

Scan of the Artificial Intelligence Regulatory Landscape – Information Access & Privacy

Information and Privacy Commission NSW

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Scope and attributions

- A high level scan of the national and international regulatory landscape relevant to artificial intelligence (AI) with a focus on information access and privacy rights to inform a future best practice regulatory approach for New South Wales (NSW).
- An overview of approaches by a select number of global authorities (Organisation for Economic and Cultural Development (OECD) noting Australia is a member and the European Commission Regulatory Framework (EC)) with a focus on frameworks applied in regulating AI including values based principles, rights preservation and classification frameworks for developing AI models.
- A summary of governance models used internationally in regulating AI and a recognition of Horizontal and Hybrid (broad based and legislative/policy) and Vertical (rights specific and single treatment type) approaches to AI regulation. Noting that NSW adopts a horizontal hybrid approach that contains a number of key governance/regulatory elements including an expert advisory committee, oversight through a central agency and mechanisms for capability uplift in the public sector together with industry and academic engagement. These elements are consistent with leading jurisdictions.
- A summary of select international developments in the regulation of AI relevant to information access and privacy.
- A high level categorisation of risks to information access and privacy rights that arise in the use of AI together with treatments to manage identified risks.
- A summary of the extant risk treatments operating in NSW.
- A condensed outline of residual risks to information access and privacy in NSW and further treatment options including options that recognise the Australian federated model of government.
- An assessment of those options within three broad categories against OECD values and EC principles.
- Attributions – the source documents are accessible through the links provided; images 4-6 and 8 are attributable to the OECD or related research; this presentation was developed by IPC Commissioners, * denotes privacy inputs; RTK denotes right to know laws; G2B denotes (government to business) G2C denotes (government to citizens).

AI Risks to the fundamental human rights of Information Access Article 19 UDHR & Privacy Article 12 UDHR

What are we regulating referable to information access and privacy rights in NSW?

- Artificial Intelligence; or
- *The Use of Artificial Intelligence*

Where and who are we regulating?

- Private sector – global (trade and technology); or
- *New South Wales Government agencies + (extant sectors)*

