11 March 2019

Mr Edward Santow
Human Rights Commissioner
Human Rights and Technology Project
Australian Human Rights Commission

Email: tech@humanrights.gov.au

Dear Mr Santow

AUSTRALIAN HUMAN RIGHTS COMMISSION AND WORLD ECONOMIC FORUM WHITE PAPER ON AI GOVERNANCE AND LEADERSHIP

The Australian Industry Group (Ai Group) welcomes the opportunity to comment to the consultation on the White Paper about Artificial Intelligence (AI) governance and leadership by the Australian Human Rights Commission (AHRC) and World Economic Forum (WEF).

1. Introduction

Ai Group's membership comes from a broad range of industries and includes businesses of all sizes. Rapidly advancing technologies including 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.

There is growing discussion among our members of the impact of the Fourth Industrial Revolution on their businesses and workforce. Like previous advances, new technology is enabling improvements in speed to market, quality and cost effectiveness. But the latest revolution also presages more flexibility and individualisation – a customer-oriented approach that provides a social value.

The history of previous industrial revolutions suggests that if factors related to social inequality are not appropriately addressed, there is a risk that Australia will be one of the unlucky countries that falls behind. Public policy such as around inclusiveness and education impacts on the social divide as well as the digital divide. And we are already seeing the effects of poor management in other countries where these divisions are growing.

According to the 2018 Australian Digital Inclusion Index report, the socio-demographic groups that were most digitally excluded in Australia in 2018 included: people in low income households; mobile only users; people aged over 65; people who did not complete secondary school; and people with a disability.[1] While there appears to be improvement in some areas (such as digital access, digital ability, value of internet services, and Indigenous inclusion), there still remains a gap between the digitally included and excluded.

We, as a community, need to re-examine how change is managed. We should neither hold back the tide nor be indifferent to change. However, the ultimate benefits of technological change do not erase the transitional costs to disrupted industries and displaced workers.

Businesses have responsibilities to recognise and respond to transitional costs, not just the benefits of an exciting new direction. And some are already demonstrating leadership in this area.

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[1] Roy Morgan Research, "Measuring Australia's digital divide: Australian Digital Inclusion Index 2018" (Report, August 2017), pp. 5-6.

Overall, industry recognises the importance of the work of bodies such as the Australian Human Rights Commission, which can help contribute to the discussion on closing the social digital divide including AI.

Our comments below are in response to the questions raised in the White Paper.

We would also welcome the opportunity to work with the AHRC to bring together a range of industries who may be interested in this White Paper to be consulted with further.

2.   Role of government and regulation

> 1. *What should be the main goals of government regulation in the area of artificial intelligence?*
> 2. *Considering how artificial intelligence is currently regulated and influenced in Australia:*
>   (a) *What existing bodies play an important role in this area?*
>   (b) *What are the gaps in the current regulatory system?*

2.1 Role of government

Overall, government's role is to set a vision for the nation, and ensure that public policy is conducive to digital investment and competition that benefits industry and the community in the long term. Government also has a leadership role to allay business and individuals' fears of "Digital Darwinism" including AI, by preparing the community to prosper in an increasingly technology-driven era. To this end, we welcome the Government's release in December last year of its report "Australia's Tech Future: Delivering a strong, safe and inclusive digital economy", which sets out the Government's Digital Economy Strategy.

As alluded to earlier, while technology such as AI may provide benefits to business innovation and productivity, there may be mixed social impacts such as a new division in wealth creation between the technically literate and illiterate. Government has a role in minimising such negative impacts. For example, Government can be a skills enabler through education and training around areas such as digital capability (including in AI), cyber security and privacy.

From an international perspective, Australia is not a leader in AI, where it is still behind its peers overseas in terms of AI investment. The Australian Government can play a vital role to change this. It is therefore positive that Innovation and Science Australia has recommended that priority should be given to the "development of advanced capability in artificial intelligence and machine learning in the medium- to long-term to ensure growth of the cyber–physical economy".[2] It is also positive that the Government announced funding of approximately $30 million "to develop the artificial intelligence and machine learning capabilities of Australian businesses and workers. This will include funding for Cooperative Research Centre Projects with a focus on artificial intelligence, and a national ethics framework to address standards and codes of conduct for adopting such technology in Australia".[3]

2.2 Role of regulation

At this early stage of Australia's involvement in AI, positive measures from Government are critical. More can be done to make us globally competitive. Regulation is an important area that could make or break the growth of an industry at its early stages of development. The extent to which AI is regulated can act as an investment barrier and diminish our attractiveness relative to other jurisdictions.

