



INSTITUTE OF
PUBLIC
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Submission to the
Dept of the Prime Minister & Cabinet:
Positioning Australia as a leader in
digital economy regulation

May 2022

20 May 2022

The Director
Digital Technology Taskforce
Dept of the Prime Minister & Cabinet

By online lodgment

Dear Sir/ Madam

Positioning Australia as a leader in digital economy regulation

The Institute of Public Accountants (IPA) welcomes the opportunity to provide comments on the issues paper, *Positioning Australia as a leader in digital economy regulation* relating to automated decision-making and AI regulation.

The IPA is one of the three professional accounting bodies in Australia, representing over 47,000 members and students in Australia and in over 80 countries. The IPA Group is the largest accounting body in the world representing the small business/SME sectors.

The IPA strongly believes that the digital economy should be promoted and supported not just by government, but also by the private sector, and especially by small business and SMEs which will benefit from the opportunities it presents. For this reason it is essential that the regulation of the digital economy be appropriately considered and implemented to ensure a level playing field and sufficient flexibility to keep pace with the fast-changing digital environment.

Our comments in response to the issues paper are noted below.

Please don't hesitate to contact Vicki Stylianou (vicki.stylianou@publicaccountants.org.au) if you require further information or have queries.

Yours faithfully



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IPA comments on issues paper

This submission will generally canvass the issues discussed in questions 1, 6, 7 and 10 of the issues paper.

IPA general position

We made a call in our 2022-23 pre-Budget submission to consider the role of regtech (technology-based solutions applied to regulatory compliance) and facilitate the introduction, development and application of regtech solutions (especially by small business) as a means of easing the regulatory burden.

Some initiatives have been taken that achieve these ends, including:

1. using Single Touch Payroll data to assist in eligibility for JobKeeper during the recent COVID crisis;
2. the Modernising Business Registers Program being undertaken by ASIC (and ATO);
3. the Standard Business Reporting project; and
4. the pre-filling of tax returns.

The IPA also conducts an AI for Accountants digital short course which covers the basic concepts of AI and to subsequently use that knowledge and understanding in their practices.

We also recognise and welcome the Artificial Intelligence and Digital Capability Centre's grants that offer \$44 million to encourage (amongst other things) Australian businesses to improve their AI skills and increase the adoption of AI technologies.

Agreement with government position

The IPA agrees with the positioning statement contained in the issues paper, which states:

Positioning Australia as a leader in digital economy regulation will enhance public trust and confidence and ultimately facilitate the greater uptake of these technologies in the long-term. Modernised legal frameworks will provide business and government with increased certainty about the benefits and risks of adopting these technologies, encouraging increased uptake and investment. It will also provide consumers with confidence that AI and ADM are being deployed in a way that it trusted, secure and to their benefit.

In addition, the IPA applauds the observation in Australia's AI Action Plan (2021), which is part of the Australian Data strategy Action Plan which statesⁱ:

The Australian Government released the AI Ethics Framework in 2019 to guide businesses and governments developing and implementing AI in Australia. The framework includes 8 AI ethics principles to: help reduce the risk of negative impacts from AI and ensure the use of AI is supported by good governance standards. The AI Ethics Framework affirms our commitment to the OECD Principles on AI – to promote AI that is innovative, trustworthy and that respects human rights and democratic values. The release of the AI Ethics Framework also reflects our decision to become a founding member of the Global Partnership on Artificial Intelligence (GPAI). Widespread adoption of the framework's principles among business, government and academia will build trust in AI systems.

International frameworks

Given the plethora of principles and frameworks in this space and the potential for regulatory overlap or just confusion at best, it is critical that Australia seeks to adopt and implement a generally accepted framework.

The IPA is therefore particularly committed to ensuring that the OECD's Recommendation of the Council on Artificial Intelligence are followed, and that more generally Australia should follow international norms as it relates to the use and operation of AI in a regulatory environment to ensure consistency and interoperability.

However, given the nature of the IPA membership and client base, any reforms must be reviewed through a 'small business lens'.

When proceeding with regulatory reforms to accommodate the use of AI the European Union approach of 'Think Small First' should be adopted.