Values-based principles




Inclusive growth, sustainable development and well-being >



Human-centred values and fairness >



Transparency and explainability >



Robustness, security and safety >



Accountability >


Recommendations for policy makers



Investing in AI research and development >



Fostering a digital ecosystem for AI >



Shaping an enabling policy environment for AI >

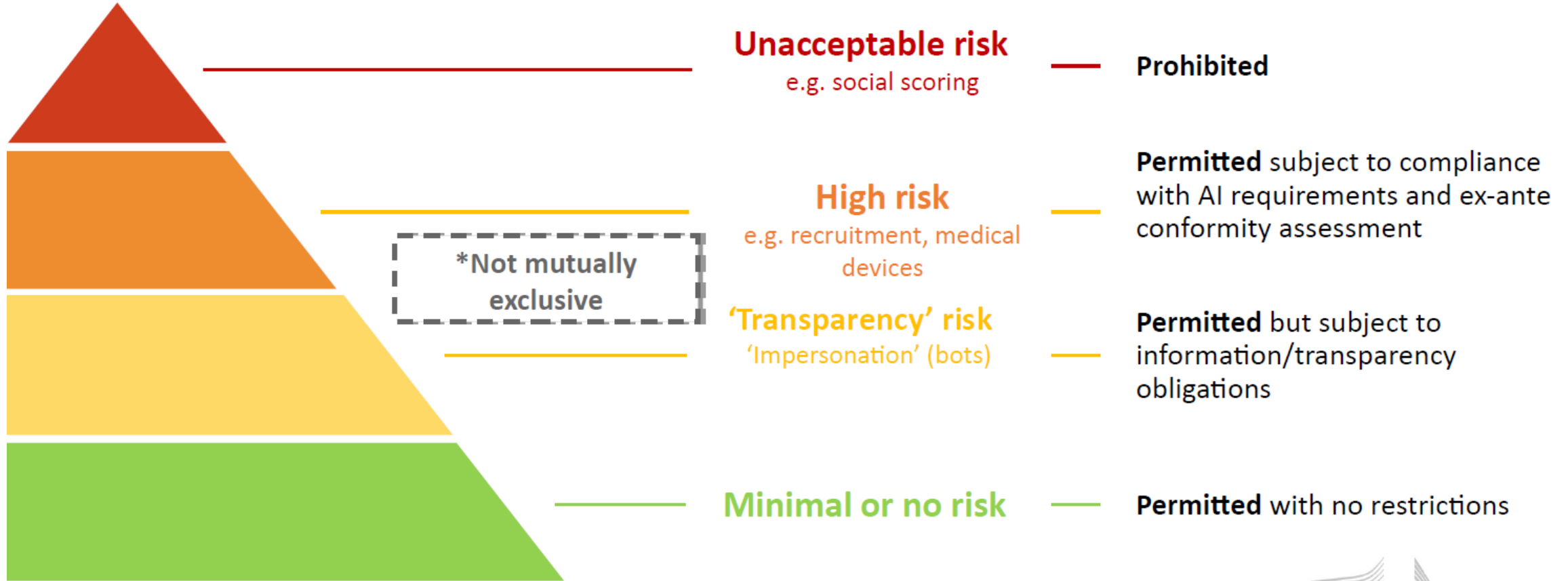


Building human capacity and preparing for labour market transformation >



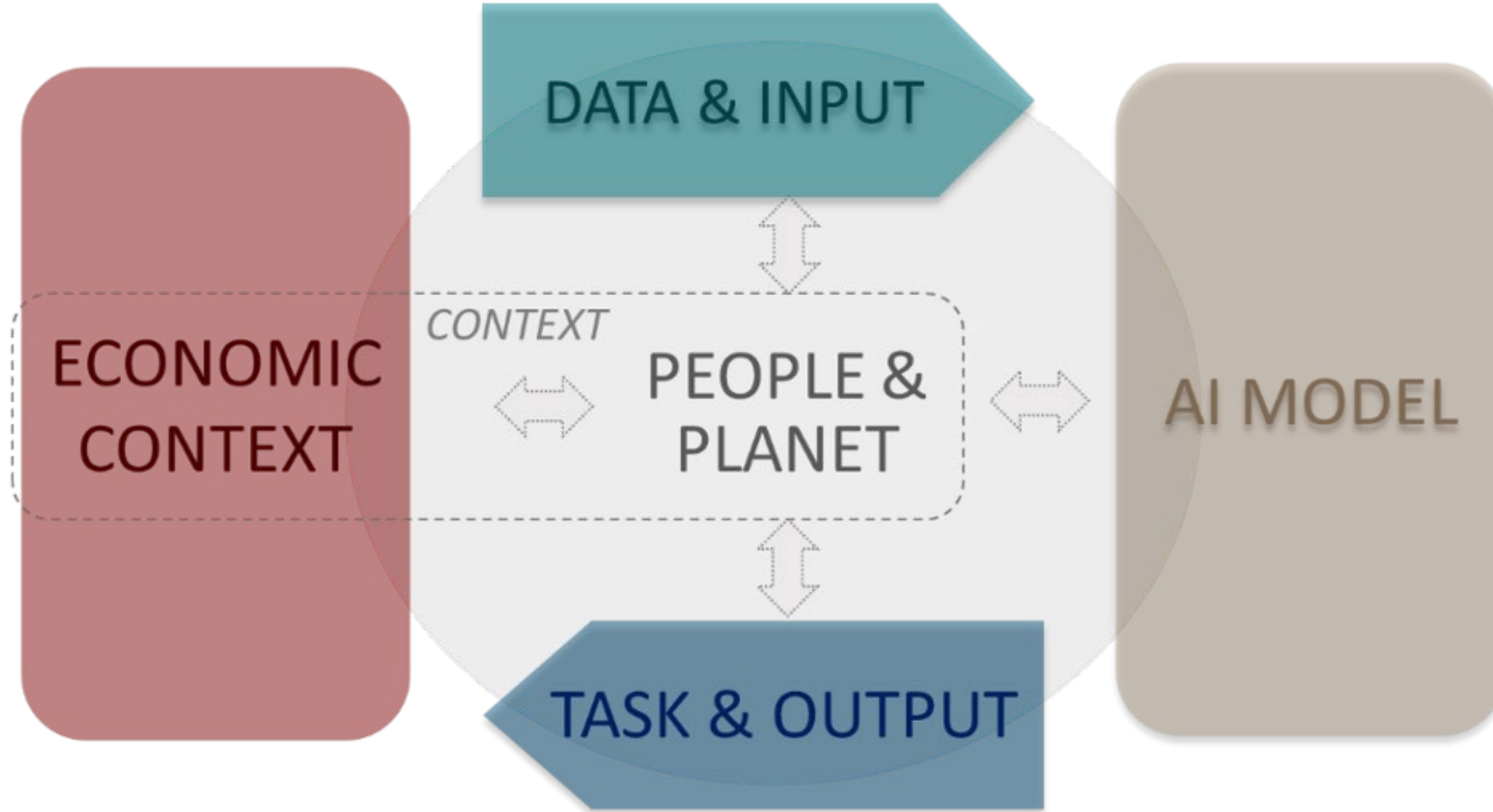
International co-operation for trustworthy AI >

Recognised Risks in the Use of AI (draft AI Act EU) Prohibitive and Permissive Model



OECD – Classification Framework

Primacy of existing (incl. regulatory) context



Additional Co-ordinated Global Authorities

Global AI Action Alliance

The World Economic Forum Global AI Action Alliance is a global community and accelerator that brings the world's foremost AI developers and users together to:

- Accelerate the adoption of trusted, transparent and inclusive AI globally and across sectors
- Create a feedback loop of real-time learning and scaling across key sectors and challenge areas
- Catalyse and incubate new partnerships and initiatives to address urgent gaps and needs.

