

ARA SUBMISSION

MANDATORY GUARDRAILS FOR AI IN HIGH-RISK SETTINGS

OCTOBER 2024

The Australian Retailers Association (ARA) welcomes the opportunity to provide a submission to the Department of Industry, Science and Resources in response to its discussion paper on the proposed introduction of mandatory guardrails for AI in high-risk settings.

The ARA is the oldest, largest and most diverse national retail body, representing a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

The growing adoption and use of AI across our sector is driving efficiencies, increasing productivity and improving customer experiences. However, AI does also present risks in terms of consumer trust and corporate reputation if not used responsibly, which is why the ARA is interested in ensuring that any intervention – whether voluntary or mandatory – strikes an optimal balance managing risk without constraining opportunity.

EXECUTIVE SUMMARY

In principle, the ARA is supportive of the government's commitment to ensuring the safe and responsible use of AI across the economy, including in our sector. In line with the position adopted by the Australian Chamber of Commerce and Industry (ACCI), the ARA also supports the establishment of voluntary standards to ensure community confidence in the use of AI.

However, the establishment of mandatory guardrails is problematic as is the use of language that provides the impression that the use of AI in some sectors – like retail and hospitality – presents a higher risk than in other parts of the economy. Our position is that the establishment of mandatory standards will duplicate existing legislation, inhibit adoption of AI (particularly by small business) and that the use of AI in our sector does not present any greater risk than similar uses in other sectors.

If mandatory standards are deemed necessary, the ARA's position in respect of the options outlined in the discussion paper is for a framework approach drawing on existing legislation and regulation (Option 2) supplemented by new legislation to address any risks that cannot be adequately mitigated through existing measures. We do not support the introduction of a new cross-economy AI Act (Option 3).

Irrespective of whether any guardrails or voluntary or mandatory, they must align with international equivalents to avoid inconsistencies with other jurisdictions, they must not duplicate existing legislative provisions that already adequately address the risks of AI, and they must not impose a compliance burden on business in a manner than is disproportionate to the risk.

RESPONSE

In response to the matters and questions raised in the discussion paper, the ARA provides the following commentary and recommendations.

Business needs examples of high-risk AI applications to support proposed principles

The proposed principles provide the framework required for clearly defining high-risk settings, but the ARA recommends the inclusion of examples and specific applications that could be categorised as high risk. These principles and examples would be applicable in either a voluntary or mandatory scheme. The ARA does not support the adoption of language that describes whole sectors as high-risk, as was the case for the retail and hospitality sectors in the Responsible AI Index 2024, released in September 2024.

Business needs more guidance to avoid uncertainty

As noted, a principles-based approach has limited utility for businesses without additional guidance materials to help translate principles into practices. In addition to examples and case studies that could help to illustrate high-risk settings, a list of applications that have been assessed to be high-risk would reduce uncertainty for business. It is important that this list of high-risk applications remains current and takes into account the AI maturity, capability of capacity for different types of business.

Applications should be assessed on their unique risk profiles

The proposition that all generative AI models represent the same level of risk has the potential drive disproportionate response to low-risk applications, with unintended consequences for consumer confidence, business adoption and investment by developers. The ARA recommends that generative AI applications are assessed individually on their merits against the ten guardrails, rather than a category-level assumption that results in the risk profile of some applications, and any risk response, being overstated.

Guardrails should apply to developers and deployers differently

Because developers are responsible for the development of applications, they have the ability to positively influence the risk profile of different AI models they build. A deployer (such as a retail business that uses AI tools developed by others) has little or no influence to address any risks against the ten guardrails. For this reason, the ARA recommends that local deployers of AI have different accountabilities than local and overseas developers, broadly in-line with the approach used in Canada takes a differentiated approach to guardrails.

Small business will not adopt AI if the guardrails are not fit-for-purpose

Just as there should be a risk-based approach to the treatment of applications, each with their own unique risk profile, there should also be recognition that the use of AI by a small business presents a much lower risk than the same AI application used by a larger business. There is also an underlying assumption in the discussion paper that all developers and deployers have the same level of understanding and resource to manage risks. Without differentiating on the basis on business size, in terms of either risk assessment or mitigation, there is the potential that the compliance burden for small business will discourage the mainstream adoption of AI.

Thank you again for the opportunity to provide comments to the Department of Industry, Science and Resources in response to its discussion paper on the proposed introduction of mandatory guardrails for AI in high-risk settings. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.