26 July 2023

Department of Industry, Science and Resources
Industry House
10 Binara Street
Canberra ACT 2601
Australia

By email: DigitalEconomy@industry.gov.au

To whom it may concern,

Ramsay Health Care Australia (RHCA) appreciates the opportunity to provide comment on the *Supporting responsible AI: discussion paper.*

Ramsay Health Care (RHC) provides quality healthcare through a global network of clinical practice, teaching and research. RHC's global network extends across ten countries, with over eleven million admissions and patient visits to facilities in more than 530 locations. RHCA has over 70 private hospitals and day surgery units in Australia and is Australia's largest private hospital operator, employing more than 30,000 people.

Firstly, RHCA is **concerned** the paper mentions this consultation does not seek to consolidate or replicate the development of existing general or sector-specific regulations and governance initiatives across the Australian Government, and only seeks to identify potential gaps and whether additional AI governance mechanisms are required (page 13). The paper itself notes many of these issues are cross-cutting and related to a broad range of issues (page 4).

The Government may wish to consider tasking the Regulatory Reform Division, Department of Finance (formerly the Deregulation Taskforce, Department of the Prime Minister and Cabinet) to undertake this work, given the Division has undertaken similar reviews such as health practitioner regulatory settings, automatic mutual recognition of occupation licences and excise and excise-equivalent goods system.

Secondly, RHCA **strongly recommends** this work aligns with the Australian Government's broader policy platform including the work being undertaken by the Attorney-Generals' Department, the Digital Transformation Agency, the National Science and Technology Council (NSTC) and the National AI Centre. Interestingly, the NSTC provided a rapid response information report on generative AI in March 2023. It is strongly encouraged the Government establishes interdepartmental committees (IDC), at least at the Deputy Secretary level, to progress and ensure the successful development of AI policy.

Thirdly, RHCA **recommends** the Australian Government appoint a particular department or agency (such as the National AI Centre) to be responsible for Australia's general AI policy, given it has been identified as a critical technology in Australia's interest. Other departments could then develop sector-specific regulations in coordination with the lead agency, as required. It would also be paramount this lead agency works with state and territory governments, private, not-for-profit and academia to ensure a national consistent approach is developed to address AI.

Fourthly, RHCA **recommends** the Australian Government harmonise and simplify existing legislation and regulations (Commonwealth, State, Territory) to ensure there is a consistent approach to AI, including related obligations and requirements. Streamlining and simplifying regulation to promote its effectiveness should be a priority for the Government, rather than introducing additional regulations to an already complex and burdensome system for the private sector.

The Australian Government should continue to engage in international forums in consultation with the Department of Foreign Affairs and Trade, such as the G7, OECD, United Nations, Word Trade Organisation and World Economic Forum. This engagement can support domestic responses and avoid duplication of work being undertaken at a global level.

Lastly, RHCA can bring a global perspective to this conversation given the Ramsay Group has operations across the United Kingdom, European Union, Asia, and Australia. RHCA would be happy to contribute its perspective by participating in future consultations, including roundtables. It is important the Government takes learnings from overseas, rather than duplicate and rework significant progress which could be implemented within Australia.

Thank you for the opportunity to provide a submission.

Please do not hesitate to contact me on 0477 759 370 or governmentpolicy@ramsayhealth.com.au.

Yours faithfully,

Dr Rachna Gandhi
Group Chief Data and Digital Officer
Ramsay Health Care Australia
26 July 2023

Answers to the questions

Definitions

1. <u>Do you agree with the definitions in this discussion paper? If not, what definitions do you prefer and why?</u>

Ramsay Health Care Australia (RHCA) **recommends** the Australian Government works with industry to seek in-principal agreement to an Australian definition of AI, at least, if a global definition cannot be agreed upon. This will ensure there is a set foundation and understanding to AI policy development in Australia.

RHCA **urges** the Australian Government to continue to engage at a global level to influence the definition of AI and other associated definitions through the International Organisation for Standardization (ISO).