Global Partnership on Artificial Intelligence (GPAI)

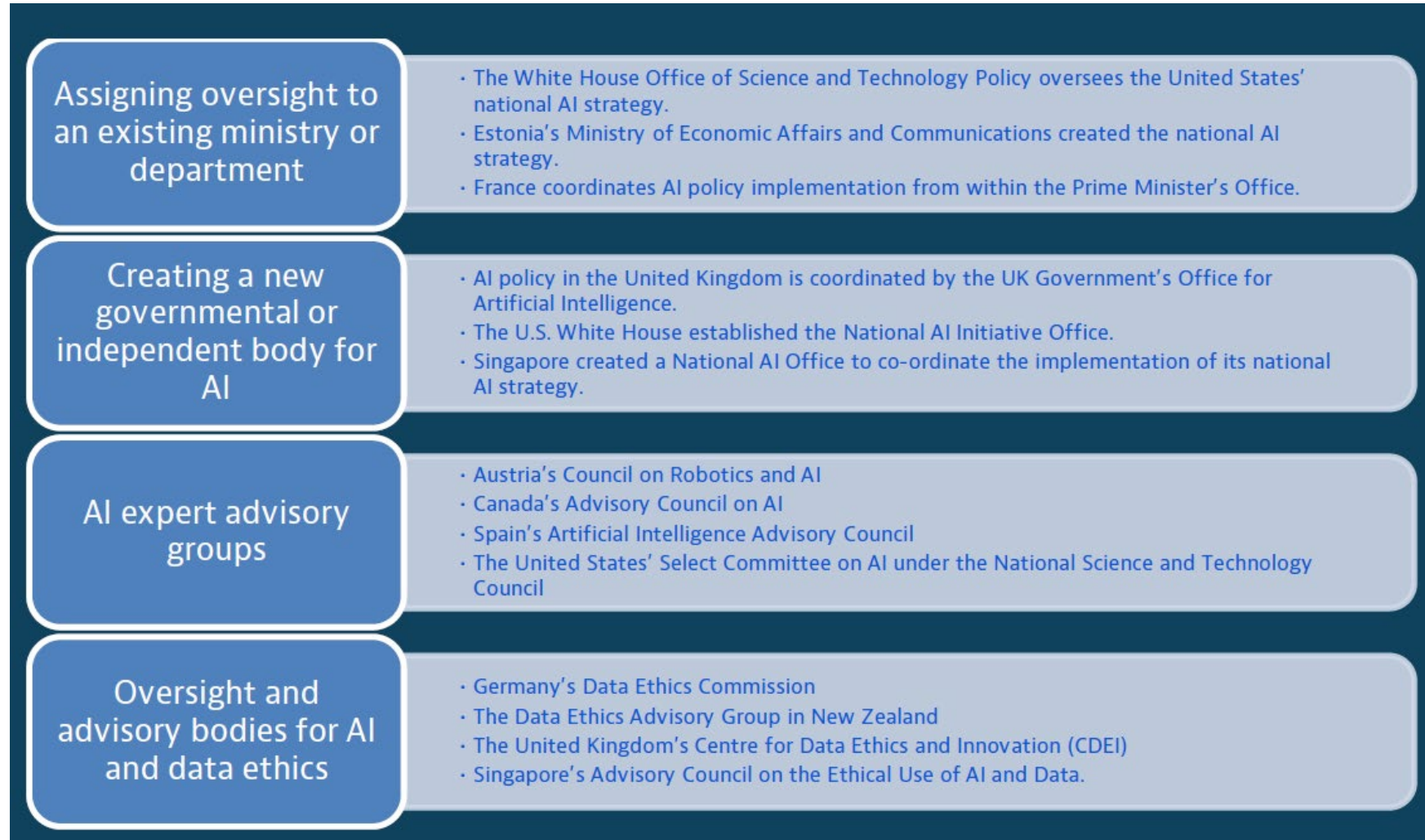
Built around a shared commitment to the OECD Recommendation on Artificial Intelligence, GPAI brings together engaged minds and expertise from science, industry, civil society, governments, international organisations and academia to foster international cooperation.

International Organisation for Standardization (ISO)

ISO/IEC 22989 covers AI concepts and terminology, and ISO/IEC 23053 describes a generic framework for using machine learning (ML) technology.

