Ms Meghan Quinn PSM
Secretary
Department of Industry, Science and Resources
Industry House, 10 Binara Street (GPO Box 2013)
Canberra ACT 2601

AIConsultation@industry.gov.au

Dear Secretary,

The Digital Platform Regulators Forum (DP-REG) welcomes the opportunity to respond to the Australian Government's proposals paper for introducing mandatory guardrails for AI in high-risk settings.

DP-REG comprises the Australian Competition and Consumer Commission (ACCC), the Australian Communications and Media Authority (ACMA), the eSafety Commissioner (eSafety) and the Office of the Australian Information Commissioner (OAIC). The structure, purpose and goals of DP-REG are outlined in our Terms of Reference.

Through DP-REG, members share information about, and collaborate on, cross-cutting issues and activities involving the regulation of digital platforms. This includes consideration of how competition, consumer protection, privacy, media and information, online safety and data issues may intersect with the Australian Government's safe and responsible AI work program.

This submission provides comment on proposed regulatory options to mandate guardrails for AI in high-risk settings and highlight DP-REG's work to date in developing an understanding of the opportunities and impacts arising out of the uptake of AI technologies in Australia. This submission does not comment on the substance of the proposed mandatory guardrails, which DP-REG member regulators may address in individual submissions to this consultation process.

DP-REG welcomes the general approach outlined in the proposals paper, which acknowledges that stronger transparency, governance and accountability from developers and deployers of AI can build public trust in the safety of AI tools. Of these three principles, DP-REG members particularly highlight the importance of accountability. Without accountability, transparency and governance mechanisms will have substantially less impact on public trust. We would welcome further engagement to share our understanding of how transparency, governance and accountability can be extended – using existing frameworks – across the digital platform industry as they

increasingly develop and deploy large language models (LLMs) and multimodal foundation models (MFMs).

Noting the proposed guardrails establish ex-ante obligations focused on transparency, governance and accountability, DP-REG members recognise that some existing regulatory regimes will continue to play an important role to protect Australians where harms arise from AI even with the guardrails in place.

Regulatory options to mandate guardrails

As detailed later in this submission, DP-REG members have undertaken joint work since 2022 intended to provide clarity to regulated entities about how existing regulatory frameworks may apply to address harms and challenges involving generative AI.

DP-REG members remain well placed to understand how generative AI technologies interact with our domains and related harms, along with our own regulatory frameworks.

Regardless of how the mandatory guardrails are introduced, ongoing work of regulators to clarify the application of existing laws will shape how the mandatory guardrails operate and interact with existing regulation. Our work will also continue to support efforts to clarify accountability and legal responsibility for AI across the supply chain.

Against this backdrop, we believe introducing an AI-specific Act will likely present significant practical challenges.

- The growth of AI is rapid and unpredictable. This creates considerable risks that a technology-specific regulatory framework will not keep up with the pace of technological change.
- An AI-specific Act enforced by a standalone regulator creates a risk that guardrails are enforced in a way that duplicates existing guardrails in other regulatory frameworks focused on reducing specific harms. For example, guardrails focused on transparency could duplicate regulatory activities taken by individual DP-REG members to require that digital platforms report on specific data or their efforts to reduce harms.
- Consumers may struggle to engage with an AI-specific regulator because they may not know when, how, or even whether they can complain about a decision that a company made with the support of AI.

While DP-REG members consider that an AI-specific Act presents considerable implementation issues, DP-REG members consider that a framework that guides how AI is defined and regulated across government would be useful.

DP-REG members support in principle a framework approach to implementing guardrails

DP-REG considers Option 2 is the most suitable option presented in the proposals paper. This option would support a coordinated approach across government, while allowing domain-specific regulators to undertake activities within their respective frameworks.