RHCA **notes** this discussion paper uses key definitions based on ISO definitions. Minor modifications are suggested for the following definitions:

- Artificial intelligence: are intelligent systems (including algorithms) capable of performing tasks which typically require human intelligence and are not necessarily about predictive outputs. AI systems are designed to simulate and mimic human cognitive abilities.
- A large language model (LLM): is a type of AI model which has been trained on massive amounts of text data to create outputs that resembles natural language.

Potential gaps in approaches

2. <u>What potential risks from AI are not covered by Australia's existing regulatory approaches? Do you have suggestions for possible regulatory action to mitigate these risks?</u>

RHCA is **concerned** the paper mentions this consultation does not seek to consolidate or replicate the development of existing general or sector-specific regulations and governance initiatives across the Australian Government, and only seeks to identify potential gaps and whether additional AI governance mechanisms are required (page 13). The paper itself notes many of these issues are cross-cutting and related to a broad range of issues (page 4).

The Government may wish to consider tasking the Regulatory Reform Division, Department of Finance (formerly the Deregulation Taskforce, Department of the Prime Minister and Cabinet) to undertake this work, given the Division has undertaken similar reviews such as health practitioner regulatory settings, automatic mutual recognition of occupation licences and excise and excise-equivalent goods system.

RHCA **strongly recommends** this work aligns with the Australian Government's broader policy platform including the work being undertaken by the Attorney-Generals' Department, the Digital Transformation Agency, the National Science and Technology Council (NSTC) and the National AI Centre. Interestingly, the NSTC provided a rapid response information report on generative AI in March 2023. Currently, it is not easy to identify gaps in the existing regulatory approach given the expansive and somewhat siloed approaches being undertaken by different departments.

RHCA also **recommends** the Australian Government appoints a particular department or agency (such as the National AI Centre) to be responsible for Australia's general AI policy, given it has been identified as a critical technology in Australia's interest. This lead agency would be responsible for developing general foundations, principles, and associated regulations, applicable to all industries. For example, the former Critical Technologies Policy Coordination Office which sat within the Department of the Prime Minister and Cabinet coordinated whole-of-government advice on technology developments, opportunities and risks, and recommended actions to protect critical technologies. Other departments could then develop sector-specific regulations in coordination with the lead agency, as required. It would also be paramount this lead agency works with state and territory governments to ensure a national consistent approach is developed to address AI.

RHCA **recommends** the Australian Government develops generic regulations which provides foundational principles, applicable to all industries. At this stage, RHCA is of the view the healthcare industry should self-regulate, rather than the Australian Government intervening through additional burdensome regulation, except for agreed high risk mechanisms.

RHCA **notes** the healthcare sector recognises the risks (perceived and real) with automated/autonomous decision making and emphasises there must be a provision of augmented decision-making with sufficient quality assurance. In any instance, it is critical relevant departments and agencies (Department of Health and Aged Care, Therapeutic Goods Administration (TGA)) that may also be involved in AI regulations work closely with the lead agency for AI policy. For example, it would be important for ML algorithms to be approved by the TGA if directly used for clinical purposes for primary care (I.e., ML algorithms for early detection of sepsis in the Emergency Department). This will ensure there is a consistent approach across government to address the risks and mitigation strategies associated with AI.

RHCA also **raises** the following risks with the Australian Government:

- Conditions and impacts of AI which are systematic or difficult to reverse;
- Observability and how to fact-check all output for correctness, currency, bias and completeness (inaccuracies create problems such as incomprehensive datasets which leads to bias and harm);
- Protect and respect large language model (LLM) intellectual property rights (unauthorised use of copyrighted material or creation of content that infringes on the intellectual property of others is strictly prohibited); and
- Transparency and accountability, particularly in relation to data ownership.

RHCA **welcomes** the Australian Government's investment to support the development of critical technology, including AI through extending the National AI Centre and its role in supporting responsible AI usage through developing governance and industry capabilities.