High level regulatory governance options:

Government and/or independent authority; technical & ethical advisory



International Developments 2022 (Summary of key controls)

| Country/ies | Legal/policy Authority | Jurisdiction | Responsible Oversight Authority/ies and Expert Advisory Entities | Approach and limitations Horizontal (H) Vertical (V) |
|----------------------------|--|---|--|---|
| European Union RTK laws | EU Digital Strategy Coordinated Plan on AI GDPR Artificial Intelligence Act a risk-based approach to regulating AI in Europe Information access and privacy captured as Fundamental Human Rights | EU Private Sector exemptions | The Council of Europe (Host European Court of Human Rights upholds HRs, democracy, and the rule of law) Following assessment of classification based upon risk AI Act creates a European Artificial Intelligence Board | Act: Overarching Classification Framework that relies on self-assessment; focuses on risk to individuals not public good or public participation; prohibitions rigid/limited e.g. omits biometrics for emotional recognition; transparency and enforcement powers limited (Art.19) e.g. bans and incident reports; cost and pressure on innovation; limited ongoing industry input Enhancements recommended to address identified deficiencies including a Fundamental Rights Impact Assessment Largely fine based enforcement approach (H) |
| France RTK laws | AI for Humanity Digital Republic Law 2016 French OGP NAP 2021-03 Information Access Laws | France; Govt and Industry targets: health, transport, the environment; defence and security | National consultative committee on Digital Ethics and AI AI Sandbox Program of the National Data Protection Authority: National Commission on Informatics and Liberty National Strategy on AI: Ministries for Higher Education, Research and Innovation; Economy and Finance; Directorate General for Enterprises; Public Health Ministry; Ministry of the Armed Forces National Research Institute for Digital Sciences; Interministerial Director of the Digital Technology and the Information and Communication System Creation of a public laboratory on the transformation of work Etalab is a Department of the Interministerial Digital Directorate. | Strategy addresses risk that industry may dominate: ‘the digital ecosystem is characterized by an omnipresent “winner takes all” logic and dominant positions seem increasingly difficult to challenge. And the fields covered by AI are no exception, which is why it is up to the public authorities to introduce “platformisation” into these various sectors, if only to avoid value being vacuumed off by a private actor in a paramount position’ (H) Rights inclusive approach: open access; digital access; IP; all algorithms used by govt. must be open and accessible to citizens; must publicly list and make open its rules |

International Developments 2022 continued

| Country/ies | Legal/policy Authority | Jurisdiction | Responsible Oversight Authority/ies and Expert Advisory Entities | Approach and limitations Horizontal (H) Vertical (V) |
|---------------------|--|--|--|--|
| Germany RTK laws | National AI Strategy IA Ethics Commission (time limited independent advisory board) | Govt sector and industry | Federal Ministry of Education and Research; Federal Ministry for Economic Affairs and Energy; Federal Ministry of Labour and Social Affairs Research excellence: German Research Centre for Artificial Intelligence | (H) Largely governed by EU with nationally specific controls/policies |
| UK RTK laws | National AI Strategy AI Regulation Policy paper released by UK Government, "Establishing a Pro-Innovation Approach to Regulating AI". Submissions closed September 26 th Report on Addressing Trust in Public Sector Data Use Centre for Data Ethics and Innovation AI Procurement in A Box UK-US Declaration of co-operation in AI and R&D Data/information/privacy legislation UK OIC | Post exit impacted by EU | Department for Digital, Culture, Media and Sport; Department for Business, Energy & Industrial Strategy; The Policy Paper identifies the Information Commissioner's Office, Competition and Markets Authority, Ofcom, Medicine and Healthcare Regulatory Authority, and Equality and Human Rights Commission as the key regulators in its new regime World Economic Forum Office for Artificial Intelligence | (H) Preferred approach is for principles and guidance, but legislation has not been ruled out The Policy paper outlines six AI governance principles. The principles build on the five OECD principles Policy paper confirms that regulators will be asked to focus on high-risk concerns. The UK Government plans to publish a White Paper in late 2022 Trust Report: Where data is shared in the public interest, there needs to be greater clarity about how the public interest is defined and judged. An individual's right to privacy must be weighed against the rights of other citizens and of communities and society more widely CDEI will work with partners to articulate the conditions for public interest data sharing |
| USA RTK laws | Bill of Rights Risk Management Framework | If enacted private and public sectors | USA Select Committee (new) | (H) Focus on 5 key areas: Safe and Effective systems, Algorithmic discrimination protection; data privacy, notice and explanation; human alternatives, consideration and fall back |
| China* | Administrative Provisions on Algorithmic Recommendations for Internet Information Services (Algorithm Rule)* | Online services deploying recommendation algorithms within China. Took effect on 1 March 2022* | The Cyberspace Administration of China (CAC)* | Businesses are required to provide explainable AI algorithms and be transparent about their purpose. Businesses are also prohibited from relying on AI algorithms to charge people different prices to different people based on personal information collected. There are also requirements about ethical use of algorithms* |