For a framework approach to be successful, it will need to:

- Clearly set out a common set of broad definitions.
- Establish the scope of its application and provide guidance on common regulatory options available to regulators.
- Allow expert regulators to retain the ability to each bring their own distinct lens to proportionately enforcing mandatory guardrails, as informed by each regulator's understanding of the domains and harms they regulate.
- Minimise regulatory burden and complexity for regulated entities, who have established and productive relationships with domain-specific regulators.
- Minimise duplication of effort by industry participants by reducing barriers to information-sharing between existing regulators.
- Continue to build capability of regulators to identify, investigate and respond when AI intersects with their regulatory frameworks, including an uplift in technical skills for existing regulators to better understand the technology.
- Promote coordination between regulators, including to facilitate the appropriate allocation of complaints from individuals affected by AI. DP-REG members recognise the value of coordination (e.g. cross appointments and joint enforcement) to promote regulatory coherence. DP-REG also notes the impact that regulatory cooperation forums like the UK's Digital Regulation Co-operation Forum , with a dedicated CEO and staff coordinating between regulators, have had, including through the DRCF AI and Digital Hub.

Our joint work to address AI

DP-REG conducts joint work to better understand digital platform technologies and their implications for consumer protection, competition, the media and information environment, privacy and online safety within the digital platform context. Our previous submission to the Department of Industry, Science and Resources' (DISR) 'Safe and Responsible AI' Discussion Paper highlighted our work to evaluate the risks posed by algorithms and the impact of LLMs. Working papers on both these topics were published in 2023 and are available on DP-REG's website.

On 19 September 2024, DP-REG published its latest examination of technology working paper, assessing the impact of MFMs. DP-REG members considered how the use of MFMs to generate multiple types of content, such as image, audio and video, raised concerns such as enabling scams and deceptive practices, the spread of misinformation

and disinformation, the generation of harmful content and the loss of control over personal information.

The deployment of MFMs may result in growing challenges for enforcement as well as regulatory challenges spanning across the remit of each DP-REG member. This is inevitable as issues such as lack of disclosure and labelling requirements for AI-generated materials, coupled with the potential for the creation of highly personalised content at scale, increases the risk that harmful material is spread and amplified. These challenges cannot be wholly addressed by any one regulator. DP-REG members are already engaging with how each member's existing regulatory frameworks and experience could be applied to addressing these challenges.

DP-REG members are also individually progressing work to address the risks and harms associated with AI under their respective regulatory frameworks, including for example:

- increasing transparency about systems and processes,
- promoting safe AI design and use, and
- providing guidance on the training of generative AI models and the use of commercially available AI products.

DP-REG's 2024-26 priorities

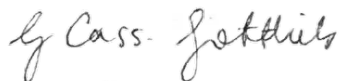On 25 July 2024, DP-REG released its overarching goals and priorities from 2024 to 2026. During this period, DP-REG's strategic priorities include:

- Increasing members digital platform regulatory capability by sharing information and progressing joint work,
- Increasing information and intelligence sharing with each other,
- Collaborating on regulatory development to promote regulatory coherence and clarity,
- Proactively engaging with industry and government as a forum, and
- Better understanding, assessing and responding to the benefits, risks and harms of technology, including AI.
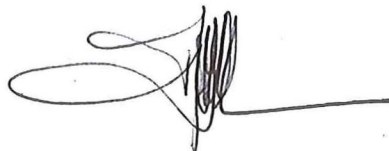
DP-REG members, as guided by the 2024-26 goals and strategic priorities, will continue to use the forum to cooperate on responding to AI, including through engagement with experts that can boost individual and collective capability, responding to the government's Safe and Responsible AI work program and the Australian Parliament's Senate Select Committee on Adopting AI.

We welcome further opportunities to engage with the DISR, and the opportunity to share our experience as this important work continues.
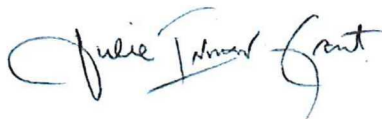
Yours sincerely,

Gina Cass-Gottlieb, Chair, Australian
Competition and Consumer Commission

Nerida O'Loughlin PSM, Chair, Australian
Communications and Media Authority

Julie Inman Grant, eSafety Commissioner,
Office of the eSafety Commissioner

Carly Kind, Privacy Commissioner, Office of
the Australian Information Commissioner