3. <u>Are there any further non-regulatory initiatives the Australian Government could implement to support responsible AI practices in Australia? Please describe these and their benefits or impacts.</u>

RHCA **strongly recommends** the Australian Government invests in building consumer AI literacy for all Australians. This could include general Government awareness campaigns, but also more specific interventions such as primary/secondary education (AI in the syllabus) to ensure children

learn and understand AI from an early age or target disadvantaged Australians so that no one is left behind. It is clear AI is going to be ubiquitous, much more than the cloud in a very short time. Should ChatGPT adoption rates be the future, it is paramount users understand AI, its use, and potential implications.

RHCA **encourages** the Australian Government to ensure non-regulatory initiatives are practical and user friendly. Given the regulatory landscape is complex, there must be practical guidelines for any applicable laws and regulations (IP, privacy, data protection) and how to guidance prior to the implementation of AI.

RHCA **supports** an inclusive and collaborative approach regarding the development of AI systems. To further build consumer trust and confidence, the community could be engaged on the objective of AI projects and insights into data use, with the methodology made public, unless there is an overriding public interest to not do so.

RHCA **strongly supports** each Australian citizen upholding their individual rights, such as the right of anonymity where practicable under the *Privacy Act 1988* (Cth), that is, the Australian Government should not erode these guarantees and freedoms. As such, AI systems should be designed and used in a way that respects human values (privacy, fairness and autonomy). Therefore, appropriate data governance must be implemented to prevent misuse, unauthorised access and mitigate the impact of any breaches. AI solutions must be used safely and securely, and in a way that is consistent with privacy, data sharing and information access requirements.

4. <u>Do you have suggestions on coordination of AI governance across government? Please outline the goals that any coordination mechanisms could achieve and how they could influence the development and uptake of AI in Australia.</u>

Refer to Question 2.

RHCA **strongly recommends** this work aligns with the Australian Government's broader policy platform including the work being undertaken by the Attorney-Generals' Department, the Digital Transformation Agency and the National Science and Technology Council (NSTC) and the National AI Centre. Furthermore, the Department of Finance continues to lead the Australian Government's digital identity initiative. To achieve consensus across Australia, the Australian Government may wish to discuss AI at the Data and Digital Ministers meeting which seeks to align policies across the Commonwealth, State and Territory Governments as well as New Zealand.

RHCA **notes** with any regulations, all stakeholders (government, private, public, not-for-profit, community) must be provided assurance regarding the privacy of user data used in AI solutions. The Australian Government should work closely with the Attorney-Generals' Department to implement adequate controls to manage the risk and ensure data is kept secure. For example, the current Privacy Act Review recommends entities include information in their privacy policy about whether personal information will be used in ADM which has a legal, or similarly significant effect on an individual's right. As such there must be a guideline or base framework to ensure the safe use of AI to help businesses and government, while not creating and promoting biases.

Responses suitable for Australia

5. <u>Are there any governance measures being taken or considered by other countries (including any not discussed in this paper) that are relevant, adaptable and desirable for Australia?</u>

RHCA **notes** AI is still nascent, and the references provided in the paper are sound. With any proposed governance measures, care should be given to the implementation, and guidelines should be appropriate for use, with sample scenarios around design and decision considerations.

RHCA **strongly encourages** the Australian Government to continue to engage in international forums in consultation with the Department of Foreign Affairs and Trade, such as the G7, OECD, United Nations, Word Trade Organisation and World Economic Forum. This engagement can support domestic responses and avoid duplication of work being undertaken at a global level. Despite countries moving towards a risk-based approach albeit with different approaches, the G7 has agreed to prioritise collaboration on AI governance which emphasises there is appetite at an international level to work to develop appropriate AI policy levers.

RHCA **advises** the Australian Government it can bring a global perspective to this conversation given the Ramsay Group has operations across the United Kingdom, European Union, Asia, and Australia. RHCA would be happy to contribute its perspective by participating in future consultations, including roundtables. It is important the Government takes learnings from overseas, rather than duplicate and rework significant progress which could be implemented within Australia.