International Developments 2022 continued

| Country/ies | Legal/policy Authority | Jurisdiction | Responsible Oversight Authority/ies and Expert Advisory Entities | Approach and limitations Horizontal (H) Vertical (V) |
|---|---|--|---|---|
| Canada RTK laws | <p>Draft Artificial Intelligence and Data Act</p> <p>The Digital Charter Implementation Act comprises three proposed acts: the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act, and the Artificial Intelligence and Data Act (AIDA) (see Global Partnership on AI)</p> <p>Global Partnership on AI</p> <p>Canada's Digital Charter</p> <p>Advisory Council on AI</p> | Govt Sector and Industry | <p>Ministry of Industry, Science and Economic Development Canada is proposed as the de-facto regulator for artificial intelligence. The bill provides that the Minister may designate a senior official as the Artificial Intelligence Data Commissioner, whose role will be to assist the Minister in administration and enforcement of Part 1</p> <p>Also Canadian Institute for Advancement and Research</p> | <p>Bill aims to regulate international and interprovincial trade and commerce in artificial intelligence systems, including the design, development and use of AI systems in Canada. Bill aims to prohibit certain conduct in relation to AI systems that may result in harm to individuals or their interests (prohibitive approach)</p> <p>The Digital Charter Implementation Act of 2022 aims to protect the personal information of children and proposes regulatory measures to stop companies developing and deploying harmful artificial intelligence (AI) systems (H)</p> |
| New Zealand RTK laws | <p>AI Strategy 2021</p> <p>AI White Paper</p> <p>Reimagining Regulation in the Age of AI (WEF Project)</p> <p>Algorithm Charter for Aotearoa New Zealand</p> <p>Data Ethics Advisory Group</p> <p>Digital Economy Partnership Agreement</p> | Govt. Sector with industry development modelled on World Eco. Forum approach | <p>Department of Internal Affairs</p> <p>Statistics New Zealand</p> | <p>Strategy has 6 cornerstones and proposes collaboration between Government, academia and industry</p> <p>Co-sponsor for a World Economic Forum project on regulation of AI, develop a framework for national conversations on AI, and develop a roadmap for policymakers on high level principles, tools and approaches for countries who may wish to regulate AI. Pilot projects, testing out aspects of the Roadmap, will be undertaken in New Zealand (H)</p> |
| Australia (by exception- see Privacy Inputs)* | Privacy Act Discussion paper, Attorney General's Department, October 2021* | Commonwealth, private sector* | OAIC* | Recommendation 17: Require privacy policies to include information on whether personal information will be used in automated decision making which has a legal, or similarly significant effect on people's rights* |
| Singapore RTK Under Constitution Art. 14 | <p>Advisory Council on the Ethical Use of AI and Data</p> <p>Principles to Promote Fairness, Ethics, Accountability and Transparency in the use of Artificial Intelligence and Data Analytics in Singapore's Financial Sector</p> | Govt Sector and Industry | Centrally co-ordinated approach | AI Singapore, a programme led by the National Research Foundation with participants such as Smart Nation and Digital Government Office, the Economic Development Board, the Infocomm Media Development Authority, the state-owned company SGInnovate, and the Integrated Health Information Systems |

Recognised risks to Information Access and Privacy and treatments in the Use of AI

| Risk to citizens (C) and Agencies (A) | Treatment | Extant Protections/oversight |
|---------------------------------------|--|---|
| Transparency (C), (A) | <p>Right to Know legislation.</p> <p>Open Data</p> <p>Privacy Management Plans*</p> <p>Privacy Collection Notices*</p> | <p>Information Commissioner</p> <p>Privacy Commissioner*</p> <p>DAC</p> <p>AI Framework</p> |
| Explainability (C), (A) | <p>Contracts should mandate: Retain data rights, facilitate access to audit logs retained by the service provider; receive notice from the supplier of any adverse incident that are legal or administrative in nature, including system failures and unintended consequences; waive legal rights in respect of purchaser's testing/auditing; ensure the system operates within law/compliance requirements and subcontractors' compliance</p> <p>Mandate general notice of use, explanation of use and right to access inputs/outputs and algorithmic workings.</p> | <p>AI Strategy</p> <p>AI Advisory Group</p> <p>GIPA Act (s20(1)(b) – how decisions made)</p> <p>DRF Act (s10)</p> <p>Information Commissioner</p> |
| Access to Information (C), (A) | <p>GIPA Act</p> <p>AI Framework</p> | <p>G2C</p> <p>S9 formal application GIPA Act</p> <p>OPIADS, COPIADS e.g. subject to Commercial in Confidence etc. business interests may override</p> <p>s121 only services (not decisions)</p> <p>G2B (as above)</p> |
| Breach of IPPs or HPPs* | <p>PPIPA and HRIPA: Personal and health information should be collected, used and disclosed lawfully. It should be protected and held securely; only retained as long as necessary and disposed of securely*</p> <p>Individuals have rights of access to their personal and health information held by Government agencies*</p> <p>Privacy by Design*</p> <p>Privacy Impact Assessment*</p> | <p>PPIP Act – IPPs*</p> <p>HRIP Act – HPPs*</p> <p>Oversight by Privacy Commissioner*</p> |

