

**NSWCCL SUBMISSION**

**JOINT COMMITTEE OF  
PUBLIC ACCOUNTS AND  
AUDIT**

**INQUIRY INTO THE USE AND  
GOVERNANCE OF  
ARTIFICIAL INTELLIGENCE  
SYSTEMS BY PUBLIC  
SECTOR ENTITIES**

**October 2024**

## **Acknowledgment**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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## 1 Executive Summary

The NSW Council for Civil Liberties (**NSWCCL**) appreciates the opportunity to contribute to the Inquiry into the Use and Governance of Artificial Intelligence Systems by Public Sector Entities (**Inquiry**). This submission builds on our previous work to address the key issues outlined in the Inquiry's Terms of Reference. The rapid adoption of artificial intelligence (**AI**) by public sector entities in Australia presents both significant opportunities and profound risks. While AI has the potential to enhance efficiency, accuracy, and service delivery, it also poses threats to privacy, fairness, and democratic principles. This submission emphasises the need for a comprehensive regulatory framework that ensures the ethical and responsible use of AI, protects individual rights, and builds public trust.

Key Recommendations:

- **Establishment of an AI Safety Commissioner:** A statutory office to oversee AI regulation, conduct audits, and enforce compliance.
- **Comprehensive AI Legislation:** Bespoke AI legislation that adopts a risk-based approach, with clear and proportionate obligations on entities that develop, deploy, or use AI.
- **Strengthening Existing Laws:** Amendments to privacy, consumer protection, and anti-discrimination laws to incorporate AI-specific provisions.
- **Enhanced Governance Structures:** Development of further robust internal governance frameworks to ensure transparency, accountability, and ethical use of AI.
- **Public Engagement and Education:** Initiatives to inform and engage the public on AI use and its implications.

This submission aims to ensure that Australia's legislative, regulatory, and policy frameworks are fit for purpose in managing the risks and harnessing the benefits of AI.

The NSWCCL has previously responded to other inquiries regarding AI use in Australia including in July 2023 a submission to the Department of Industry, Science and Innovation regarding the discussion paper for safe and responsible AI use in Australia and in May 2024 a submission to the Select Committee on Adopting Artificial Intelligence. These previous submissions are relevant to the current inquiry and can be found at [Submission: Safe and Responsible AI in Australia - NSWCCL](#) and [Submission: AI technologies in Australia - NSWCCL](#).

## 2 Introduction

The NSWCCL welcomes the opportunity to contribute to the Inquiry. As a leading human rights organisation, NSWCCL is dedicated to advocating for individual rights and promoting transparency and accountability in government practices. The increasing adoption of AI by public sector entities in Australia necessitates careful scrutiny due to its potential benefits and associated risks, such as privacy concerns, fairness, and bias.

This submission aligns with previous NSWCCL submissions and references the Australian Government's Policy for the Responsible Use of AI in Government released on 1 September 2024 (**Government AI Policy**) and other associated Australian Government AI frameworks. It addresses the Inquiry's Terms of Reference, focusing on AI's current uses, legislative frameworks, governance structures, risk assessments, and public sector capabilities. NSWCCL advocates for an AI Safety Commissioner, comprehensive AI legislation, and strengthened laws. Emphasising robust governance, continuous monitoring, and public engagement, NSWCCL aims to ensure ethical and responsible AI use, balancing innovation with individual rights and public trust.

## 3 Response to Terms of Reference

3.1 The purposes for which AI is currently being used by the public sector entity and whether there are planned or likely future uses

- The integration of AI within Australia's public sector has been progressively increasing, driven by its potential to enhance efficiency, accuracy, and service delivery. AI is currently utilised across the Australian Public Service (**APS**) in various capacities, including data analysis, automating routine tasks, customer service chatbots, streamlining administrative processes and predictive analytics.