As the EU has stated:

The definition of the "Think Small First" principle implies that policy makers give full consideration to SMEs at the early policy development stage. Ideally rules impacting on business should be created from the SMEs point of view or in other words, SMEs should be considered by public authorities as being their "prime customers" as far as business regulation is concerned. The principle relies on the fact that "one size does not fit all" but a lighter touch approach can also be beneficial to larger businesses. Conversely, rules and procedures designed for large companies create disproportionate, if not unbearable burdens for SMEs as they lack the economies of scale.ⁱⁱ

Regulation should be designed in a manner that recognises that the 'users' of an AI environment in the business context include small business people, who tend to have limited resources.

Australian perspective

Moreover, as the Productivity Commission noted in its 2020 Information Paper – *Regulatory Technology*, even in low-tech applications widespread implementation of regtech can take some years and can require substantial investment by regulators and businesses in capacity and cultural change.ⁱⁱⁱ

The Commission also said:

Given risks of regulatory 'creep' and overreach, as well as the potential to reduce costs and improve regulatory outcomes, advances in technology heighten the onus on policy makers to ensure the need for, and design of, regulation are soundly based.^{iv}

This means there is a role for government to ensure those who will have to work in an environment have:

1. the technical capacity (both in skills and in equipment) to operate in an environment where AI will be processing information and making decisions. This may require government investment in appropriate assistance programs;
2. clarity as to the role AI will play in the decision-making process;
3. confidence the algorithms or other programming that is used to ensure that correct and preferable decisions are made;

4. clarity on how decisions made by AI can be challenged; and
5. a clear capacity to have an AI program reviewed where there are grounds to believe that decisions are being made that suggest a revenue/regulatory bias.

The taxpayers who are the clients of the IPA membership must have confidence that automated decision making is accurate.

Need for transparency and contestability

This would mean (for example) clearly identifying in legislation or regulations, when a computer program can be used to make a decision, and deeming any decision made as being made by a designated office holder and so creating a transparent review process. An example of such a provision is section 223 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

The recent Robodebt controversy also emphasises the need to ensure that the programs that facilitate AI decision making comply with the law. In the Robodebt case, averaged ATO PAYG income data was used to make decisions as opposed to what the person actually earned at the relevant time, which was the relevant legal test.

There must also be confidence that regulator IT systems can support the mass use of decision-making using AI.

IPA members have noticed that some pre-filled information being inserted in tax return documents is becoming less accurate over time.

There were also a number of technical difficulties that precluded eligible individuals from accessing the early release of superannuation permitted as part of the COVID response.

Academic writers have observed:

These recent technological failures provide good examples of the nature and scale of potential claims which might arise if things do go wrong in the digital world. The risk may be amplified by the fact that technology is already allowing for tax administration functions to extend beyond physical limits previously possible and, conceivably in the near future, extending to more complex and potentially high liability matters. If things go wrong, the potential consequences both in terms of sheer numbers of potential claims and aggregate loss caused, are likely to be significant^v

Recommendations:

1. The creation by statute of an AI 'super ombudsman' as part of the Government's administrative law package. It should have the power to:
 - (a) fully review decisions made using AI; and
 - (b) be able to review the presumptions contained in algorithms and other programs and report where it appears that results are producing erroneous outcomes not aligned with overarching legislative objectives (a lessons learned approach).

The overall intention would be to provide information that can be used to enable continuous improvement of systems and so enhance regulator performance and address overlap.

2. A clear path created in any relevant administrative law package to allow the challenge of any decisions made using AI.

3. Clear statutory provisions ensuring that penalties will not be imposed because of any failure in IT systems based on AI and ADM.

Conclusion:

The IPA supports the Digital Age Policy Framework being developed in order to encourage the development of the technical skills and IT capacity of both government and other stakeholders to maximise the efficiencies and benefits that AI and ADM offer. However, this needs to be underpinned by a suitable regulatory foundation which provides transparency, contestability and accessible avenues for redress for impacted consumers.

(Footnotes below)

ⁱ <https://ausdatastrategy.pmc.gov.au/sites/default/files/2021-12/australian-data-strategy-action-plan.pdf>

ⁱⁱ European Commission Enterprise and Industry Directorate General Report of the Expert Group *Think Small First – Considering SME Interests in policy-making* (2009):4

ⁱⁱⁱ <https://www.pc.gov.au/research/completed/regulatory-technology/regulatory-technology.pdf>:4

^{iv} *Ibid*

^v Bevacqua J *Tax Authority Immunity in a Digital Tax Administration World* eJournal of Tax Research (2020) vol.18 no2 pp.402-40: 438 - <https://www.unsw.edu.au/business/sites/default/files/documents/402-Tax-authority-immunity-in-a-digital-tax-administration-world.pdf>