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**Submission to the Department of Industry, Science and Resources Enquiry –
Supporting Responsible AI, July 2023.**

Background

This submission is in response to the Department of Industry, Science and Resources' call for views on how the Australian Government can mitigate any potential risks of AI and support safe and responsible AI practices

I write because we are a small marketing research company of two employees and as such, have a business interest in effective and ethical AI use. We are a company member of The Research Society[1]. and adhere to its Code of Professional Behaviour[2] in all our information collection and data retention and data security matters and comply with the Australian Privacy Principles. Research program privacy and ethical treatment of the participants and of the data we collect is core to our business. In line with that, we advise participants in our research that their participation is on the basis of their participant anonymity and express consent to participate in the research program. And we advise the potential participants, and our clients, that all results are reported in de-identified aggregates only, even if the data we collect is individually identifiable in its collection and analyses stages. We do this to encourage participation and open and honest advice from those who do participate.

Currently and into the future, we use and expect to increasingly use AI tools to assist us to strengthen our clients' businesses. But we are concerned to ensure that such tools, if and when used, continue to maintain the promised anonymity of response and that any knowledge obtained is available in de-identified material only.

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[1] https://consult.industry.gov.au/supporting-responsible-ai This Code applies to members of The Research Society across Australia and is followed by them.
[2] https://www.researchsociety.com.au/stay-informed/the-code/

Overall, the marketing research sector is a very minor sector within the broader Australian industry. There are about 21,621 people working in it[3]. There are 2,665[4] businesses, though most (1,472 businesses) do not employ staff, 910 of the businesses employ 1 to 4 staff, and only 283 businesses employ 5 or more staff. Thus, given its small size, the needs and views of the market research sector may be overlooked, and to avoid that, I've submitted this outline of our company views.

Note: In the balance of the submission, for clarity, we shall refer to the market research sector, but the term includes those who work in marketing, consumer, social, opinion, government, customer insights and experience, staff, and business research activities, including data analytics. Those activities could be undertaken by specialist marketing research companies such as ours or undertaken by staff within organisations whose core activities are in other sectors (e.g., they work in Government, in retail, in financial services, etc.).

Applying AI to market research

We are interested in the elements of AI that can strengthen our market research practice in all elements – from proposal preparation, data collection and analyses, to reporting of the end results.

Specific areas for the Department's consideration

There are a number of areas of concern or potential need that we see as deserving further review and those follow for the Department's consideration.

1. We are concerned that the use of AI platforms, as those relate expressly to their potential to negate our privacy and anonymity of response guarantees to participants. Similarly, we are concerned about the possible collection of personal data without the express agreement of those being researched.

2. We are also concerned more generally that Australia-based researchers may use AI products that are not based in Australia, and so not be subject to nor compliant with Australian laws and Australian AI Ethics Principles. We would seek legislation

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[3] https://tablebuilder.abs.gov.au/webapi/jsf/tableView/openTable.xhtml
[4] https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release

that requires Australia-based researchers to ensure that the overseas AI platforms they use, do conform to the Australian Privacy Act and the Australian AI Ethics Principles.

3. There are concerns that AI platforms or programs that use historical data may reflect old-fashioned views of gender or gender roles or not to reflect current Australian community values. Accordingly, we would seek that AI platforms operating in Australia should draw their data and build their algorithms so that these reflect the current Australian society and values, rather than reflect outdated times. This need to reflect the current society is particularly relevant given the continually changing nature of Australian society in demographic and values terms.

4. AI data or the developed algorithms for that data need to be cognizant of changes in Australian society and of current Australian society composition and its mores, so that the use of AI in segmentation studies undertaken by market researchers is not inadequate nor misleading.

5. The Discussion Paper refers to database ownership (page 9). We note that this may advantage larger research companies, larger consumer research panel providers or larger end users. Again, such advantages may lessen competition and lessen effective AI use among smaller organisations and may be in conflict with fair market trading. The impact of this potential is something the Department, in possible conjunction with the Australian Competition & Consumer Commission, may wish to consider further.

6. On page 10, the Discussion Paper notes legislation relevant to privacy and general regulations that apply to specific sectors. The industries cited are general – financial services or food or therapeutic goods, and so on. This is clear, but in listing those and regulations affecting those, the needs and interests of suppliers and service providers to those industries, such as market research agencies, are not specifically noted.

We see a need to ensure that market, social, consumer, staff, and government research service suppliers (i.e., market research agencies) are expressly recognised in such lists, as these suppliers have to meet the regulatory standards of data protection (e.g., APRA's data security requirements of financial institutions and of their suppliers). The risk is that if the market research sector is not expressly recognised, AI standards for those industries may not readily match the

needs of the market research suppliers to these industries. Adding marketing research specifically to such lists will help ensure its specific needs are also included in AI Principles and legislation.

