Does AI need governance? – The potential roles of a 'Responsible Innovation Organisation' in Australia
(Submission to the Australian Human Rights Commissioner on the White Paper *Artificial Intelligence: Governance and Leadership*)

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The purpose of this submission is to address the list of questions posed by the Australian Human Rights Commissioner on the White Paper *Artificial Intelligence: Governance and Leadership* (2019).[1]

All of the comments below should be taken as submissions, rather than this being re-stated for each.

1. What should be the main goals of government regulation in the area of artificial intelligence?

(a) 'Regulation' must not be confused with economic enablement and stimulation. Both may be legitimate in relation to AI, but the same organisation must not be given responsibility for both, as they involve an inherent potential for conflict of interests. Regulatory steps may be desirable and necessary, particularly in relation to potentially dangerous uses of AI, which are contrary to promoting AI-based industries in Australia. The first goal of government regulation must be to avoid such conflicts of interest. As a presenter at a Council of Europe conference recently put it: 'Human rights as a prerequisite of AI'.

(b) Avoid the attempt to 'pick winners' or to encourage governments to do so. Focus on principles, not products. Maximize benefits, minimize risks, and safeguard fundamental human rights. The enforcement of legislation, regulation, codes or standards by fines, or even by injunctions, against misuse of certain AI technologies or applications may be seen by some interested parties as disadvantaging some competitors in favour of others, but in fact is simply the basic requirement of the rule of law that competition occur within

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[1] https://tech.humanrights.gov.au/sites/default/files/2019-02/AHRC_WEF_AI_WhitePaper2019.pdf

the bounds of law.

(c) Encourage Australian input into the global development of standards for, ethics of, and treaties concerning, AI development and use, recognising that most developments in AI will take place outside Australia, but will affect Australia and Australians.

(d) Legislate where necessary to prevent the most harmful uses of AI, particularly where these relate to personal information, and to development of weapons.

(e) Treat both the public sector and the private sector as equally likely sources of harm.

(f) (Construing 'regulation' broadly) Encourage responsible education, public awareness, and training, concerning the mechanisms of AI, its potential and its dangers.

(g) While 'avoid unnecessary regulation' remains a useful warning against unnecessarily inhibiting innovation, this must be balanced against the positive impact of regulation such as better protection rights of consumers and citizens. However, it is exceptionally unlikely that self-regulation will be sufficient, and it should be assumed that some regulation (possibly including co-regulation) will be necessary.

(h) For completeness, the general objectives of the regulation of AI are primarily the protection of human rights and the protecting of competition against the very considerable threats posed by the misuse of AI technologies and applications.

2. Considering how artificial intelligence is currently regulated and influenced in Australia:

At present, the bodies with the greatest influence on AI (including related technologies and systems) in Australia (and therefore *de facto* regulatory effect) are foreign owned corporations, at least in some subject domains. Applications of core technologies will often have a very substantial local component.

It should be anticipated that the personal data of Australians will be acquired for many Machine Learning (ML) applications, and related forms of AI applications. The Australian government has an interest in ensuring that this data is used to promote the interests of Australians and to ensure that the human rights of Australians are protected.

(a) What existing bodies play an important role in this area?

The **Australian Competition and Consumer Commission** (ACCC), or a body arising from its recommendations, will do so, as an outcome of its *Platforms Inquiry*, if its preliminary recommendations concerning a body involved in the regulation of algorithms is adopted. These ACCC recommendations are essentially about the more effective regulation of AI in one of its most dangerous manifestations, the form of

surveillance capitalism invented and significantly dominated by the main platform operators.[2] The implementation of these

The new **National Science and Technology Council** (NSTC) has a strong interest in AI and is attempting to target areas in which Australia can hope to do well in Ai applications, which 'includes in areas like agriculture and healthcare, and potentially in using AI in the energy sector'.[3] It is essentially and industry development organisation. Although it is claimed that part of its role should be 'to see where Australia had an opportunity to play a leading role in shaping the ethics and regulation of AI internationally', this is a confusion of conflicting roles that should be avoided, and an example of why a separate body which only has a role in AI governance/ethics, and no role in industry development, is needed.

Various parts of **CSIRO (including Data61)** have some of that expertise, but are not policy-oriented, and are essentially involved in industry development. Although a government body, they are best regarded as part of industry.

(b) What are the gaps in the current regulatory system?

There is no Australian policy-oriented organisation with a permanent high level of expertise in AI-related technologies, and certainly no such organisation which does not have potentially conflicting industry development objectives.

3. Would there be significant economic and/or social value for Australia in establishing a Responsible Innovation Organisation?

Yes, there would be value in such an organisation being created, with a limited life-span, while there is a high need for policy development in Australia (as there is in other countries). It could have a term of five years, with one possible further five year renewal of its legislative mandate.

However, 'Responsible Innovation Organisation' is a completely inappropriate title, as it suggests that the body has a role in promoting innovation (ie industry development), either by itself or as part of some larger economically-oriented organisation, which will inevitably dominate and distort its views. The organisation that is needed must only be an 'AI governance and ethics organisation' (by whatever name), independent of any industry development organisation.

