Submission to the Department of Industry, Science and Resources

# Response to Discussion Paper: Supporting Responsible AI

Public Version

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# EXECUTIVE SUMMARY

1. Optus welcomes the opportunity to provide a submission on the Government's 'Supporting Responsible AI' discussion paper.

2. Optus is the owner and operator of significant national communications infrastructure and the supplier of important carriage and content services to a large portion of the Australian community (over 11 million services). .

3. Optus is playing a leadership role in the responsible and innovative use of artificial intelligence in the telecommunications industry. We have a number of AI-based capabilities across our business have policies and procedures in place for the safe and responsible use of AI across our business.

4. Optus supports the government's ambition to harness the huge productivity potential of artificial intelligence whilst ensuring that appropriate safeguards are established. Based on our own experience, we offer the following key comments for government's consideration:

   (a) **A deeper, shared understanding of AI** itself will greatly assist in guiding government policy;

   (b) Government should review the extent to which the currently known risks of artificial intelligence can be **regulated through existing frameworks and any additional regulation should be principles-based**;

   (c) Government should **emphasise the transformative potential of artificial intelligence in its policy approach**, whilst ensuring that appropriate safeguards are in place.

5. Further explanation is in the body of our submission and we have also offered more specific responses to a number of the questions in the discussion paper. We would welcome the opportunity to discuss any of these issues in further detail.

6. As a member of the Communications Alliance, Business Council of Australia and Tech Council of Australia, Optus broadly supports their respective submissions (TBC based on reviewing submissions).

# A Deeper Understanding of AI Will Better Guide Government Policy

7. Government has already taken constructive steps to understand the policy implications of AI, including through the process of developing its 'Principles for the Safe and Effective Use of Artificial Intelligence'. However, with the release of Chat-GPT and other similar programmes, the public use of generative AI in particular has reached an inflection point, throwing up a myriad of policy questions.

8. Some of these issues have been identified in this discussion paper, including the potential for AI to:

   (a) Generate deepfakes to try and influence democratic processes, spread mis-/disinformation or encourage people to self-harm;

   (b) Exacerbate discrimination as a result of algorithmic bias;

   (c) Encourage monopolistic practices in the control of key data-sets;

   (d) Obscure decision-making processes (e.g. in automated decision-making systems) thereby raising challenges for due legal processes.

9. More broadly, there are a host of potential structural implications that artificial intelligence could have for the economy, particularly in terms of the future of work, health and government decision-making. For example, as the discussion paper also notes, AI is currently being used to consolidate and analyse medical data/imagery. The sheer scale and speed at which artificial intelligence can perform this analysis dwarfs our current capacity and could lead to profound medical advances in the coming years. This in turn has significant implications for government policy, such as how health spending is allocated and how medical professionals are trained.

10. Industry is also still in the early stages of understanding the potential uses and implications of AI. Many of the examples noted in the discussion paper are an early snapshot of the potential implications of AI. In the coming years, the use of AI will proliferate exponentially, as will the public policy implications of its use. A closer, more collaborative relationship with government is therefore crucial for building a better shared understanding of AI itself and, consequently, the best policy settings to guide its appropriate use.

11. The key question to understand will be when does AI produce a materially different process or outcome that would require a different regulatory response? Automated Decision-Making (ADM) is a good example: usually an individual is the ultimate decision-maker in a given process and can be held accountable. Who is accountable for automated decisions? Similarly, the use of generative AI that draws on copyrighted or other legally protected material to create new content raises novel questions for intellectual property law.

12. Most of the time, however, AI technology is simply a more efficient method for handling an existing process (for example, AI chatbots being used for more basic customer interactions, machine learning for faster analysis of existing data and so forth). In these cases, AI technology does not create any new public policy challenges, merely new manifestations of existing ones (such as protecting personal information).

13. Having clarity around the distinction between these two concepts will be crucial in developing an effective policy framework that maximises the benefits of AI technology whilst implementing appropriate safeguards, transparency and accountability.