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[2] Australian Government, Innovation and Science Australia, "Australia 2030: Prosperity through innovation – A plan for Australia to thrive in the global innovation race" (November 2017), p. 52.
[3] Minister for the Department of Industry, Innovation and Science, "Budget 2018 – New opportunities and jobs for Australian industry" (May 2018).

In some areas of regulation in response to modern technology, we have been alarmed by heavy handed interventions that seek to eliminate some forms of risk rather than manage them, while ignoring the risks and costs to innovation and the economy. For example, the recently passed encryption law risks substantial damage to the security and credibility of Australia's connected systems and products and the businesses and people who use them. The AHRC has expressed similar concerns.[4] Such measures not only add costs to international business, but risk curtailing innovation and limiting the benefits of digitalisation to businesses and their customers.

Part of this regulatory response could be due to criticism and concern that regulators are generally not moving fast and flexibly enough to adapt and respond to the pace of technological change. There could also be a lack of understanding of the broader context, such as: the technology; business models; the effect of globalisation; and the role of the different government regulators and other agencies in this environment.

While it is legitimate to question the impact of specific emerging technologies such as AI, the alarm and reactive response from parts of government and the public highlights a wider issue: the role of government in managing the social risks and disruptions associated with new technology.

It is important that regulators are mindful that we have been through similar experiences before with other technological advances like automobiles, telephones and cameras, and more broadly industrial revolutions. As history and experience has shown with these technologies, as the public became more exposed to their presence and practicality, they not only accepted it, but embraced the positive impact that these technologies have had on their lives. Many initial concerns and fears were resolved or proved groundless, and regulation focussed on specific genuine and continuing risks, such as traffic safety or interception of telecommunications. AI is yet to reach that full public comfort, and similar concerns are being expressed about other emerging technologies such as drones, robots and driverless vehicles.

While regulation has a role in addressing reasonable public concerns such as around security, safety, privacy and environmental issues, there are also often alternative approaches to the regulatory "stick". Regulatory barriers should only be introduced where there are clear net community benefits.

Depending on the identified policy issue (in this case, around human rights), regulation may be an option to address that issue, as well as non-regulatory measures. The issues need to be understood and developed further before an appropriate policy response can be considered.

Notwithstanding the above, the White Paper offers a very brief discussion about where AI can create the risk of bias and discrimination, with examples of how it could arise. From our interpretation, the examples highlight a potential lack of understanding about the use of data and AI, and its inadvertent impact on the community (i.e. bias and discrimination). In this case, a non-regulatory response could be to improve the education and training system. For example, a unit could be included in the curriculum for developers and implementers of AI about tackling the potential issue of bias and discrimination arising from AI. In fact, the education system is also going through its own transition in responding to the pace of technological change and meeting the demands of industry and the public. The AHRC should consider its role in influencing discussions around reform of the education system in this context.

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[4] For example, the new encryption legislation was rushed through Australian Parliament last year without full consideration of the impact that this could create for a broad range of stakeholders. Legitimate concerns about the legislation were raised from a broad range of stakeholders including industry, civil society, and technical and privacy experts. However, the Government response largely ignored the issues raised by passing the encryption bill without reflecting stakeholder concerns. This has led to an outcome where businesses are facing a heavier degree of regulatory burden and uncertainty compared to their competitors operating in overseas jurisdictions, with smaller businesses likely to be relatively worse off. Most importantly, we are concerned that the legislation could lead to the weakening of existing cyber security of businesses and its customers.

2.3 Opportunities to collaborate with existing bodies

Like other types of emerging technologies, various issues could arise from AI including with respect to standards, education and training, cyber security and privacy, and innovation. Each of these areas will have many relevant stakeholders, and it will be important that the AHRC collaborates with as many relevant existing bodies as it can manage given the potentially overlapping issues. These include Standards Australia, Data61, Cooperative Research Centres that receive funding on AI, Industry Growth Centres, and government bodies procuring AI-related projects such as the Digital Transformation Agency (DTA).

We discuss other existing bodies that could be relevant for future discussions around AI in section 3.3.3.

2.4 Gaps in the current regulatory system

Before determining whether there are gaps in the current regulatory system on AI, it is important that the AHRC sufficiently identifies the issues around human rights that need to be addressed around AI. As noted above, regulation is one option, but there may also be alternative non-regulatory measures, depending on the issue.