RHCA **notes** it would be appropriate to try and obtain consensus across the Australian Government, state and territory governments and the private sector regarding the regulation of AI to ensure the regulatory framework does not become more complex and burdensome. It is evident in the United States of America, specific states are introducing AI regulations that may have further regulatory requirements than at the federal level.

Target areas

6. <u>Should different approaches apply to public and private sector use of AI technologies? If so, how should the approaches differ?</u>

In the first instance, RHCA **recommends** different approaches (beyond the foundational principles) apply to public and private sector use of AI technologies. For the successful use of AI by Government, the Government must maintain and improve Australians' trust in the Australian public service (currently 61%, Citizen Experience Survey 2020-2021), otherwise such an initiative may not succeed, and the true benefits will not come to fruition. The recent Royal Commission into the Robodebt Scheme highlights the importance of the Australian Government setting the standard for the use of AI in Australia. Furthermore, government implementation of initiatives can influence private sector behaviour and clearly set expectations.

Generally, the public sector focuses more so on the delivery of effective and equitable public services, where one must ensure transparency is key, and upholding societal values. Whereas the private sector is primarily driven by business objectives, profitability and customer satisfaction.

However, RHCA **strongly recommends** both sectors should be encouraged to respect the privacy of individuals over profits. This can only be achieved by dialog and incentives to do the right thing and dis-incentivise doing the wrong thing.

As such, RHCA **strongly recommends** the Australian Government ensures all Commonwealth Government departments and agencies meet the same AI standards being set for private organisations, to serve as a role model and best practice for other entities.

RHCA **notes** the Australian Government's ongoing emphasis for the private sector to share information. It is crucial the Government also shares information and cannot remain elusive in this space (unless restricted by legislation), particularly when it involves certain actors.

7. <u>How can the Australian Government further support responsible AI practices in its own agencies?</u>

Refer to Question 2 and Question 6.

RHCA **recommends** the Australian Government develop clear education and guidance, in conjunction with the private sector to enhance Australia's AI practices to support the uptake of AI technologies in Australia. In essence, the Government must attract further investment in Australia by removing barriers and red tape. This will also support providing guidance to Australians whilst improving AI literacy of Australians in the longer-term, particularly on the limitations and risks involved in the use of generative AI.

8. <u>In what circumstances are generic solutions to the risks of AI most valuable? And in what circumstances are technology-specific solutions better? Please provide some examples.</u>

Refer to Question 2.

RHCA **recommends** the development and use of AI systems consider concrete risks and the likelihood of those risks occurring in comparison with the potential benefits and risks presented by similar systems without AI.

Should a risk-based approach be implemented, RHCA **emphasises** the lead agency must monitor high risk solutions, and potentially re-evaluate medium risks every six months as AI continues to advance, given its rapid speed and scale of growth.

RHCA **reminds** the Australian Government that industry and the community must be consulted widely with the proposed approach to be taken, to ensure the management of risk for generic versus technology-specific solutions is appropriate. It would be important for generic regulatory mechanisms to be consistent with technology-specific solutions or sector specific solutions.

9. <u>Given the importance of transparency across the AI lifecycle, please share your thoughts on:</u>

   a. where and when transparency will be most critical and valuable to mitigate potential AI risks and to improve public trust and confidence in AI?

RHCA **strongly supports** transparency across the entire AI lifecycle.

RHCA **recommends** stakeholders be notified and understand when they are being significantly affected by AI as well as when they are interacting with an AI solution. Stakeholders should be provided an opportunity to contest and challenge the use and outcome of an AI system in a timely manner.

RHCA **encourages** the Australian Government to consider providing Australians access to an efficient and transparent review mechanism should there be questions about the use of data or AI-informed outcomes. For example, the Australian Government would likely increase trust and confidence with all Australians and avoid future issues such as Robodebt, an Australian Government led initiative.

