![Actuaries Institute logo]

8 May 2024

Select Committee on Adopting Artificial Intelligence (AI)
PO Box 6100
Parliament House
Canberra ACT 2600

Email: aicommittee.sen@aph.gov.au

Dear Sir/Madam

Response to Select Committee on Adopting Artificial Intelligence (AI)

The Actuaries Institute ('the Institute') welcomes the opportunity to provide responses to the Select Committee on Adopting Artificial Intelligence ('Select Committee').

The Institute is the peak professional body for actuaries in Australia. Our members have significant involvement in Artificial Intelligence ('AI') in varied sectors of the economy and have contributed to several Government consultations and other work related to the topic of the Select Committee. Some of our recent contributions include:

► Submission to the Department of Industry, Science and Resources on Responsible AI in July 2023;

► The Institute's response to the Privacy Act Review Report in March 2023;

► The Institute's response to the Department of the Prime Minister and Cabinet, Digital Technology Taskforce Issues Paper 'Positioning Australia as a Leader in Digital Economy Regulation – Automated Decision making and AI Regulation' in April 2022;

► Submission to the Australian Human Rights Commission Discussion Paper 'Human Rights and Technology Discussion Paper', March 2020, noting the Institute's comments and recommendations were referenced several times in the final report;

► The Australian Human Rights Commission and Actuaries Institute joint Guidance Resource 'Artificial intelligence and discrimination in insurance pricing and underwriting', published in December 2022; and A technical paper on automated decision-making systems, intended as high-level, practical guidance to support data professionals involved in designing, developing, managing or evaluating automated decision-making systems, including AI systems, published in October 2020.

AI creates immense opportunities to implement technology that benefits citizens, organisations and society as a whole. However, the same technology when implemented poorly or maliciously can cause substantial harms to individuals. Actuaries are experts on risk, and while our Members have views on many other areas of the Terms of Reference based on their experience in building and running AI and Automated Decision Making (ADM) systems, our submission is focused on considerations relating to risk, primarily on items (b), (c) and (e).

Risks and Harms from AI

In our submission to the Department of Industry, Science and Resources on Responsible AI in July 2023, we discuss risks and harms of AI at length. We identify two broad categories of risks or harms which AI may create:

► Risks manifesting in individual harms:

For individuals, poor outcomes from AI could include matters as diverse as personal injury, being misled, being treated unfairly, or discrimination. Often such matters are already considered by regulation, which might already apply or be adaptable to AI.

► Risks that manifest at broader societal scale:

These include challenges such as the impact of widespread misinformation or disinformation on our collective knowledge, impacts to democracy, impacts on specific segments of the workforce, or even existential threats. These broad risks clearly require a different set of risk-management strategies and regulatory responses.

We believe that these risk categories must be considered separately in any response. A single risk framework or a single regulatory response is unlikely to be able to effectively consider such diverse matters. We explain this in detail in our submission. Even within each of these categories, we do not believe a single response is likely to be effective – the risks under consideration are too diverse. We notice also that the first category already contains a wide range of regulatory measures for decisions in general, not a single framework or piece of regulation. This is no different just because AI is being used; the case for having a variety of regulation to manage this category of risk remains sound.

The release of ChatGPT in November 2022 further revealed the potential of AI to the general public and triggered the current acceleration in AI which sees new models and innovations released every week. With new innovations always come risks, which must be identified and managed. Management at a societal level can take many forms, for example informal guidance or 'best practice', industry codes, standards, and enforceable regulation. To support risk management in society, and the continued identification and management of those risks, we believe it is essential to increase AI literacy across all segments of the population, starting with students at school. Education will ensure citizens understand what AI is, how it works in simple terms, and can identify examples of AI in their daily lives. This knowledge will empower society to identify and challenge instances where AI is being used irresponsibly.

Good Regulation for AI

The Institute's principles guiding our response to policy development include a commitment to 'Support effectively regulated systems'. Actuaries believe the public interest is best supported by systems that are effectively regulated, including settings that balance being proportional to risk, supporting efficient and fair practices and outcomes, minimising complexity, understanding future trends and withstanding foreseeable future shocks.

The fundamental point made by this principle — and in Institute publications and positions on regulation — is the importance of balance and proportionality. Poorly designed or poorly targeted regulation can create as many problems as it seeks to solve.

It is often suggested that AI and ADM are new and somewhat special, and so existing rules do not exist or do not apply. In many situations, this is simply not true. AI/ADM has been present for a long time in many industries, and in many of those areas decisions made by AI/ADM are already subject to broad, principles-based regulation, as are equivalent human decisions.