7. On Page 13 of the Discussion Paper, the paragraph

    "As an enabling technology, AI is increasingly combined with other components and emerging technologies to produce innovative new businesses, products, and services. This often means that AI is regulated under multiple laws, increasing the likelihood of possible duplication or conflict between regulatory systems, and associated compliance burdens on AI developers and adopters."

    could clearly apply to market research agencies and this may be further potential financial burden for marketing research agencies. Hence our request that the needs of market research agencies and sector be expressly considered as AI legislation and Principles are developed.

8. Looking at the AI Ethics principles, we consider that marketing research works as a tool in assisting *Principle 1. Human, societal, and environmental wellbeing: AI systems should benefit individuals, society, and the environment.* It does this by explaining what people think, know, and do, so appropriate policies, products and services can be implemented or delivered.

9. Similarly, ethical market research supports *Principle 2. Human-centred values: AI systems should respect human rights, diversity, and the autonomy of individuals*, by ensuring views and opinions, groups and values are fairly and properly measured and reported. And here, we suggest that market research practices need to be undertaken in cognizance of this and be stated so expressly in legislation that may follow and in the to-be-updated Privacy Act, so all who undertake market research behave accordingly.

10. Ethical market research supports *Principle 3. Fairness: AI systems should be inclusive and accessible, and should not involve or result in unfair discrimination against individuals, communities or groups.* Here, we ask that AI systems and algorithms used in Australia enable fair and equitable segmentations and better delivery of relevant products and services and so enable market research to play its part in strengthening the future Australian society.

11. In relation to *Principle 4. Privacy protection and security: AI systems should respect and uphold privacy rights and data protection, and ensure the security of data*, we believe that there is a need to strengthen this Principle by legislation or regulation, as there are many researchers and entities who do market research who are not members of The Research Society and so are not covered or bound by its Code. And we believe that not all individually identifiable data collected is kept as secure as this Principle would suggest it should be, and legislation may help ensure that it is securely kept.

12. *Principle 5. Reliability and safety: AI systems should reliably operate in accordance with their intended purpose* suggests that as we move into more AI-generated surveys and questionnaires (and probably analyses), this need is to ensure that while the market research is done for purpose, its use cannot disadvantage an individual or a group. The Privacy Act revisions proposals report notes this in relation to direct marketing and segmentation (Proposal 20.1 (b)). Accordingly, a concern we have is that AI algorithms that are not properly set could lead to the identification of individuals and groups and not provide or market goods or services to those – perhaps to their detriment as Tracey Spicer notes[5] and in contradiction to this Principle.

13. *Principle 6. Transparency and explainability: There should be transparency and responsible disclosure so people can understand when they are being significantly impacted by AI and can find out when an AI system is engaging with them.* The proposed revisions to the Privacy Act (Page 198 of the 2022 report[6]) indicate that an individual can seek information held about them by an entity. If is information sought by an individual is held by a market research agency, clarity on what should be provided is sought.

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[5] "Her research around hospitals and the health care system shocked Spicer, who has only recently started to feel better after living with long COVID. Unable to walk, she spent months in and out of a wheelchair, gaining an insight into living with a disability. RELATED ARTICLE Simon Winchester is afraid that there will soon be no particular need to be intelligent at all. Review. Are we heading for the end of our intelligence? Anyone marginalised is likely to be adversely affected by the rapidly changing world of tech. That extends to older people. "The thought that if you turn up to a hospital, you have COVID-19, you need a ventilator, and you're over 50, and someone who's 30 turns up, they will give the ventilator to the 30-year-old, because the algorithm sees older people as less productive in society and therefore less valuable to humanity. That gave me a terrible fright. So as well as the usual biases around gender and people of colour and people with disability, that is what really shocked me, that as we get older, particularly with machine learning, we will be seen as more dispensable." https://www.theage.com.au/culture/books/tech-companies-operate-like-don-draper-s-world-in-mad-men-20230627-p5djug.html
[6] https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report

This is because in some market research projects, the data held may identify people individually or all the people who have participated in group exercises, while in other projects the information may be obtained in an anonymous format.

If the data is for an individual, that can be explained and released to that individual should they seek it. But if the data is of a group, it may be difficult or expensive to distort or hide the contributions of others in the group before releasing such information. The question we have here is whether the Principle 6 requirement to be transparent and explainable (and perhaps, as the revisions to the Privacy Act indicate, to provide individual's data) would apply if the individual was researched in a group exercise? And if so, how would we maintain the privacy of others who participated in that group activity and had not agreed to release that to another participant?