- The future use of AI in the public sector is anticipated to expand significantly, driven by technological advancements and the recognition of AI's potential benefits. Planned or likely future uses include smart infrastructure management, personalised public services, advanced decision support systems and real time regulatory compliance monitoring.
- Despite the significant potential benefits, the ethical and responsible use of AI in the public sector presents several challenges regarding:
  - Transparency and Accountability: Public sector entities must explain and justify AI use, ensuring decisions made by AI systems are transparent and accountable.
  - Ethical Use and Bias Mitigation: Ensuring AI systems are free from bias and do not perpetuate stereotypes or result in discriminatory outcomes.
  - Privacy and Security: Robust measures are needed to protect sensitive data and secure AI systems from cyber threats.
  - Building and Maintaining Public Trust: Ongoing public engagement, clear communication about AI's benefits and risks, and safeguards to protect citizens' rights are vital.
    - The Government AI Policy and other AI frameworks such as the Australia's AI Ethic Principles have attempted to address these challenges notably the requirement for Australian Government agencies to release transparency statements regarding their adoption and use of AI which must be reviewed and updated annually. However there are significant gaps in the Government AI Policy and associated frameworks which affect its efficacy including:
      - there is limited mandatory requirements under the Government AI Policy nor is there any further wording on how these requirements must be completed – what is stopping a Government agency to release a one page transparency statement;
      - there is no enforcement powers or penalties to be issued if a Government agency breaches any of these mandatory requirements;
      - the Government AI Policy has a notable number of agencies which are exempt to the policy;
      - whilst there are risk assessments within the Government AI Policy, they could be more stringent and prescriptive; and
      - there is no legislation backing the current policies which could be amended or suspended at any time.
        - The NSWCCCL has previously and continues to advocate for the introduction of a Human Rights Act in Australia. Such an Act would provide a robust, legislative backed framework which would be able to assess current and future uses of AI. The Act would be able to identify the potential impact of AI use on privacy, freedom of expression, and non-discrimination.
        - The NSWCCCL would recommend enhancing the current Government AI Policy and associated frameworks to be more prescriptive regarding how Government Agencies undertakes use cases for AI and more mandatory requirements. Further this policy should apply to all public sector entities and have legislation and a regulator backing its enforcement. We discuss this further below.

### 3.2 The existing legislative, regulatory and policy frameworks that are relevant to the use of AI and whether they are fit for purpose

- Currently the existing laws are fragmented and do not adequately address the risks and challenges posed by public sector use of AI. Legislation such as the *Privacy Act 1988* (Cth), various consumer protection laws, and anti-discrimination laws, were not drafted with the new technological advances of AI in mind and lack the specificity required to manage AI's complexities and risks effectively. There is a pressing need for bespoke AI legislation that adopts a risk-based approach, with clear and proportionate obligations on entities that develop, deploy, or use AI.
- The NSWCCCL considers that simply strengthening existing laws will not be sufficient in addressing AI risks within the public sector. Strengthening existing laws should be in tandem to a specific targeted AI

legislation. Australia needs comprehensive AI legislation that addresses the specific risks and challenges posed by AI technologies. This legislation should:

- **Mandate Transparency and Accountability:** Require all AI systems used by public sector entities to be transparent and accountable, with clear documentation and explainability of AI decision-making processes. There should be clear and proportionate obligations (especially relating to transparency) on entities that develop, deploy or use AI, and safeguards to protect the rights of individuals.
- **Establish an AI Safety Commissioner:** Create an independent statutory office to oversee AI regulation, conduct audits, and enforce compliance with AI-specific laws.
- **Implement a Risk-Based Approach:** Adopt a risk-based regulatory framework that imposes graduated obligations based on the risk level of AI applications, ensuring that high-risk AI systems are subject to stringent oversight.
- The NSWCCCL considers the following existing law should be reviewed and amended as follows:
- *Privacy Act 1988* (Cth): Include explicit requirements for AI transparency, data protection, and individual rights to challenge AI-driven decisions.
- **Consumer Protection Laws:** Update to cover AI-related risks, ensuring that consumers are protected from biased and opaque AI systems.
- **Anti-Discrimination Laws:** Revise to prevent AI-driven discrimination and ensure fairness in AI applications.
- The NSWCCCL urges the Committee to consider these recommendations to ensure that Australia's legislative, regulatory, and policy frameworks are fit for purpose in managing the risks and harnessing the benefits of AI. Comprehensive reform is essential to protect individual rights, promote transparency and accountability, and build public trust in AI technologies used by public sector entities.

