27 November 2020

Department of Industry, Science, Energy and Resources

Submitted electronically

BSA COMMENTS ON AUSTRALIA'S AI ACTION PLAN

BSA | The Software Alliance (**BSA**) appreciates the opportunity to provide input to the Department of Industry, Science, Energy, and Resources on the proposed AI Action Plan (the **Plan**).

BSA is the leading advocate for the global software industry before governments and in the international marketplace. BSA's members[1] are among the world's most innovative companies, creating software solutions that spark the economy. Our members are at the forefront of software-enabled innovation that is fueling global economic growth, including cloud computing and Artificial Intelligence (**AI**) products and services. BSA members have made significant investments in developing innovative AI solutions for use across a range of applications.

As leaders in AI development, BSA members have unique insights into both the tremendous potential that AI holds to address a variety of social challenges and the governmental policies that can best support the responsible use of AI and ensure continued innovation.

As the discussion paper, *An AI Action Plan for all Australians: A call for views[2]* (the **Paper**), rightly notes, Australia has the potential to leverage AI in ways that will grow the economy, increase the productivity of an array of industries, create jobs, and improve welfare across society. From agriculture to mining, AI tools are being leveraged in every sector of the Australian economy to create wide-reaching value.

To fully seize on these benefits, the Paper proposes the Plan aimed at ensuring Australia has the right policies and resources in place to "foster a global ecosystem of trustworthy AI." The Plan covers an ambitious swath of AI-related policy topics, with a focus on building out Australian capacities around promoting AI adoption, enhancing innovation in AI, and ensuring that its benefits are enjoyed broadly throughout Australian society. BSA supports these goals and offer below a series of policy

---

[1] BSA's members include: Adobe, Amazon Web Services, Atlassian, Autodesk, AVEVA, Bentley Systems, Box, Cadence, Cisco, CNC/Mastercam, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Sitecore, Slack, Splunk, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

[2] *An AI Action Plan for all Australians: A call for views,* https://consult.industry.gov.au/digital-economy/ai-action-plan/supporting_documents/AIDiscussionPaper.pdf

recommendations that are aimed at promoting trust in AI, fostering domestic AI innovation, and ensuring that the benefits of AI are available to all Australians.

Establishing Trust and Promoting Adoption of AI

Recognising the significant benefits AI can have on business, research, people, and society, the proposed Plan will encourage the uptake and reduce the barriers to AI adoption in Australia. Ultimately, the public's willingness to embrace and adopt AI will turn on whether Australia has the right policies, incentives, and investments in place to promote trust in the technology. As AI is integrated into business and Government processes that have consequential impacts on people – such as their ability to obtain access to credit, housing, or employment – the public must be confident that such technologies are being designed and deployed responsibly.

To foster such trust, the Plan should focus on ensuring that existing laws and regulations are keeping pace with the evolution of technology. As the Paper notes, a range of existing laws, regulations, and consumer protections apply to the development and use of AI, including "administrative law principles of legality, fairness, rationality and transparency…privacy requirements and human rights obligations."[3] The public should be assured that the strength of these protections will apply irrespective of whether a decision is made by a person or an automated system.

Ensuring that existing laws and consumer protections remain sufficiently clear and enforceable is important both for fostering public confidence in AI and for encouraging its adoption by Australian businesses. To eliminate any potential uncertainty, the Plan should direct agencies to undertake a comprehensive review of existing authorities to ensure they remain fit for purpose, confirm that consumer protections continue to apply to the high-risk uses of AI, and identify current laws and regulations that may be unnecessarily impeding AI adoption.

In addition, we recommend that the Plan direct agencies to establish formal mechanisms for industry to seek guidance and clarification about regulations that may be creating uncertainty around the use of AI. Such a mechanism should enable industry to request information about how an agency may interpret existing regulations and/or statutory authorities related to the use of AI.