The EU Artificial Intelligence Act[1] is the first major AI-specific regulation in the world. While for the most part the general principles and ideas articulated in this regulation appear sound, this form of regulation has structural weaknesses and is vulnerable to medium-term challenges. Specifically, we caution against taking the approach of creating new regulation that applies only to AI. Technology-focused regulation will result in negative consequences.

► Technology-specific regulation may be inconsistent with, or may conflict with, existing principles-based regulation across a wide range of sectors. Furthermore, gaps in regulation may be created as technology advances, as new technologies might not be captured by existing definitions. This will cause challenges for implementation and ongoing maintenance of the regulation, and then ongoing challenges for both compliance and enforcement.

► AI decisions and equivalent non-AI decisions giving the exact same outcomes may be subject to different rules. At the extreme, we may find one outcome is allowed where the other is not, purely because of whether AI was involved or not. This is not only illogical, but also creates an undesirable loophole which could be exploited.

► Many AI systems blend a range of human and AI components. These may be challenging to operate, particularly if regulations for different components strictly vary depending on mechanisms. This will be an ongoing challenge for both compliance and enforcement.

Instead, we should first prioritise creating clarity across the wide range of principles-based regulation we already have. In areas where we identify risks associated with AI but where no regulation appears to exist, or where regulation is deemed inadequate, this should be addressed. For example, facial recognition technology enables surveillance of the public by both law enforcement agencies and corporations on a scale which was previously impractical. In situations like this where AI/ADM creates something genuinely new, existing regulation may be inadequate, and clarification of existing rules may be insufficient. If new regulation is required to manage novel outcomes created by AI/ADM, wherever possible the regulation should still be written in a technology-neutral manner, focused on outcomes, and not made specific to AI/ADM. If it is necessary to create technology-focused regulation, it should enhance and complement outcome-focused regulation, rather than being a substitute for or conflicting with it.

However, we believe new regulation should be the exception, not the rule. Australia already has long-standing principles-based regulation in many high-stakes areas of the economy, where AI already poses risks. It is often not necessary to create anything new. The challenge is often not a lack of regulation, but a lack of clarity over how that regulation should be interpreted. This lack of clarity hinders both practitioners and regulators. The Commonwealth can – and should – act to create regulatory clarity around AI/ADM by instructing all relevant regulators under their authority to undertake reviews of existing regulation in the context of AI/ADM, and to issue guidance as needed to create that clarity. While there are also the options of changing regulation or waiting for case law to emerge, we specifically call for guidance, as this can be created relatively quickly and can be targeted towards both hypothetical and real situations. Guidance may be used to clarify any apparent conflicts in regulation across jurisdictions, or to align on language, terminology and interpretation, to reduce any potential confusion for practitioners that seek to interpret and abide by the regulation. Simply: we should make compliance easy.

As an example of how uncertainties may arise in regulation and how guidance could support practitioners, we refer to the Institute's recent work with the Australian Human Rights Commission

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[1] https://artificialintelligenceact.eu/the-act/

('AHRC').[2] This guidance was developed relatively quickly, at low cost, and brought clarity to practitioners on open questions in legislation which had been present for decades, and which AI was making more problematic. It is an approach which could be replicated at scale, at relatively low cost, and could be targeted towards issues which are deemed the most urgent. The Institute is willing to assist with similar work, drawing upon our profession's long history in managing risk across a broad range of fields.

To facilitate this objective of regulatory clarity via guidance material, the Institute recommends the creation of a centralised expert body. The purpose of this body would be to provide AI expertise to assist regulators in drafting guidance for AI/ADM that interprets existing regulation. A centralised approach is likely to find efficiencies across the various domains encountered and may be more cost-effective than asking each primary regulator to attract and retain staff with expertise in AI regulation and interpretation. Furthermore, this centralised body should conduct broad 'horizon scanning' to ensure AI regulation stays up to date. Considering the current pace of change in AI, this activity is essential to enable proactive responses to emerging issues.

Further feedback and discussion

We welcome any opportunity to discuss this important topic with you in more depth or provide further information. If you would like to do so, please contact me on (02) 9239 6100 or executive@actuaries.asn.au.

Yours sincerely

(Signed)   Elayne Grace

CEO

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[2] Guidance Resource: Artificial intelligence and discrimination in insurance pricing and underwriting. Australian Human Rights Commission and Actuaries Institute, December 2022. Available at Guidance Resource: Artificial intelligence and discrimination in insurance pricing and underwriting | Actuaries Institute