Recognised risks to Information Access and Privacy and treatments in the Use of AI continued

| Risk to citizens (C) and Agencies (A) | Treatment | Extant Protections/oversight |
|---|---|--|
| Rapid unmonitored technological advances (C), (A) | <p>Monitoring/reporting including functionality, contractual arrangements, application and outcomes</p> <p>Risk based assessments</p> <p>Academic/expert collaboration</p> | <p>AI Strategy</p> <p>UNSW relationship/external expertise</p> <p>AI Advisory Cttee</p> <p>Information and Privacy Advisory Committee</p> <p>GIPA mandates proactive reporting of contracts and decision making – generic requirements</p> |
| Data Sovereignty (Indigenous/non indigenous issues not dealt with) (C), (A) | <p>Info. Access treatment G2B Cth. Largely responsibility coupled with system accreditation</p> <p>NSW has two Government Data Centres where NSW agency data is held within NSW*</p> <p>Under the NSW Cloud Strategy, agencies are transitioning to appropriately secure public cloud services*</p> <p>Higher risk data (including health information) should be appropriately secured and held by these cloud services in NSW*</p> | <p>Cth. Oversight</p> <p>NSW may seek to align with Cth approach to preserve Info. Access rights and agency assess to data</p> <p>HPP 14 imposes a number of requirements/limitations re transborder data flows of health information outside of NSW*</p> |
| Unintended unpredictable decision outcomes (C), (A) | <p>G2B</p> <p>Contractual Provisions incl. to: preserve access, mandate audit logs and notify of adverse incidents</p> <p>Monitoring of application and outputs</p> <p>Oversight of operation and harm holistically</p> <p>G2C</p> <p>Promote citizen awareness, independent monitoring, contractual arrangements for 3rd party providers to preserve access and notification</p> <p>Mandate Public Reporting of use, purpose and outcomes</p> | <p>Individual contract provisions</p> <p>AI Strategy</p> <p>AI Advisory Group</p> <p>Access to information regarding how decisions are made mandated (s20(1)(b) GIPA)</p> <p>S121 GIPA Act prescribes limited information that must be provided by 3rd party providers to govt. under contracts for government services</p> |

NSW Residual Risk and Treatment Options

| Identified residual risk | Existing relevant authority | Treatment jurisdiction & functional coverage | Treatment Options Legislative & Policy | Treatment Options Regulatory market place change and ROI | Deterring & redress under proposed treatment |
|--|--|--|---|---|--|
| Fundamental rights curtailed because of jurisdictional limitations or contractual inadequacy | GIPA Act PPIP Act HRIP Act Policy/advisory AI Strategy (procurement) Commissioner advice under the DRF Act (s.10) | GIPA – 3 rd party. Contracts limited to services does not incl. decision-making; limited type of info. made available; would not capture a right to an algorithm/machine learning informed decision PPIPA s 4(4)(b) (contractual engagement) does not specifically require contracted service providers to comply with NSW privacy laws* | AI as a factor in favour of disclosure under GIPA Act to rebalance commercial factors against disclosure Extend GIPA Act to decision making functions and prescribe additional information access requirements in 3 rd party contracts | ROI high (low cost & reg burden mod.) Standard clause incl. by govt in contracts & contracts monitoring; require information to be included in privacy policies about whether personal information will be used in automated decision making* In outsourced service provision require rights preservation via contracts leg. amendment to GIPA; add use of AI as a factor in favour of disclosure of information to address asymmetry injected by commercial in confidence provisions | G2C Citizen recourse if govt contract inadequate – complaint to IC NCAT review of decision making Proactive compliance by IC G2B Govt recourse under contract Integrity engagement and oversight |
| Notice of algorithmic use and explanation by government inadequate | GIPA Act (s 20) | GIPA Act requires agencies to report 'how decisions are made' not explicit regarding AI and applies to agencies (not 3 rd party contractors) PPIP Act (s10) requires agencies to provide notice when collecting personal information about intended purposes* | Mandate statements of use of AI by agencies as open access information (GIPA Act) and consider French approach mandate: the responsible agency; the global context and what role the algorithm has in the decision-making process; the impact of the decision; and the algorithm's technical workings PPIPA collection notices could be expanded to expressly require information about AI use of personal information* | ROI high (low cost & low reg burden) Recommendations go to agency conduct and require minimal leg. and operational change Achieved via GIPA Reg as prescribed open access | G2C Citizen recourse if govt fails to proactively disclose – complaint to IC may require additional power to require compliance Proactive compliance by IPC to monitor implementation and report publicly annually |
| Monitoring adoption and implementation of AI inadequate | AI Advisory Cttee Chief Data Scientist AI Strategy (building capacity) Cth Funded AI and Digital Centres NSW Ombudsman currently considering use of AI in admin. Decision making | Ministerial referral to Commissioner (s17(h) GIPA Act) Reporting powers under GIPA and GIIC to Minister/Parliament Contract reporting under GIPA PPIP Act 61B requires Privacy Commissioner to report on the operation of the PPIP Act each year and provide a copy of the report to the Minister* | Commission a review/regular reviews of AI related developments options to co-ordinate input from across sectors/expertise, Parliamentary Committee or independently established oversight. Include monitoring adoption and implementation in role of AI Cttee or other entity. Co-ordinated reports to Minister and oversight body Amend GIPA Act to specify contracts for AI. Amend GIPA Regs to require agencies to report on AI usage and require reporting in annual s37 Report to Parliament (Open Access) | ROI high. (low cost & impact moderate) Opportunity – augment AI Advisory Cttee to monitor adoption (i.e repository of projects and monitor implementation & unforeseen consequences) Augment AI Strategy Augment Reporting requirements under GIPA Regulations Callaghan Innovation NZ (Govt Dept of Innovation) | G2C Citizens will be aware of AI usage through proactive disclosure and RTK. Complaint to IC, NCAT review of decision making G2B Government visibility of AI use by agencies and contract providers Government undertakes regular reviews informed by monitoring tools |