To the extent new regulations are necessary, we agree that the "compliance burden of regulation [should be] proportionate and specific to the risks associated with particular AI applications."[4] Because the risks of AI are inherently use-case specific, new regulations should focus on specific applications of the technology that pose high risks to the public. If new regulations are needed, they should be risk-based, accounting for the unique roles and capabilities of the range actors that may be involved in an AI system's supply chain, with obligations assigned to the actor that is best positioned to both identify and efficiently mitigate the risk of harm that gave rise to the need for a regulation.

Given the global nature of AI development, we agree that the Plan should seek to ensure that Australia's approach to AI governance is aligned with key international trading partners.[5] Consistent with the recommendations of the AI Standards Roadmap, the Plan should prioritise Australian participation with the range of international standards development organisations that are currently developing AI standards. In addition to promoting trust, confidence, and marketplace efficiencies, international standards have the added benefit of mitigating the market distorting risks that can accompany country-specific standards. Australia should likewise continue to influence the development of global norms for AI governance through multilateral engagement with the OECD and the Global Partnership in AI.[6]

Promoting AI Innovation

Fully recognising Australia's AI potential will also require a careful analysis of the range of policies and investments that can impact domestic innovation. To that end, the Plan should include

---

[3] Ibid., p19

[4] Ipid., p19

[5] Ibid., p20 — Australia must ensure that our own regulatory approaches align with countries where our AI imports are likely to come from. This will ensure that Australian businesses can both adopt or export AI technologies easily and responsibly.

[6] The Global Partnership on AI takes off – at the OECD, https://oecd.ai/wonk/oecd-and-g7-artificial-intelligence-initiatives-side-by-side-for-responsible-ai

recommendations to promote open data and modernise Australia's copyright laws ensure flexibility for AI research and development.

Encourage open data collaboration

Recognising that access to "high quality, de-sensitised, ethically and legally sourced datasets" is a key enabler of AI innovation, the Paper seeks views on how the Plan can "unlock the value of uniquely Australian datasets." To achieve these objectives, we recommend that the AI Action Plan include a roadmap for enhancing Australia's existing open government data policies and creating a regulatory environment that encourages data sharing in the private sector.

Government-generated data is a resource that can serve as a powerful engine for creating new jobs and promoting AI innovation. At both the local and national level, agencies collect and generate vast quantities of data that offer unique insights into virtually every facet of the modern world, from satellite imagery that can help predict the weather to transportation data that can help reduce congestion. Australia has long been a leader in prioritising the availability of Government data for purposes of enabling innovation, recognising in the 2015 Public Data Policy Statement that agencies should make "non-sensitive data open by default."[7]

The Plan should seek to build on this commitment by recommending formal codification of the Public Data Policy Statement. The Plan should likewise lend support to the *Data Availability and Transparency Bill 2020* proposed by the Office of the National Data Commissioner, which would create a pathway for accredited organisations to engage in high impact research involving potentially sensitive Government data.[8]

When it comes to data in the hands of private entities, the Plan should seek to create regulatory certainty that facilitates data sharing. Despite growing recognition of the benefits of voluntary data sharing, a recent MIT study revealed that 64% of global business executives cite concerns about regulatory uncertainty as an impediment to fully embracing the benefits of open data.[9]

To promote more robust industry data sharing, the Plan should establish review processes to enable entities planning to enter into data sharing agreements to get expedited clearance from relevant authorities. Such review processes would enable industry to get guidance from regulators about any potential privacy or competition concerns that may be implicated by a data sharing arrangement. The Plan should likewise support the development, availability, and adoption of tools and best practices that make it easier and less expensive to share data in ways that are consistent with rigorous privacy expectations.

Modernise the Copyright Act

The Plan can also promote Australian AI innovation by recommending key updates to the Australian copyright regime.

