27 November 2020

Department of Industry, Science, Energy and Resources
GPO Box 2013
Canberra ACT 2601
Australia

Dear Sir/Madam

Re: AFMA Response to Australia's AI Action Plan: Discussion Paper

The Australian Financial Markets Association (AFMA) welcomes the opportunity to provide comment to the Australian Government on the development of an AI action plan to maximise the benefits of AI for all Australians. AFMA's membership, which consists of over 120 members, includes a wide range of global and domestic financial market participants that employ highly sophisticated technology, including AI and ML in their market practices. As one of the most technologically mature economic sectors, the experience of AI in financial services provides valuable insights in determining an optimal approach for the AI action plan.

Definition of AI

The Government proposes adopting the CSIRO Data61 description of AI as:

> *'a collection of interrelated technologies used to solve problems autonomously, and perform tasks to achieve defined objectives, in some cases without explicit guidance from a human being.'*

AFMA notes that this definition accounts for the 'automation' capabilities of AI instead of the more unique 'cognition' capabilities which set AI apart from other algorithm-based approaches. This approach risks including algorithms that also execute automated responses when they encounter triggers but are driven strictly by predefined sets of instructions. AI, on the other hand, is a group of algorithms that can modify their algorithms and create new algorithms in response to learned inputs and data. This is distinct from systems that rely solely on the inputs it was designed to recognize as triggers.

In this regard, AFMA prefers the understanding of AI implied in a definition proposed by the Association for Financial Markets in Europe (AFME) in response to the European Commission's White Paper on Artificial Intelligence: [1]

> *'Artificial intelligence (AI) systems are systems that act in the physical or digital world by perceiving their environment through data acquisition, interpreting the collected data, reasoning on the knowledge or processing the information derived from this data, and identifying the best action(s) to take to achieve the given goal. AI systems adapt themselves or their own algorithms by analysing how the environment is affected by previous actions, knowledge, or data.'*[2]

While the exact definition need not be adopted by Australia, a similar refined understanding of AI and a more streamlined definition that focuses on its specialised characteristics might help setting an appropriate foundation for developing the AI action plan. AFMA has elsewhere supported the Cambridge *Artificial Intelligence* (2nd Ed) textbook definition:

> *'AI is the field that studies the synthesis and analysis of computational agents that act intelligently.'*[3]

AI utility in Financial Services

AI already has substantial utility in financial services and this is a trend that is expected to continue. AI is used to improve the creation and deployment of secure software systems, to create more secure Identity and Access Management (IAM) and it has significant roles in cyber defence.

These are substantial benefits for the industry. While we acknowledge there are risks with the use of AI that need to be carefully managed, given the known benefits it is appropriate for the role of government be supportive of the technology and assist consistent management of risks.

Responses to consultative questions

Q.1. What is the role for government to support the uptake and use of AI technologies in Australia? *Q.2. What can be done to reduce barriers to AI adoption in Australia?* *Answered together:*

Avoid duplicative regulatory structures

[1] WHITE PAPER On Artificial Intelligence - A European approach to excellence and trust, *European Commission*, https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligencefeb2020_en.pdf.
[2] Consultation Response, Artificial Intelligence – A European Approach to Excellence and Trust, *Association for Financial Markets in Europe*, https://www.afme.eu/Portals/0/DispatchFeaturedImages/20200612%20AFME%20EC%20AI%20CP%20Response%20-%20Final_.pdf
[3] https://artint.info/2e/html/ArtInt2e.Ch1.S1.html

AI, being a data-intensive technology, sees practical difficulties arise in the compliance environment in terms of data governance, data exchange, ownership, storage and security as these are managed by multiple data and information security-related regimes in Australia. These include Privacy Act 1988 (Cth), Consumer Data Right, the recent Data Availability and Transparency Bill, APRA's CPS 234, the Home Affairs Critical Infrastructure legislation and possible future policy generation. The treatment of consumer protection, internal governance, conduct risk, third-party risk management, technology, cloud, outsourcing arrangements, operational resilience, data privacy and risk management are also relevant in varying degrees to AI deployment.