## EXISTING REGULATIONS SHOULD BE CONSIDERED FIRST

14. While some new regulation will likely be needed to address specific issues, many of the risks raised by AI can be managed through existing laws and regulations. For example, the Privacy Act, Security of Critical Infrastructure Act and various sector-specific laws such as the Telecommunications Act all govern a range of relevant issues such as the protection of personal information, data security, consumer protection and transparency. In addition, a recent report from the UTS Human Technology Institute captures the large array of governance mechanisms that already regulate the use of AI technology in Australia[1]. To illustrate this further, a more detailed example of how Optus's current use of AI is regulated through existing legislation is at the end of this section.

15. Optus suggests that regulatory reforms pertaining to AI technology should be considered in three stages:

    (a) Does existing regulation adequately manage AI usage?

    (b) If not, how can existing regulation be amended to achieve this?

    (c) Where existing legislation is inadequate and can't be amended, what regulatory measures would be most appropriate?

16. Some of the issues raised in the discussion paper – such as anti-competitive practices – demonstrate that the implications of AI technology are often already regulated, in this case under the Competition and Consumer Act. In this instance it would monopolistic behaviour that was of concern not the use of AI.

17. This example also demonstrates the need for a better, shared understanding of AI itself as this is a case where the policy challenge does not arise from AI directly but rather a (hypothetical) attempt to monopolise the data that AI might utilise.

18. Where additional regulation is required, consideration should therefore be given to how existing legislation can be adapted to manage the use of artificial intelligence. Once this has occurred, a clearer picture will emerge of whether any regulatory gaps exist that require further action from government. A more beneficial first step, however, would be to identify what changes might need to be made to existing legislation to incorporate the use of AI.

19. In addition, government should consider the fact that organisations that utilise AI are already strongly incentivised to establish robust governance mechanisms and safeguards for its use. .

20. In light of this, Optus recommends that any initial, broad AI regulations be voluntary in nature. This would reflect the fact that AI use is still in its infancy and the policy implications are only just beginning to be understood. Moreover, businesses are already recognising the need to have robust governance in place for its use and putting systems in place to manage the safe and responsible use of AI. This would not preclude the development of broader legislation at a later stage but rather recognise the fact that many of the policy implications are yet to be understood and a more flexible regulatory approach is more appropriate in this developmental phase.

[1] 'The State of AI Governance in Australia' (UTS Human Technology Institute, May 2023) - https://www.uts.edu.au/sites/default/files/article/downloads/HTI%20The%20State%20of%20AI%20Governance%20in%20Australia%20-%2031%20May%202023.pdf

**Case Study – Optus Contact Centre**

Optus has partnered with Google to deploy AI technology as part of our customer contact centre. Using Google Cloud technology, Optus's AI Assistant draws on advanced modelling to enable accurate and meaningful interactions with customers.

While the AI Assistant provides an innovative way for our customers to interact with us, the regulatory issues that its use raises are no different to the more traditional interactions with a call centre operator. The same obligations around the protection of personal information exist and our AI Assistant is appropriately programmed to do so. Similarly, our obligations to retain and protect customer data under either the Mandatory Date Retention Regime or the Telecommunications Act (e.g. for the purposes of TIO complaints) equally apply to customer information gathered by the AI Assistant and Optus treats these obligations just as seriously.

## GOVERNMENT SHOULD EMPHASISE THE POTENTIAL OF AI

21. The economic potential of AI has been likened to that of the internet or even electricity. It has the potential to unlock a new and powerful wave of productivity through the unprecedented speed and scale of its processing, analytical and generative capacity. As the discussion paper notes, the estimated economic benefit of this could be between $1 and $4 trillion in the next ten years.

22. At the same time, generative AI is a new and powerful technology that is unfamiliar to most. This combination of power and opacity is creating a great deal of scepticism amongst Australians. A recent ANU Poll, for example, indicated that 34% of respondents were more concerned than excited about AI technology and a further 45% were equally concerned and excited[2].

23. Healthy scepticism is hugely important, especially when it relates to something with as far-reaching implications as AI technology. At the same time, the benefits that Australians stand to realise are profound and government has a major role to play in acknowledging these legitimate concerns but also leading people to a better understanding of AI and how it can benefit the country in significant ways.

24. This capacity is already starting to yield productivity benefits across many sectors of the economy through reduced data processing times and the unlocking of a host of new analytical capabilities that were previously not possible.