In 2018, the Department of Communications and the Arts launched a consultation to explore reforms to the *Copyright Act 1968*, including a potential exception to enable text and data mining.[10] Text and data mining (**TDM**) is an analytic technique that is foundational to the development of AI, enabling developers to extract factual information from "unstructured data," such as written text, images, and audiovisual material. It is a key tool for generating training data for machine learning-based AI systems. Unfortunately, because Australia's Copyright Act lacks an exception to facilitate the use of

---

[7] Australian Government Public Data Policy Statement, available at https://www.pmc.gov.au/sites/default/files/publications/aust_govt_public_data_policy_statement_1.pdf

[8] BSA | The Software Alliance BSA Comments on the Data Accessibility and Transparency Bill, available at https://www.bsa.org/files/policy-filings/11062020bsadatcmts.pdf; and Office of the National Data Commissioner, New legislation, https://www.datacommissioner.gov.au/data-sharing/legislation

[9] MIT Technology Review, *The Global AI Agenda*, available at https://bit.ly/GlobalAIagendaPDFENG

[10] Copyright modernisation consultation, https://www.communications.gov.au/have-your-say/copyright-modernisation-consultation

TDM for purposes of extracting data from copyrightable works, there is uncertainty about whether the practice may be considered infringing under current law.[11]

In connection with the Paper's goal of increasing the availability of data for Australian researchers, the Plan should recommend support for the enactment of a text and data mining exception to the Copyright Act.

AI that Benefits People

As AI becomes more deeply enmeshed in the economy, there will be an increasing demand for personnel in all industries to have heightened technological literacy. To ensure the benefits of AI are available to all Australians, the Plan should include a comprehensive workforce agenda that focuses on:

- ***Investing in STEM education***: STEM education is essential to building a highly skilled workforce, but too few students currently have access. Enhancing Government investments in early STEM interventions, expanding public private partnerships in education, re-envisioning vocational education, and training more STEM-qualified K–12 teachers are critical priorities. Making STEM education more widely available — and encouraging inclusion of indigenous and other underrepresented groups — through scholarships, and other initiatives will help ensure the jobs of the future are available to the entire population.

- ***Expanding workforce retraining:*** The Plan should support mid-career retraining programs to provide Australian workers with high-demand cybersecurity and IT skills, helping match qualified workers to growing occupational fields. Tax incentives to offset costs to workers for specialised training and certification programs could also pay dividends.

- ***Creating alternative pathways to the evolving workforce:*** As the Australian economy changes, the Government should consider whether its education model should change as well. In the new economy, technical schools, apprenticeships, skills boot camps, and other alternative pathways may be just as effective as traditional classrooms in generating the skills and interests necessary to thrive in the digital economy. The Plan should therefore support efforts to strengthen apprenticeship programs and expand access to technical schools.

- ***Broadening access to technology:*** Ensuring equal opportunity to access technology is fundamental to job creation, economic growth, and to diversifying the workforce. Because internet access is the gateway to economic and educational opportunity, the Plan should prioritise policies that ensure that every Australian has access to reliable and affordable broadband. To ensure that students of all income levels and locations are exposed to the technologies that will shape their professional futures, the Plan should recommend investments in innovative efforts to expand access to technologies in underserved communities.

*   *   *

Thank you again for the opportunity to provide input into the development of the AI Action Plan. We agree that Australia can maximise the benefits of AI through carefully considered policies that promote trust and innovation. In addition to the policies outlined in the Discussion Paper, the concurrent review of the Privacy Act will have an important impact on Australia's ability to establish a tech policy landscape that advances trust and innovation.[12]

---

[11] For further background, please see BSA's submission in response to the Copyright Modernisation Consultation, available at https://www.bsa.org/files/policy-filings/06082018BSA_Response_Australia_DCA_Copyright_Modernisation_Consultation.pdf

[12] Review of the Privacy Act 1988, available at https://www.ag.gov.au/integrity/consultations/review-privacy-act-1988

Creating a data protection framework that protects the privacy rights of individuals, supports consumer trust in the digital economy, and enables innovation in data-intensive solutions is critical for economic growth and recovery. Such policies underpin the application of advanced technologies, such as cloud computing, data analytics, and artificial technologies to some of societies' most significant challenges, from tackling climate change to responding to public health emergencies and many others.

If you require any clarification or further information in respect of this submission, please contact the undersigned at brianf@bsa.org or +65 8328 0140.

Yours faithfully,

Brian Fletcher

Director, Policy – APAC

BSA | The Software Alliance