### 3.3 whether the internal governance structures that currently exist for AI will ensure its ethical and responsible use by public sector entities

- The Australian Government AI Policy outlines several principles and mandatory requirements aimed at ensuring the ethical and responsible use of AI this is also supported by the AI ethical principles and various guides and strategies published by the Australian Government. However, the policy's implementation and effectiveness are contingent on the robustness of internal governance structures within public sector entities. The policy mandates that agencies must:
- Designate accountable officials for AI implementation.
- Ensure AI use is ethical, responsible, transparent, and explainable to the public.
- Make publicly available a statement outlining their approach to AI adoption and use.
- While these requirements are a step in the right direction, the Government AI Policy lacks specificity and relies on individual public sector agencies to self-monitor and report. We recommend that the Government AI policy is amended to include:
- **Dedicated AI Boards:** Further to each public sector agencies introducing a AI officer establish AI dedicated AI governance boards within public sector entities, these boards should oversee the ethical deployment and continuous monitoring of AI systems.
- **Comprehensive Oversight Mechanisms:** A dedicated body, such as an AI Safety Commissioner, is needed to oversee AI implementation and operation across public sector entities.
- **Increases Transparency and Accountability:** Whilst the policy requires AI transparency statements include a more detailed and standardised framework to demonstrate how a public sector agency adopts and uses AI including how to assess such AI technologies.
- **Regular Reviews and Updates:** Establish a process for regular reviews and updates of the policy to keep pace with technological advancements and emerging risks.

- Include all public sector entities: Ensure that all public sector entities, including national security agencies, are subject to the same AI governance standards:
- The NSWCCCL believes that the current internal governance structures for AI in public sector entities are inadequate to ensure its ethical and responsible use. By implementing the recommendations outlined above, the government can enhance the oversight, transparency, and accountability of AI systems, thereby building public trust and ensuring that AI technologies are used in a manner that upholds the rights and interests of all Australians.

3.4 The internal framework/policies or additional controls used for assessing the risks associated with the use and possible misuse of AI, including the areas of security, privacy, ethics, bias, discrimination, transparency and accountability

- There are significant challenges regarding implementing frameworks used for assessment risks associated with the use and possible misuse of AI.
- The Committee should consider the following in amending the current Government AI Policy regarding risks associated with security and privacy:
- Comprehensive Risk Assessments: Agencies should conduct thorough risk assessments that consider the sensitivity and classification of data being processed by AI systems. This includes evaluating potential vulnerabilities in the AI system's implementation and sourcing. Whilst the Government AI Policy discusses AI risks and refers to existing risk frameworks, a specific AI risk management framework should be published.
- Regular Security Audits: Implement regular security audits to identify and address potential security gaps. These audits should be conducted by independent third parties to ensure objectivity.
- Incident Response Plans: Develop and maintain incident response plans specifically tailored to AI-related security breaches. These plans should include protocols for immediate containment, investigation, and remediation of security incidents.
- Data Minimisation: Agencies should adopt data minimisation principles, ensuring that only the necessary data is collected and processed by AI systems.
- Transparency in Data Use: Agencies must be transparent about how personal data is used in AI systems. This includes providing clear and accessible information to the public about data collection, processing, and storage practices.
- Privacy Impact Assessments: Conduct privacy impact assessments (PIAs) for all AI projects to identify and mitigate potential privacy risks. PIAs should be updated regularly to reflect changes in AI technology and data usage.
  - The Committee should consider the following in amending the current Government AI Policy regarding risks associated with ethics, bias, discrimination, transparency and accountability:
- Ethical Guidelines: Develop the current ethical principles further into enforceable guidelines for AI use that align with human rights principles. These guidelines should address issues such as fairness, accountability, and the prevention of harm.
- Ethics Committees: Establish ethics committees within public sector entities to review and oversee AI projects. These committees should include diverse stakeholders, including ethicists, legal experts, and community representatives.
- Bias Detection and Mitigation: Implement tools and methodologies for detecting and mitigating bias in AI systems. This includes using diverse and representative datasets for training AI models.
- Regular Bias Audits: Conduct regular bias audits to identify and address any discriminatory outcomes produced by AI systems. These audits should be transparent and involve external reviewers.
- Explainability of AI Decisions: Ensure that AI systems are explainable, meaning that the rationale behind AI-driven decisions can be understood and communicated to the public. This is crucial for maintaining public trust and accountability.

- Public Engagement: Engage with the public and other stakeholders to gather feedback on AI use and to address concerns. This can be achieved through public consultations, forums, and transparent reporting mechanisms.