The European Union has undertaken a similar effort with the High Level Expert Group that is developing guidelines for the ethical use of AI. The Japanese, Germans, French, and Canadians, have also established organizations and guidance to consider the

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[2] See 18 submissions by the Australian Privacy Foundation to the ACCC in Greenleaf, G, Johnston, A, Arnold, B, Lindsay, D, Clarke, R and Coombs, E, 'Digital platforms: The need to restrict surveillance capitalism (Australian Privacy Foundation submission to the Australian Competition and Consumer Commission (ACCC) – Digital Platforms Inquiry – preliminary report' (February 22, 2019 https://papers.ssrn.com/abstract_id=3341044

[3] J. Riley 'Karen Andrews sets council priorities' *Innovation Australia* 27 February 2019 https://www.innovationaus.com/2019/02/Karen-Andrews-sets-council-priorities

responsible use of AI. It may be useful to assess these other national strategies.

4. Under what circumstances would a Responsible Innovation Organisation add value to your organisation directly?

Subject to the above caveats concerning the role of the needed organisation, a body such as AustLII, involved in the development of AI applications for use in such areas as the provision of AI-assisted free legal advice and information, would find it valuable to have an Australian policy-oriented organisation recommending international standards for Australian adoption, or assisting in the developing of Australian standards.

Universities, involved in the development of new AI technologies, and in the application of existing technologies, would experience similar benefits.

5. How should the business case for a Responsible Innovation Organisation be measured?

Strictly econometric measures of such policy-oriented organisations are not possible or desirable. This is particularly so because the needed body should have nothing directly to do with promoting industrial development or 'picking winners' for innovation.

There are genuine risks to public safety, economic growth, and national security associated with the irresponsible deployment of AI systems. While it may be difficult to make a clear business case for a RIO, it is widely understood that regulations help support sustainable growth.

6. If Australia had a Responsible Innovation Organisation:

(a) What should be its overarching vision and core aims?

These are set out in 1(a)-(h) above, and subject to the above caveats concerning role and title.

(b) What powers and functions should it have?

(i) It should primarily encourage and assist other Australian organisations to provide inputs into development of standards and ethics (internationally and in Australia), including by funding assistance where necessary. Where it perceives a gap in the quality or direction of Australian inputs, it should have the capacity to make such inputs itself. There are a considerable number of international initiatives on AI governance at present, and Australian input into these is needed.[4]

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[4] Recent such initiatives include International Standards Organisation (ISO) various draft standard for AI (under ISO/IEC JTC 1/SC 42 Artificial intelligence) https://www.iso.org/committee/6794475.html ; Consultative Committee of Convention 108 'Guidelines on Artificial Intelligence and Data Protection' Council of Europe, Strasbourg, 19 December 2018; European Commission 'Ethics Guidelines for Trustworthy AI', 18 December 2018' https://ec.europa.eu/digital-single-market/en/news/draft-ethics-guidelines-trustworthy-ai;   'Universal Guidelines

(ii) It should make its own recommendations concerning the need for Australian legislation (and other forms of regulation), and desirable Australian input into treaties.

(iii) It should not have any roles at all in promoting industrial development or 'picking winners' for innovation.

(c) How should it be structured?

A board of part-time Commissioners, with one full-time Commissioner, is desirable. It should be a stand-alone organisation, as it would not fit comfortably within other organisations such as AHRC, ALRC or CSIRO.

(d) What internal and external expertise should it have at its disposal?

(i) A permanent board of technical experts, appointed part-time and remunerated for such input as they are requested to provide.

(ii) Ad hoc committees of experts (technical and otherwise), appointed for particular issues of priority study, whose contributions are likely to be pro bono (on well-established models of such bodies as AHRC and ALRC).

(iii) Achievement of balance between differing local interests in the composition of both the permanent board and the ad hoc committees will be critical to the success of this approach. The most important requirement will be to have little or no involvement of international technology companies in these Australian governance arrangements, beyond their ability (like anyone else) to make submissions on issues under consideration. The US idea of 'multi-stakeholder governance' is simply a device to have US interests injected into what should be national interest bodies around the world, and should be disregarded.

(e) How should it interact with other bodies with similar responsibilities?

It should have a specific responsibility to provide policy inputs into other bodies with occasionally overlapping responsibilities, such as AHRC, ALRC and NSTC, and to bodies with an ongoing regulatory role, such as the ACCC-proposed algorithm regulator.

(f) How should its activities be resourced? Would it be jointly funded by government and industry? How would its independence be secured?

Joint funding by industry prevents very grave risks of regulatory capture by parties whose activities should be subject to the greatest scrutiny, such as large US technology companies. Public funding is more desirable, as the costs will be modest.

(g) How should it be evaluated and monitored? How should it report its activities?

It should provide an annual report to Parliament, and communicate its work between

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reports via a variety of Internet channels.