4 August 2023

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

Via online form.

Re: Safe and responsible AI in Australia

To Whom It May Concern:

The Association of Digital Service Providers Australia New Zealand (DSPANZ) welcomes the opportunity to make this submission on behalf of our members and the business software industry.

> **About DSPANZ**
> Digital Service Providers Australia New Zealand is the gateway for the government into the dynamic, world-class business software sector in Australia and Aotearoa New Zealand. Our 90+ members range from large, well-established companies to new and nimble innovators working at the cutting edge of business software and app development on both sides of the Tasman.

DSPANZ supports the government exploring options to mitigate risks and support safe and responsible artificial intelligence (AI) practices. Many of our members agree that Australia should take a stronger regulatory approach towards AI, but this approach should allow for international interoperability and innovation.

In this submission, we have provided general feedback before responding to specific questions raised in the discussion paper. In summary:

- While DSPs see opportunities to leverage AI, they also view the existing legislative environment as a barrier to investing in AI;
- Co-design and international interoperability should be embedded in any new regulations for AI;
- We recommend following the European Union, United States, and United Kingdom approaches to regulating AI, including leveraging existing guidance and material; and
- If the government decides on a mandated risk-based approach, we recommend undertaking further consultation.

DSPANZ welcomes the opportunity to provide further feedback on our submission. Please contact Maggie Leese for more information.

Yours faithfully,

Matthew Prouse,
President & Director
DSPANZ.

Overall Response

Many Digital Service Providers (DSPs) are actively looking at opportunities to leverage AI technologies within their software products and services. With suitable safeguards in place, many DSPs believe their users will receive greater value from software that uses AI. While DSPs see these opportunities, they also view the existing legislative environment as a barrier to investing in AI.

Challenges for DSPs

As we rapidly approach a future where tax and other business processes "just happen", the business software industry will need to rely on technology, such as AI, to make this future a reality. There are opportunities to leverage AI within tax, accounting and payroll software, for example, to prompt users about their regulatory obligations and to help them avoid mistakes. However, the *Tax Agent Services Act 2009* (TASA) prevents many tax, accounting and payroll DSPs from being able to provide these valuable prompts and other AI-automated processes as they could be categorised as providing tax advice[1]. The Act also limits the software services that DSPs can provide to client-facing tax and Business Activity Statement (BAS) agents compared to in-house accountants.

Further, the current speed of legislative change and uncertainty around upcoming changes to the *Privacy Act 1988* makes it difficult for DSPs to know if they will fall on the right side of regulatory change. This uncertainty will undoubtedly slow the rate of innovation as DSPs will be unsure whether their investments in AI will have their expected return on investment impacted by regulatory changes mid-development.

Regulatory Options

DSPANZ believes appropriate protection around AI technology is necessary to encourage confident and robust participation in the digital economy and to maximise productivity outcomes. When designing any new regulations for AI, DSPs would like to see co-design and international interoperability embedded in the process.

We recognise that AI regulations may need to come alongside other legislative changes to foster innovation and allow for a future where tax and other business processes "just happen". Without these changes, the business software industry, and therefore many Australian businesses, will be left behind. If changes are made to other legislation to enable better AI adoption, this should involve consultation to ensure consumers remain adequately protected.

Overall, we highly encourage the government to work alongside industry to prevent unintended consequences from new regulations and to avoid further limiting DSP innovation.

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[1] Definition of tax agent services from the *Tax Agent Services Act 2009*:
https://www.legislation.gov.au/Details/C2022C00054/Html/Text#_Toc94793663

Response to Discussion Paper Questions

4. 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.

Following our overall feedback, any AI regulations may come hand in hand with other legislative changes to allow for innovation and automated processes, especially within the business software industry.

9. Given the importance of transparency across the AI lifecycle, please share your thoughts on:
    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?**
    b. **Mandating transparency requirements across the private and public sectors, including how these requirements could be implemented.**

It is important to be transparent with users when using AI within software or the calculations in software. If transparency requirements are mandated, we recommend further consultation as they may differ for different industry sectors.

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

In line with our overall feedback, DSPANZ believes that legislative changes, such as changes to taxation legislation, would allow DSPs to invest in AI and provide better processes and experiences within their software. With DSPANZ members covering almost all Australian small businesses, if changes happened in this space, it would significantly increase the adoption of AI by small businesses.

We also want to recognise that introducing AI-driven services to platforms such as Microsoft 365 later this year will see many businesses using AI in everyday processes.

Our members have also raised that while AI specialisation qualifies under the Global Talent program visa, streamlining visa processes for Australia to acquire more skills would help accelerate the utilisation of AI.

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

DSPANZ broadly supports a risk-based approach for addressing potential AI risks. We recommend leveraging the [Berryville Institute of Machine Learning's An Architectural Risk Analysis of Machine Learning Systems: Towards More Secure Machine Learning](#), as it includes detailed information on security around machine learning.

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

Similar to our answer to question 9, the right regulatory approach may differ from sector to sector. However, given the ubiquitous nature of business software products such as

Microsoft Office 365 (with an AI co-pilot), we would suggest that the creation of sector specific regulations will become cumbersome, ineffective and ultimately unenforceable.

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

While we broadly agree with the elements included in the draft risk-based approach, in line with our answer to question 14, the government should include information about security around AI and machine learning security. Alongside any risk-based approach for AI, the government should provide education and resources for different sectors to utilise.

20. 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:
   a. Public or private organisations or both?
   b. Developers or deployers or both?

Many of our members agree that Australia should take a more robust regulatory approach towards AI and follow examples from the European Union, UK and US to allow interoperability. However, as we have raised throughout this submission, Australia's approach should balance providing the appropriate regulatory settings but still allowing for innovation.

If the government decides on a mandated risk-based approach, we recommend further consulting on the contents of the risk-based approach and when organisations will be expected to start following it.

DSPANZ believes a risk-based approach should apply from development to deployment to ensure risks are managed across this lifecycle.