### 3.5 Whether there is an adequate line of sight to the output of AI, and the decisions made through its use

- The lack of transparency in AI decision-making processes can lead to significant risks, including the erosion of public trust and potential harm to individuals, especially vulnerable populations. The Robodebt Scheme exemplifies the risks associated with inadequate transparency in AI decision-making. The scheme's reliance on automated processes to calculate welfare overpayments led to significant errors and harm to vulnerable individuals. The lack of transparency and explainability in the decision-making process made it difficult for affected individuals to challenge the decisions and seek redress. This case underscores the need for robust transparency and accountability measures in AI systems used by public sector entities.
  - AI systems, particularly those based on machine learning and neural networks, often operate as "black boxes," making it difficult to understand how specific decisions are made. This complexity can hinder efforts to provide clear and understandable explanations for AI-driven decisions. The quality of data used to train AI systems significantly impacts their outputs. Biases in training data can lead to biased decisions, which are difficult to detect and rectify without adequate transparency. There is a need for standardised frameworks that mandate transparency and accountability in AI systems. The current regulatory environment in Australia lacks specific provisions that address the unique challenges posed by AI.
  - The NSWCCCL recommends the following strategies to augment existing Government AI oversight frameworks:
- Implementation of Transparency by Design: AI systems should be designed with transparency as a core principle. This includes documenting the decision-making process, providing clear explanations for decisions, and ensuring that these explanations are accessible to non-technical stakeholders.
  - Regular Audits and Monitoring: Public sector entities should conduct regular audits of their AI systems to ensure compliance with transparency and accountability standards. These audits should be conducted by independent bodies to maintain objectivity.
  - Public Disclosure of AI Use: Agencies should be required to publicly disclose their use of AI, including the types of decisions being made, the data sources used, and the measures in place to ensure transparency and accountability. This aligns with the Australian Government's policy for the responsible use of AI, which mandates the publication of AI transparency statements.
  - Development of an AI Assurance Framework: The NSWCCCL supports the development and implementation of an AI assurance framework, as outlined in the Australian Government's policy. This framework should include guidelines for transparency, accountability, and ethical use of AI, and should be piloted and refined based on feedback from participating agencies.
    - The NSWCCCL recommends that Australia draw on international best practices in AI regulation. The European Union's AI Act, which categorises AI systems based on risk and mandates transparency and accountability measures for high-risk systems, provides a useful model. Similarly, the OECD's guidelines on AI emphasise the importance of transparency and accountability in AI systems.
  - Adjust onus of proof to incentivise appropriate evaluation and safety of AI decision-making: The NSWCCCL supports the development of a rebuttable presumption that a legal person is responsible and legally liable for a decision, regardless of how that decision is made, including through AI.

### 3.6 Whether the public sector has the internal capability to effectively adopt and utilise AI into the future

- The adoption of AI within the APS is accelerating, but readiness and maturity for managing AI vary significantly across different public sector entities. Throughout all sectors there is a notable skills gap regarding AI expertise and often there is limited or insufficient funding and resources allocated to AI initiatives. The current governance structures often are reactive to the changes to AI technologies and often found to be inadequate.

- The public sector should build the internal capability required to harness the benefits of AI while ensuring its ethical and responsible. Such steps to build internal capabilities include:
- Skills Development: Investing in training and development programs to build AI expertise within the public sector.
- Investment in Infrastructure: Allocating significant resources to upgrade the technological infrastructure necessary for AI deployment. This includes establishing dedicated funding streams and grant programs to support AI initiatives, including internal AI public sector initiatives.
- AI Governance Frameworks: As mentioned throughout this submission a review and development of comprehensive AI governance frameworks will assist the public sector in building internal capability.
- Risk Management Systems: Implement robust risk management systems to assess and mitigate the risks associated with AI.
- Introduction of Human Rights Act: As mentioned above, introduce legislation which incorporates a human rights framework to guide AI ethics.

### 3.7 Whether there are sovereign capability issues to consider given that most AI tools currently used in Australia are sourced from overseas