3.   Responsible Innovation Organisation

3.   *Would there be significant economic and/or social value for Australia in establishing a Responsible Innovation Organisation?*
4.   *Under what circumstances would a Responsible Innovation Organisation add value to your organisation directly?*
5.   *How should the business case for a Responsible Innovation Organisation be measured?*
6.   *If Australia had a Responsible Innovation Organisation:*
   (a)   *What should be its overarching vision and core aims?*
   (b)   *What powers and functions should it have?*
   (c)   *How should it be structured?*
   (d)   *What internal and external expertise should it have at its disposal?*
   (e)   *How should it interact with other bodies with similar responsibilities?*
   (f)   *How should its activities be resourced? Would it be jointly funded by government and industry? How would its independence be secured?*
   (g)   *How should it be evaluated and monitored? How should it report its activities?*

3.1 Understanding the problem

We consider there are fundamental issues that need to be understood and questions that need to be asked before proceeding further with the consideration of a Responsible Innovation Organisation (RIO) as proposed in the White Paper.

For instance, we appreciate that the Paper "aims to identify how Australia can simultaneously foster innovation and protect human rights through the application of new technologies, in particular AI". However, the Paper appears to leap almost immediately to the RIO as solution, without further unpacking the problem that it is trying to address or considering alternative or existing measures that could be utilised or improved upon.

More substantive work will be needed to understand the human rights issues before they can be considered further. In particular, we note that the AHRC is concurrently consulting on identifying issues relating to human rights and technology (published in its Issues Paper in July last year). We therefore suggest that it might be more prudent for the AHRC to complete that piece of important work before proceeding with the consideration of potential options.

Alternatively, if there was a view to proceed with a RIO, a possible configuration of the RIO could be to consider fundamental questions and issues around AI to inform either the work of existing bodies or the development of a new regulatory response. A contemplative RIO without new regulatory powers could be a useful initial (and perhaps only) step.
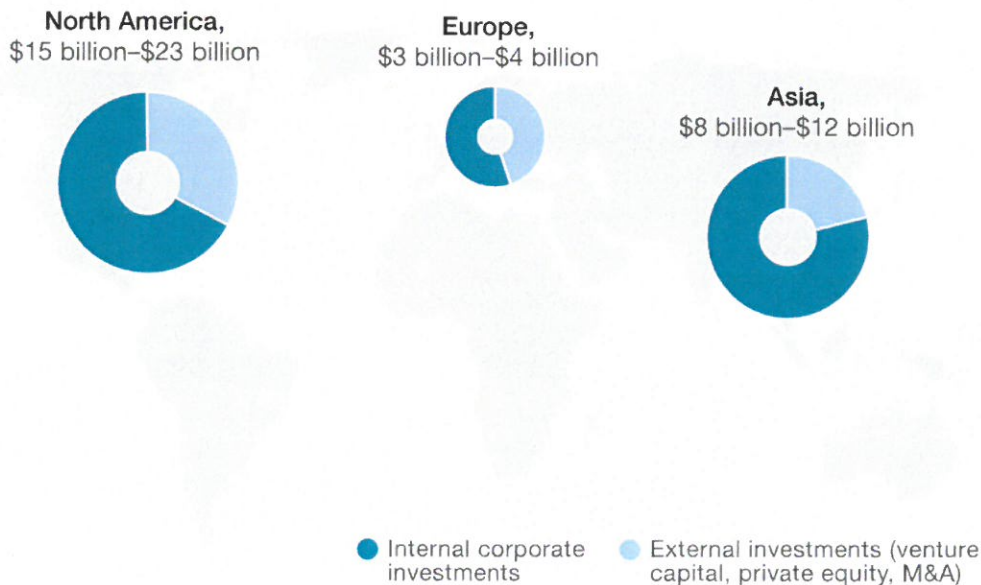
Furthermore, we note that there are a range of possible concerns with AI (e.g. economic disruption and resulting social impact, existential threats, transhumanism) which do not seem to be in the AHRC's scope. A strong human rights dimension within a broader "governing and thinking through AI" body or regime could make more sense than a body that only tied together one cluster of issues. The feasibility of a new body or new regulatory response is discussed further below.

3.2 International comparisons

As noted above and acknowledged in the White Paper, Australia faces strong global competition to make the most of AI. The United States and China are reported to be leading in AI investment.[5] An independent report for the UK Government also acknowledges that the "UK and other countries are generally seen as behind the US and China in terms of scale of investment and activity".[6] See the Figure below.

While behind the US, the UK is still a significantly larger investor in AI than Australia. Last year, the UK government announced the AI Sector Deal where the government, industry and academia will contribute almost £1bn to support the AI sector.[7]

Artificial-intelligence investment, 2016

North America,
$15 billion–$23 billion

Europe,
$3 billion–$4 billion

Asia,
$8 billion–$12 billion

● Internal corporate investments   ● External investments (venture capital, private equity, M&A)

Source: McKinsey Global Institute, "10 imperatives for Europe in the age of AI and automation" (Report, October 2017).