Multiple regulators, with few incentives to coordinate their activities, apply inconsistent and partly overlapping standards to the same firms in the financial markets sector. For example, the information security and data-related regulatory approaches by APRA, ASIC and ACCC cover the same ground but in slightly different ways, duplicating reporting requirements. This fragmented approach to regulation is likely to continue to create barriers to AI utilisation and its inefficiency imposes unnecessarily high costs on the industry.

Material changes to consent regimes under the recently proposed Privacy Act reforms could make it more difficult for Australian businesses to work with large datasets (even when personal information is anonymised) and impede development of AI in Australia. Simplifying, harmonizing and using a single gradated standard and using a single regulator that is accommodative to business is most likely to smooth the path for AI.

AFMA supports the Government taking a whole-of-government policy approach to AI policy. Such an approach should consider the existing regulatory requirements that apply to any economic sector or activity, and any new regulatory framework AI should be designed not conflict with or duplicate existing frameworks.

Aim for consistency with efficient international regulation

As AI is a global technology Australia should adhere to global standards around the language used to describe AI and the taxonomy associated with the technology. An agreed global shared terminology for AI would assist in facilitating government and industry to work together and should also assist in cross-jurisdictional interoperability. More generally, as part of generating an efficient regulatory environment Government should aim to align the domestic AI regulatory approach with international best practices where the international approach is efficient and widely adopted.

Q.4. How can we identify and unlock the value of uniquely Australian datasets?

AFMA has recently made a number of submissions to Government consultations on the appropriate approach to data that has been collected by the Government and its agencies, including in relation to the Data Availability and Transparency Bill.

In these submissions we have stressed the need to avoid a *faux-naif* approach to data that has been collected by the Government and its agencies as 'there for the using'. Consistent with international practices in the EU's GDPR and the evolving rights of data subjects in

areas like the Consumer Data Right, AFMA holds that great care needs to be taken to ensure that data re-use is only done when it is appropriate and agreed by the data owners and subjects.

Proposals in the Data Availability and Transparency Act to make all collected data potentially available for re-use have been opposed by AFMA and some agencies as risking harm to the regulatory structures used in financial services and to the legitimacy of government data collection when the reuse is not aligned with the original purpose of collection.

A simplistic 'unlock the value' approach risks similar harms unless it is done in a way that scrupulously recognises the ownership and rights of firms and individuals who have collected data or who are the subjects of the data.

Q.5. How can we lower the barriers to entry for businesses and government developing, piloting or assessing the value of AI while ensuring appropriate consumer safeguards?

Australia's regulatory settings have moved towards an unbalanced approach that favours orienting matters entirely as consumer matters. As an example, the current proposals for the review of the Privacy Act explicitly propose to remove 'balance' as an aim of the Act so that a reorientation towards an entirely consumer conception can be made.

AFMA suggests that the Governments actions in moving away from a balanced approach as explicitly proposed in the review of the Privacy Act and implicitly in many other areas as likely to create barriers for business in developing, piloting and assessing the value of AI.

Q. 10. What is the best way to ensure Australians have the skills and capabilities they will need for an AI enabled future?
Q.11. What is the best way to ensure Australian businesses have access to the AI workforce they need for an AI enable future?
Answered together:

Several recent studies, surveys and economic data have shown Australia's declining position as an attractive business and financial centre. The 2019 Global Competitiveness Report by World Economic Forum4 shows Australia's rank down two places citing weaker performances in Institutions, Innovation Capability, Business Dynamism, Infrastructure, and ICT Adoption.

To ensure Australia can attract international talent AI action plan needs to be supported by other policy initiatives such as competitive taxation for companies and individuals and regulation regimes that do not place undue risks on employees and support a dynamic and competitive business environment. The direction of many policy initiatives is not aligned with these outcomes. For example, in a major policy initiative ASIC has created a

[4] The Global Competitiveness Report 2019, *World Economic Forum,* http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

Foreign Financial Service Providers regime that effectively requires Australian businesses to access foreign markets via international financial centres, removing the ability for Australia to be such a centre itself.

There is also a need for government to invest in the future of our workforce to enhance our AI capacity. AFMA supports the promotion of AI-related education and STEM at secondary and tertiary education facilities and training programs.

We thank you for considering our comments.

Should you require further information please do not hesitate to contact me via the Secretariat.

Yours sincerely

Damian Jeffree

Senior Director of Policy