> b. mandating transparency requirements across the private and public sectors, including how these requirements could be implemented.

Refer to Question 3 and Question 6.

RHCA **recommends** appropriate review mechanisms must be in place to ensure stakeholders can question and challenge AI-based outcomes. There must be an emphasis on explainability to help stakeholders understand how decisions were made and how they were used to achieve an outcome.

10. <u>Do you have suggestions for:</u>

> a. *Whether any high-risk AI applications or technologies should be banned completely?*

RHCA **cautions** the Australian Government completely banning high-risk AI applications or technologies as this may slow innovation and productivity. The decision to completely ban a high-risk AI application or technology can be complex and have unintended consequences (particularly given AI is still relatively new).

RHCA **believes** it is important for entities to have flexibility in this area so that the appropriateness of banning can be considered on a case-by-case-basis, including having regard to input from Government, regulators, and experts at the relevant time.

RHCA **strongly recommends** appropriate regulations (including penalties for inappropriate use) for the use of AI for the following:

- Social scoring;
- Warfare;
- Hacking;
- Encourages self-harm; and
- Disinformation (fake news or deepfakes).

RHCA **recommends** mandatory confidential reporting to Government for high-risk AI applications or technologies, and the outcome would be a more balance approach.

RHCA **emphasises** the Australian Government should seek to align its approach with our major trading partners to ensure Australia can remain a key partner with our global counterparts, particularly in this ever-growing industry. This will provide certainty and confidence to business, including future investment.

> b. *Criteria or requirements to identify AI applications or technologies that should be banned, and in which contexts?*

Refer to Question 10 (a).

RHCA **strongly recommends** the development of a risk-based approach which sets out the criteria or requirements to identify AI applications or technologies. However, further consultation with industry and the community will be required to determine the criteria, requirements and contexts, noting there are many complexities and differences across sectors.

RHCA **notes** AI systems should primarily aim to contribute positively to human lives, public welfare and global sustainability and not be used to harm individuals, groups, or society.

11. <u>What initiatives or government action can increase public trust in AI deployment to encourage more people to use AI?</u>

Refer to Question 3, Question 6, Question 7 and Question 9(a) and (b).

RHCA **strongly recommends** the Australian Government develops a framework and associated methodology with concrete examples. This framework would ensure the design and implementation of an AI solution considers issues such as moral principles, confidence, safeguarding information, effects on employment, rules and standards. To support building trust and confidence, particularly to convey AI is centred on human needs, transparency, knowledge sharing, and collaboration is important.

Implications and infrastructure

12. <u>How would banning high-risk activities (like social scoring or facial recognition technology in certain circumstances) impact Australia's tech sector and our trade and exports with other countries?</u>

Refer to Question 10.

RHCA **supports** the implementation of effective guardrails to ensure such activities do not lead to disbenefit (negative benefits). For example, it may be appropriate to ban social scoring, but not necessarily some applications of facial recognition.

13. <u>What changes (if any) to Australian conformity infrastructure might be required to support assurance processes to mitigate against potential AI risks?</u>

Broadly, RHCA has **no comment** regarding changes to Australia's conformity infrastructure to support assurance processes.

RHCA **notes** any standards, including technical, assurance infrastructure and conformity processes or practices must be sufficiently consulted widely with industry and have broad support to further build trust with consumers as well as facilitate international trade.

RHCA **recommends** the Australian Government review the NSW AI Assurance Framework to determine whether it could be uplifted and be made an Australian Framework to assure AI projects against the ethics framework. This could be taken to National Cabinet for consideration and would avoid the need for the Australian Government to duplicate Frameworks.

Risk-based approaches

14. <u>Do you support a risk-based approach for addressing potential AI risks? If not, is there a better approach?</u>

Refer to Question 3 and Question 9(a) and (b).

RHCA **strongly supports** a risk-based approach for addressing potential AI risks. The Australian Government must ensure this approach is consistent across all levels of government, with sufficient public consultation.