When comparing jurisdictions on regulation of AI we need to consider the level of investment in developing an AI industry and the workforce. Australia is a relatively small investor in AI and success

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[5] Australian Government, Innovation and Science Australia, "Australia 2030: Prosperity through innovation – A plan for Australia to thrive in the global innovation race" (November 2017), pp. 16-17.
[6] Professor Dame Wendy Hall and Jérôme Pesenti, Independent Report for the UK Government, "Growing the Artificial Intelligence industry in the UK" (October 2017), pp. 39-40.
[7] UK Government, "Tech sector backs British AI industry with multi million pound investment" (April 2018).

will need considerable support from Government – not through free rein for rogue AI operators, but careful consideration of any new forms of regulation against global best practice approaches and the extent of AI industry support overseas.

3.3 Domestic considerations

We welcome the White Paper's consideration of other government activities in Australia which may be relevant to this consultation. This will help avoid potential overlap and makes efficient use of existing resources.

3.3.1 ACCC Digital Platforms Inquiry

The White Paper draws a connection between the RIO and the ACCC's preliminary proposals from the current Digital Platforms Inquiry for a digital platforms ombudsman and code of practice. Ai Group has also made a submission to this inquiry and has highlighted a number of concerns including with respect to these two particular proposals, which we have reproduced below.

Digital platforms ombudsman

The intent behind this proposal by the ACCC for a digital platforms ombudsman is unclear.

The need for, and scope of, any regulatory intervention via an ombudsman should also take into consideration the following factors:

- *Some industry sectors such as energy and telecommunications already have ombudsmen with a broad scope to address complaints, including those relating to data and privacy.*

- *Certain industries are also self-regulated through mechanisms such as industry codes of practice (e.g. retail) which may already be effective.*

- *Certain businesses may consider that they have internal mechanisms to deal with the types of complaints proposed to be covered by a digital platforms ombudsman.*

Before the ACCC considers a digital platforms ombudsman, we recommend that it takes into account the relevant factors listed above. Otherwise, there could be adverse consequences such as creating a conflict of jurisdiction between existing ombudsmen and other mechanisms, and the proposed digital platforms ombudsman.

Office of the Australian Information Commissioner (OAIC) Code of Practice for digital platforms

With this recommendation, it is also unclear what the meaning and scope of "digital platforms" is, and therefore what types of industry sectors and businesses are being targeted.

As mentioned above, some businesses may have existing obligations and practices, and it will be difficult to understand how this proposal will apply and impact on them without further information.

We recommend that the ACCC identifies the types of businesses that would be subject to this preliminary recommendation, and how this proposal would fit in with any existing obligations for affected businesses.

3.3.2 Functions and powers of existing and new bodies and schemes

We appreciate the White Paper offers a diverse range of functions and powers for the proposed RIO where it may have economic or social value to tackle a range of challenges arising from AI. The RIO's purpose remains unclear given the multiple potential functions raised.

However, if the proposed functions and powers are already addressed through existing bodies (e.g. ACCC, AHRC, Data61, Fair Work Commission, IEEE, OAIC, Standards Australia, Industry Growth Centres, Cooperative Research Centres), we do not see sufficient value in creating a RIO. There will be a need for more collaboration or integration of work between the relevant bodies on AI, without necessarily resorting to the creation of a new body.

If functions or powers proposed are not currently covered, and do serve a clearly articulated purpose, they should be considered against criteria such as: long term community cost-benefit analysis; impact on global competitiveness; proportionality of response; and impacts on investment incentives or barriers for business.

For example, if there is an aim for a new body to develop an AI industry sector in Australia to ensure we remain competitive, then establishing a new Industry Growth Centre (IGC) could be an option if it meets the following criteria:

- Provides a net benefit to Australia, including businesses and the community, taking account of costs to establish and run it, and the creation of new local jobs, skills and talent.

- Offers funding to support the growth of the local AI industry to compete globally.

- Addresses an issue that is not being tackled by another body and operating within its scope, and collaborates with relevant organisations to help achieve its objectives.

- Encourages investment in Australian industry.

Alternatively, we offer a possible configuration of the RIO that can explore fundamental questions and issues around AI to inform either the work of existing bodies or the development of a new regulatory response. This is discussed further in section 3.1 above.

Should the AHRC be interested in discussing our submission further, please contact our Digital Capability and Policy Lead Charles Hoang (02 9466 5462, charles.hoang@aigroup.com.au).

Yours sincerely,

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