NSW Residual Risk and Treatment Options continued

| Identified residual risk | Existing relevant authority | Treatment jurisdiction & functional coverage | Treatment Options Legislative & Policy | Treatment Options Regulatory market place change and ROI | Deterrant & redress under proposed treatment |
|---|--|--|--|--|--|
| <p>Inadequate contractual arrangements to preserve rights and control of govt data holdings</p> <p>Data Sovereignty claims (multinational enterprises)</p> <p>Claims of IP and commercial in confidence prevent disclosure/access</p> | <p>AI Strategy (procurement)</p> <p>Procurement Board</p> <p>GIPA Act S121 (in part)</p> | <p>s121 GIPA limited to prescribed info only and to provision of services</p> <p>Under GIPA factors against disclosure operate to preserve IP, commercial info. etc.</p> | <p>G2C</p> <p>GIPA s121 extend</p> <p>AI included as a factor in favour of disclosure of information to rebalance access rights for citizens</p> <p>G2B</p> <p>Procurement approach mandates govt access legislated or consistent contractual retention of govt. data or ability to access data provided by govt in test suits or ongoing</p> <p>AI Strategy confirms contractual requirements</p> | <p>ROI moderate (low cost, mod reg burden)</p> <p>Market place change for NSW but not beyond – risk could be address by national agreement</p> <p>Mandate Human Rights Assessment for pre-qual. or contract clause inclusion and subject to assessment by each relevant regulator (provides visibility of use case)</p> <p>Contracts incl.: Purchaser right to audit/audit logs; user manuals; training data; retain govt data inputs; address IP rights; include notification requirements in circumstances of adverse impacts including complaints or legal action; require monitoring to ensure currency of explainability and transparency in decision-making as required under the GIPA Act. (See AI Procurement in a box)</p> <p>(see below also relevant)</p> | <p>G2C</p> <p>GIPA Act preserves access rights; investigation of systems and processes if required; no compensation under GIPA. Redress NCAT or claim against gov.</p> <p>G2B</p> <p>Contracts set threshold</p> <p>Breach of contract</p> |
| <p>Rapid unmonitored technological advancement</p> | <p>Academic Institutions - Private Sector/govt. funded</p> <p>AI Strategy (provides for capacity building)</p> <p>AI Ethics Cttee</p> <p>IPAC</p> <p>Cth funded AI and Digital Centres</p> | <p>Research institute/co-ordination in consultation with private sector</p> <p>Broaden capability uplift with academia and public sector</p> <p>Prohibitive approach for high risk AI/egregious harm</p> | <p>Creation of a public laboratory on the transformation of work</p> <p>Advance existing relationships with academia/private sector</p> <p>Maintain a 'human in the loop' approach</p> <p>Legislation to prohibit in identified high risk areas</p> | <p>ROI moderate. Funding required to estab. Centres of Excellence</p> <p>AI Forum NZ Govt funded collaborative</p> <p>Global Partnership on AI</p> <p>Sub-jurisdictional OGP Plan (NSW) or collaborative approach to Australian OGP Plan to promote Open Government values and initiatives See France</p> <p>France/EC Sandbox and Health Data Hub and Data Hub Gaia-X, an EU cloud initiative that aims to establish an interoperable data exchange through which businesses can share data under the protection of European laws plus data sharing commons</p> <p>Implement design features according to standards and/or within contracts incl. human in the loop design</p> <p>Pan-Canadian AI Strategy and Genome Canada - funding</p> <p>Augment AI Strategy re capacity building and UNSW partnership</p> | <p>G2B</p> <p>Deterrant via advice/expertise continuous monitoring and potential to address harms under contracts. Breach of contract.</p> |