15. <u>What do you see as the main benefits or limitations of a risk-based approach? How can any limitations be overcome?</u>

Refer to Question 10(a).

RHCA **notes** there would be benefits and limitations with any proposed solution, including a risk-based approach, but it is likely the most appropriate approach. Limitations may include the person performing the risk assessment (subjectivity, personal bias) as well as uncertainties based on information quality used to perform the risk analysis.

16. <u>Is a risk-based approach better suited to some sectors, AI applications or organisations than others based on organisation size, AI maturity and resources?</u>

RHCA **agrees** a risk-based approach may better suite some sectors, AI applications or organisations than others based on organisation size, AI maturity and resources. There will always be different maturity and levels of technology adoption with different levels of data quality, based on an organisation's needs and resources.

RHCA **emphasises** the Australian Government must consult widely with industry before deciding to implement multiple approaches to AI, to avoid further complexities. As such, general foundations, principles, and associated regulations should be developed, applicable to all industries. Industries may then seek to develop sector-specific regulations in line with the general principles.

17. <u>What elements should be in a risk-based approach for addressing potential AI risks? Do you support the elements presented in Attachment C?</u>

Refer to Question 9(a).

RHCA **broadly supports** the elements in Attachment C: Possible elements of a draft risk-based approach. It is paramount AI solutions are transparent and explainable, that is, stakeholders should be able to understand how AI systems work, make decisions, and are used.

RHCA **emphasises** the risk-based approach must be robust and reliable to help prevent errors, biases, or malicious exploitation which can lead to adverse consequences. Furthermore, the approach must also ensure fairness and equity promotes equal opportunities whilst avoiding potential harm to individuals or marginalised groups (I.e., algorithms which contain systemic and repeatable errors may lead to prejudiced decisions or outcomes).

RHCA **recommends** careful data management must be undertaken to ensure potential data biases are identified and appropriately managed:

- a data model that is designed with a focus on diversity and inclusion;
- use of a dataset that is representative for the problem to be solved; and

- regular monitoring of data models and outputs.

18. <u>How can an AI risk-based approach be incorporated into existing assessment frameworks (like privacy) or risk management processes to streamline and reduce potential duplication?</u>

Refer to Question 2 and Question 4.

RHCA **emphasises** an AI risk-based approach should not simply be incorporated into existing assessment frameworks or risk management processes but should seek to streamline and reduce potential duplication across all levels of government and industries. As such, it is paramount the Australian Government undertake a proper analysis with industry experts.

RHCA **notes** it may be appropriate for AI to have an independent framework given its importance and ubiquitous nature. Though, should this occur, the Australian Government must ensure there is standardisation across government, and consider permissible variations, depending on the sector (public, private, not-for-profit) or the type of industry. There must be an Australian set of common principles and governance approach to ensure Australia's efforts in AI are aligned.

19. <u>How might a risk-based approach apply to general purpose AI systems, such as large language models (LLMs) or multimodal foundation models (MFMs)?</u>

Refer to Question 5 and Question 7.

RHC **notes** international engagement must continue given generative AI prompts may be used by foreign actors to gather sensitive information. The proposed guidelines may outline what can and cannot be shared as part of the AI prompt.

RHCA also **recommends** the following:

- Information from Generative AI be used with caution, including fact-checking all output for correctness, currency, bias, and completeness;
- Users respect and protect intellectual property rights, and unauthorised use of copyrighted material or creation of content that infringes on the intellectual property of others be strictly prohibited; and
- Users must not share sensitive or confidential data with generative AI solutions, etc.

20. <u>Should a risk-based approach for responsible AI be a voluntary or self-regulation tool or be mandated through regulation? And should it apply to:</u>

a. *public or private organisations or both?*

Refer to Question 2.

b. *developers or deployers or both?*

RHCA **recommends** risk-based approach regulations apply to not only developers or deployers but also users (including organisations) which seek to use AI.