- Digital sovereignty can be threatened by reliance on foreign technology corporations. The majority of AI tools currently used in Australia are sourced from overseas, which presents several challenges. Foreign-sourced AI tools may pose security risks, including potential vulnerabilities that could be exploited by foreign entities. The integrity and confidentiality of sensitive data processed by these AI systems could be compromised. Dependence on foreign AI technologies limits Australia's control over the development, deployment, and modification of these tools. This lack of control can hinder the ability to tailor AI systems to meet specific national requirements and standards. The global supply chain for AI technologies is susceptible to disruptions, which could impact the availability and reliability of AI tools used by public sector entities.
- Foreign AI tools may not always comply with Australian regulatory standards and frameworks, leading to potential legal and ethical issues. AI systems developed overseas may not adhere to Australia's stringent data privacy laws, such as those outlined in the *Privacy Act 1988* (Cth). This non-compliance could result in breaches of sensitive private information and data protection regulations. The ethical standards embedded in foreign AI tools may differ from those expected in Australia, potentially leading to biases and discrimination in AI-driven decision-making processes.
- Democracy is also at risk with the use of AI in the public sector. There is little to no transparency in the activities of private corporations. Further, there is limited transparency regarding which overseas regulation AI corporations abide by. This raises concerns regarding the lack of accountability. Data privacy is essential in a democratic society and access to citizens' data by foreign corporations is a potential risk.
- To address these sovereign capability issues, NSWCCCL recommends the following measures:
  - Development of Domestic AI Capabilities: Invest in the development of domestic AI technologies to reduce reliance on foreign-sourced tools. This investment should include funding for research and development of AI tools within the public service, and support for local AI startups and enterprises.
  - Establishment of an AI Safety Commissioner: As recommended previously in this submission, the creation of a statutory office of an AI Safety Commissioner would provide oversight and ensure that AI systems used in Australia meet national security, ethical, and regulatory standards.
  - Risk-Based Regulatory Framework: As mentioned before in this submission, implementing a risk-based regulatory framework that includes clear and proportionate obligations for entities that develop, deploy, or use AI. This framework should ensure transparency, accountability, and the protection of individual rights.
  - Collaboration with International Partners: Engage in international collaborations to develop global standards for AI that align with Australia's regulatory and ethical expectations such as the European Union or United Kingdom. This collaboration can help mitigate risks associated with foreign-sourced AI



tools while promoting the responsible use of AI globally.

### 3.8 Any other related matters

- The NSWCCCL strongly advocates for the introduction of a Human Rights Act in Australia. Such an Act would provide a robust framework to ensure that the deployment and use of AI systems by public sector entities are aligned with fundamental human rights principles. This is particularly crucial given the potential for AI to impact rights such as privacy, freedom of expression, and non-discrimination. A Human Rights Act would mandate that all AI systems used by public sector entities undergo rigorous human rights impact assessments, ensuring that these technologies do not infringe upon the rights of individuals.

To foster public trust and understanding of AI, the NSWCCCL recommends that the government engage in public education initiatives. These initiatives should aim to inform the public about the benefits and risks of AI, how AI systems are used by public sector entities, and the safeguards in place to protect their rights. Public consultations should also be conducted to gather input on AI policies and practices, ensuring that the voices of all stakeholders, including marginalised communities, are heard.

Given the global nature of AI development, it is imperative that Australia collaborates with international bodies to establish and adhere to global standards for AI. The NSWCCCL supports alignment with frameworks such as the OECD's AI Principles and the EU's AI Act. International collaboration will help ensure that Australia's AI regulations are consistent with global best practices and that Australian public sector entities can effectively navigate the complexities of AI governance.

The NSWCCCL emphasises the need for stringent ethical guidelines for the use of AI in sensitive areas such as law enforcement, social services, and healthcare. AI systems in these areas have the potential to significantly impact individuals' lives and liberties. Therefore, it is crucial that their use is subject to the highest standards of ethical scrutiny, transparency, and accountability. The NSWCCCL recommends the development of sector-specific guidelines that address the unique ethical considerations in these areas.

- The rapid pace of AI development necessitates continuous monitoring and evaluation of AI systems and their impacts. The NSWCCCL recommends the establishment of a dedicated body within the proposed AI Safety Commissioner's office to conduct ongoing assessments of AI systems used by public sector entities. This body should be tasked with identifying emerging risks, evaluating the effectiveness of existing regulations, and recommending necessary adjustments to ensure that AI governance remains robust and adaptive to technological advancements.

The NSWCCCL highlights the need to address the digital divide to ensure equitable access to the benefits of AI. Public sector entities must consider the impact of AI on different segments of the population, particularly those who may be disadvantaged by limited access to digital technologies. Policies should be implemented to bridge the digital divide and ensure that all Australians can benefit from AI advancements.

By addressing these related matters, the NSWCCCL believes that Australia can develop a comprehensive and forward-looking framework for the ethical and responsible use of AI in the public sector, ensuring that the rights and interests of all Australians are protected.

Yours sincerely,



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