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Technology Strategy Branch
Department of Industry, Science and Resources

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To whom it may concern

Comments on Discussion Paper – Safe and responsible AI in Australia

My Office welcomes the opportunity to comment on the *Safe and Responsible AI in Australia Discussion Paper*. We acknowledge the importance of ensuring Australia has appropriate governance mechanisms to support the safe and responsible use of Artificial Intelligence (AI) including ensuring the rights of individuals, particularly those most vulnerable, are protected.

The purpose of the Office of the Commonwealth Ombudsman (OCO) is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly, and
- influence systemic improvement in government administration.

We aim to achieve our purpose by:

- independently and impartially reviewing complaints and disclosures about government administrative action
- influencing government agencies to be accountable, lawful, fair, transparent, and responsive
- assisting people to resolve complaints about government administrative action, and
- providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.

We note the discussion paper seeks views on the regulatory and governance responses Australia can take to mitigate the potential risks from AI and Automated Decision Making (ADM) in an effort to help ensure Australia continues to support responsible AI practices to increase community trust and confidence. Below, we offer the following comments:

- The Department should consider how this work intersects with other activities across government regarding administrative decision-making and administrative law reform. In particular, we note the [Report of the Robodebt Royal Commission](#) made a number of recommendations that are relevant to the use of ADM. Additionally, given AI can fundamentally change the nature of administrative decision making, the Department should consider interactions with the Government's administrative review reforms including the role of the Administrative Review Council (ARC) or a similar body and its functions and members. In our view, a body with deep expertise in administrative law will play an important role in relation to the use of AI in government administration.

- In the “challenges” section (p 8) the paper notes *“AI is unique because it can take actions at a speed and scale that would otherwise be impossible. This speed and scale at which AI can be deployed (to generate benefits as well as cause potential harm) is one of the most significant policy challenges promoting calls for greater regulatory action”*. As the Department continues to progress this work, it should provide further public information about the potential harm that can result from the use of AI and the regulatory action or other mechanisms that would best mitigate the risk of harm occurring.
- In relation to the “possible draft risk management approach” (p 32), it is unclear what criteria is being proposed to determine whether AI applications are ‘low’, ‘medium’ or ‘high’ risk, and whether it includes an assessment of the impacted cohort as well as the intended purpose/function of the application. As the Department continues to progress this work, it should ensure any risk management approach identifies relevant criteria and consequences of risk assessments, reflects impacts for vulnerable people and refers to the AI Ethics Principles.

We appreciate the opportunity to provide comments on the discussion paper. In our view current and future governance mechanisms should be designed to ensure the use of AI and ADM is lawful, transparent and operates fairly so as not to disadvantage people, particularly those most vulnerable. Providing clear information about decision-making processes and ensuring direct pathways for people to make complaints or raise concerns is a key principle of effective government administration.

Yours sincerely



Penny McKay
Acting Commonwealth Ombudsman

Influencing systemic improvement in public administration