14. *Principle 7. Contestability: When an AI system significantly impacts a person, community, group or environment, there should be a timely process to allow people to challenge the use or outcomes of the AI system* and *Principle 8. Accountability: People responsible for the different phases of the AI system lifecycle should be identifiable and accountable for the outcomes of the AI systems, and human oversight of AI systems should be enabled.* seem standard and needs no additional marketing research comment.

15. References on page 16 to the European Union and its General Data Protection Regulation (GDPR)[7] if applied in Australia could affect the use of customer data held by financial institutions and retailers generally on their customer databases. It could also affect the forms of market research or market research analyses undertaken on those databases. It could also affect the market research invitations to customers. It could also affect the capacity to input existing, known, customer data to research findings. This addition of pre-known customer data (e.g., age, gender, home postcode) can be done to benefit customers by keeping surveys shorter by not asking them to repeat what is already known.

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[7] The General Data Protection Regulation (GDPR) came into effect in 2018. It regulates the use of personal data in ADM systems 'which produce legal or similarly significantly effects'.34 It requires that individuals be given:
- prior notice of the use of personal data in ADM, including profiling35
- a right to access information about the existence of ADM and 'meaningful information about the logic involved, as well as the significance and the envisaged consequences' of such processing to the individual
- the 'right not to be subject' to certain forms of ADM

The solution to this concern could be for a legislated requirement that all organisations that hold customer data need to confirm with the current customers their agreement for its use in database analyses and in other market research activities (from which they can always exclude themselves) and be added as an opt-in element for all future customers.

16. On page 19, the Discussion Paper notes the American needs to review AI for bias annually. If such a practice were undertaken in Australia, it could affect sample selection in longitudinal surveys over time and alter the outcomes, if sample selection were to be AI-based in future. Essentially, the safeguards the USA has or is considering, if also implemented here (or if we use platforms based in the USA) could alter samples and generate bias. This American approach would need to be reviewed in relation to the market research industry needs to maintain a consistent sample population over time, so the views reported in each wave are reflective of that population and not caused by AI-generated population changes.

    Accordingly, we suggest this approach not be adopted. Instead, customers on databases should continue the right to opt out as and if they require. And, as most research is opt-in optional, they may choose to do so one year and not another (as a recent database analysis found[8]).

17. On page 23, the Discussion Paper notes Italy's concern of the potential for ChatGPT to produce inaccurate results[9]. This raises the need for evidenced verifications of such AI-produced segments, audiences, approaches, and outcomes and particularly for the market research industry to ensure that any audience, product, service, or attitude findings that have been developed with such AI platforms are also separately and reliably evidenced. And it may be that appropriate legislation requiring this should be considered.

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[8] https://www.derhamresearch.com.au/good-customer-satisfaction-measures/ and Customer satisfaction is widespread, surveys find, as Philip Derham explains. - Derham Insights Research (derhamresearch.com.au)

[9] In March 2023, the Italian Data Protection Authority (Garante) announced a temporary conditional ban of ChatGPT, raising concerns about private data that had been gathered to 'train' the product. OpenAI announced on 28 April 2023 that ChatGPT had been reinstated in Italy after it implemented changes to comply with Garante's data privacy conditions, including:
- increased transparency on OpenAI's website about how ChatGPT processes user data
- opt-out rights, including the option to disallow user conversations from being used as training data
- age verification to protect children under 13 in Italy from accessing ChatGPT
- a notice that makes users aware that ChatGPT could produce inaccurate information about people, places or facts.

18. The page 23 concerns can apply to the need for care in sample selection, relevant research prospect group identification, geographic or demographic cover and even psychographic, emotional, or medical state that can be inferred from AI-based summaries.

19. Page 26 of the discussion paper refers to a range of broad industries and needs to specifically include industry sectors that serve those broad industries (e.g., market research), as omission of the multi-industry service suppliers can lead to a lack of clarity and consideration of their supplier-to-the-industry needs.

20. In addition, while the need is identified to "ensure there are appropriate safeguards, especially for high-risk applications of AI and ADM" (page 26 of the Discussion Paper), market research suppliers who hold data (panel providers, research agencies with their own databases or who have access to clients' databases for projects etc.) need to be aware of and compliant with the safeguards and this may be something the legislation would need to expressly address.

21. On page 27, the Discussion Paper shows the potential range for AI governance – from voluntary codes to legislated requirements. To ensure all market research entities and users of market research tools and techniques are compliant, we recommend legislation as that should ensure that all Australian market research activities using AI comply. This would also better suit smaller companies, such as ours, as legislation will give greater business certainty and more consistent compliance.

22. On page 30, the Discussion Paper notes that some AI platforms have been banned in classrooms or by various Government bodies. We suggest that banning is not needed for the market research sector in Australia, but what is required is that each AI platform used must (by legislation) comply to Australian law and that any platform any market researcher uses must comply and that use of non-complying platforms is illegal and is not to be done.