NSW Residual Risk and Treatment Options continued

| Identified residual risk | Existing relevant authority | Treatment jurisdiction & functional coverage | Treatment Options Legislative & Policy | Treatment Options Regulatory market place change and ROI | Deterrent & redress under proposed treatment |
|---|--|---|---|--|--|
| Risk of data breaches* | PPIP Act (s. 12); Voluntary notification of data breach scheme* Cyber NSW | Agencies are encouraged to report privacy breaches to the Privacy Commissioner and government has indicated it will introduce a mandatory scheme; use of AI may increase potential for both data breach risk and data breach protection* Systems uplift, increased cyber maturity, cyber security monitoring | Mandatory scheme preferable to voluntary scheme for comprehensive NSW government sector coverage, reporting and learnings* Greater technical expertise and system uplift, increased monitoring, whole of government reporting, contract management | ROI moderate (moderate cost and reg burden)* Opportunity - introduction of mandatory notification of data breach scheme* Opportunity – learnings from current review of Cth. Privacy Act 1988* Cyber uplift and monitoring | Internal review by agency and external review by NCAT / complaint to Privacy Commissioner* Breach of contract Enhanced systems security, oversight and remediation |
| AI developed in areas considered high risk (e.g. weapons) | AI Assurance Framework AI Policy AI Advisory Cttee | Some jurisdictions are adopting a prohibitive model that will impact global development (see EU draft Act) | NSW could adopt a policy position to confirm approach of draft EU Act Domain could be established under Strategy or via Ethics Cttee or both NSW could legislate to prohibit application in identified high risk areas (see UTS Facial Recognition Technology towards a Model Law) | ROI high (reg burden mod.) Specifically prohibit high harm applications can be enforce cost effectively via contracts Market Place change significant if aligned to a global/authority approach. Non EU members may not adhere and therefore application may continue in other sovereign nations or tech. companies | Deterrent value via contract Redress – awarding of contracts or action for breach of contract Leg. could provide redress |

Summary of treatment options to preserve information access and privacy rights in the use of AI by NSW Government Agencies and alignment with OECD values based principles and EC Regulatory Framework Objectives

| Legislative and Regulatory | OECD Values Based Principles & EC Regulatory Framework Objectives |
|--|--|
| <ul style="list-style-type: none">• Ensure mandatory proactive disclosure of the use of AI by agencies by inclusion as <i>open access</i> under the GIPA Act• Ensure that <i>open access</i> includes a statement of use, inputs and a description of the operation of the AI system• Expand information access rights under government contracted services to AI used for decision making• Include the use of AI as a factor in favour of disclosure of information under the GIPA Act to address the existing asymmetry that protects the business interests of agencies and 3rd party providers• Introduce a mandatory privacy notification scheme under the PPIP Act* | <ul style="list-style-type: none">• Human-centred values and fairness• Transparency and explainability• Robustness, security and safety• Accountability (OECD)• Enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems• Ensure that AI systems placed on the Union market and used are safe and respect existing law on fundamental rights and Union values; ensure legal certainty to facilitate investment and innovation in AI (EC Regulatory Framework objectives) |

Summary of treatment options to preserve information access and privacy rights in the use of AI by NSW Government Agencies and alignment with OECD values based principles and EC Regulatory Framework Objectives

| Policy and Capability | OECD Values Based Principles & EC Regulatory Framework Objectives |
|--|---|
| <ul style="list-style-type: none">• Include clauses into contracts for the provision of AI to the NSW Government covering: government/purchaser right to audit/audit logs; notification requirements in circumstances of adverse impacts including complaints or legal action; access to user manuals; training data; retain government data inputs; address intellectual property rights; require monitoring to ensure currency of explainability and transparency in AI functioning• Accelerate AI capability development (incl. a human in the loop approach) within the NSW public sector through enhanced relationships with industry and academic experts• Establish a live repository of AI, use purpose, outcomes and host agency to facilitate real time monitoring | <ul style="list-style-type: none">• Human-centred values and fairness• Inclusive growth, sustainable development and well being• Transparency and explainability• Robustness, security and safety• Accountability (OECD)• Ensure that AI systems placed on the Union market and used are safe and respect existing law on fundamental rights and Union values; ensure legal certainty to facilitate investment and innovation in AI• Enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems (EU Regulatory Framework Objectives) |

Summary of treatment options to preserve information access and privacy rights in the use of AI by NSW Government Agencies and alignment with OECD values based principles and EC Regulatory Framework Objectives

| Governance and Consensus | OECD Values Based Principles & EC Regulatory Framework Objectives |
|---|--|
| <ul style="list-style-type: none">• Ensure GIPA Act annual reporting on <i>open access</i> requirements includes a statement of AI application and operation general description of its use by agencies to allow oversight and compliance monitoring by the Information Commission and others• Facilitate a whole of government approach to ongoing monitoring of the application, operation and output of AI systems deployed by NSW agencies• Engage at a national and international level to: promote consistency of regulation, governance, influence market place behaviours and advance the consideration of harmful and potentially prohibited use of AI | <ul style="list-style-type: none">• Transparency and explainability• Robustness, security and safety• Accountability (OECD)• Enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems• Ensure that AI systems placed on the Union market and used are safe and respect existing law on fundamental rights and Union values; ensure legal certainty to facilitate investment and innovation in AI• Facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent market fragmentation (EC Regulatory Framework objectives) |

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