contact me or Catherine Maxwell.

Yours faithfully,



Megan Motto
CEO

⁸ *Expert opinion: Regulating AI in Europe*, Ada Lovelace Institute, 2022, p. 6.

⁹ *Recommended rules for regulatory sandboxes*, Australian Energy Market Commission, 2020.

¹⁰ *Regulatory Sandboxes and Innovation Hubs for FinTech*, Policy Department for Economic, Scientific and Quality of Life Policies, 2020, p. 9, 22 and 23.

¹¹ Stanford PACS, Center on Philanthropy and Civil Society 2022, *A Few Thoughts on Regulatory Sandboxes*.