25. These benefits are not purely economic either. A range of public goods are in the initial stages of being unlocked by the power of artificial intelligence in areas such as medical science, engineering and academia. For our part, Optus has deployed AI technology to bolster our ability to combat scam messages and calls on our mobile network. Further details on this are set out in the case study below.

[2] 'Views of Australians Towards Science and AI' (Biddle, 2023) – available at: https://csrm.cass.anu.edu.au/research/publications/views-australians-towards-science-and-ai

**Case Study – Optus Call Stop**

Optus has worked with the Australian Financial Crimes Exchange and the banking industry to introduce 'Call Stop', an initiative that will help stop financial scammers from using call-back scams. These scams are where customers receive an SMS claiming issues with their bank account and asking them to call the bank on a certain number. Calling the number, however, sends the customer to a scammer impersonating their bank who then tries to trick the customer into providing access to the account or transferring money out of the account into one controlled by the scammer. Call Stop prevents Optus customers who call an identified scam number from reaching the scammer in the first place, instead directing them to an automated message warning them they have called an identified scam number.

26. Given the nascent stage of AI development, there are enormous benefits that we are only just beginning to realise. Government should therefore emphasise the ways in which it can support and incentivise innovation and the public goods that can result from AI technology. This is especially important in light of the fact noted in the discussion paper that Australia is a niche player in AI development due to our relatively small datasets and computing power.

27. Our responses to the specific questions in the discussion paper begin on the next page.

# DISCUSSION PAPER QUESTIONS

*Note: we have only included questions to which we have provided a response.*

## Potential Gaps in Approaches

2. 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?

- At this stage - given the nascent development of generative AI in particular – there are only a few select risk cases that can be identified that are not covered by existing regulations. The most commonly discussed example is copyright/intellectual property risks, where generative AI draws on protected content to generate new content and there is currently no mechanism to protect or compensate the original creators. Ultimately, this is still a question of how to protect intellectual property, for which we have existing regulations. The remedy should therefore be to consider how to amend these existing regulations to address the unique challenges created by generative AI.
- A broader risk is the opportunity cost of not sufficiently fostering innovation and scaling in the adoption and use of AI. As the paper notes, Australia has limited AI capabilities compared to others such as the US, EU and China. In order to maximise the benefits to Australians – particularly from productivity and service delivery improvements – it will be vital to ensure that Australia focuses on promoting innovation and incentivising investment in AI capabilities and not simply regulating.

3. 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.

- A focus on internationally-aligned standards and appropriate guidance would be the most beneficial approach. AI is already a complex technology with economy-wide applications. It will not be possible to have regulations that adequately capture every potential use case or consequence. Instead, having appropriate, clear guidance, informed by relevant experts, will greatly assist both industry and the general public to navigate the complexities of AI and its impacts on people and the economy.

## Target Areas

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

- Outside of exceptional national interest cases (e.g. use by national security/intelligence agencies, military applications etc.) there is no clear reason why different approaches should apply to public and private use of AI technologies. They key question is what risks/consequences does a particular use of AI technology create?

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

- The main way to support responsible AI practice, for both government and industry, is to improve AI literacy. AI technology, particularly generative AI, raise a number of novel policy questions and understanding why this is the case and how the technology operates is the most important first step in using it responsibly.

| 11. What initiatives or government action can increase public trust in AI deployment to encourage more people to use AI? |
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- Building a better understanding of AI technology is a crucial foundation for public trust. One key finding of the UTS 'State of AI Governance' report was that as company directors built up a more nuanced and sophisticated understanding of AI technology, their views on AI risks became clearer[3]. Specifically, respondents were more likely to rate the risks of AI as either 'low' or 'high' after becoming more knowledgeable about AI technology (as opposed to 'low' or 'moderate'.
- This suggests that organisations are more likely to appreciate the particular risks of AI – and therefore put in place adequate risk management – if they have sufficient levels of understanding within them. In turn, this will better engender public trust as risks will be appropriately mitigated and organisations will be able to better communicate how they are using AI technology and how they are managing any associated risks.

**[End of Submission]**

[3] 'The State of AI Governance in Australia' (UTS Human Technology Institute, p.19, May 2023) - https://www.uts.edu.au/sites/default/files/article/downloads/HTI%20The%20State%20of%20AI%20Governance%20in%20Australia%20-%2031%20May%202023.pdf