



AIHS

Australian
Institute of
Health & Safety

Think forward

Safe and Responsible AI:
Consultation Submission

4 August 2023

Acknowledgement of Aboriginal and Torres Strait Islander People

We acknowledge the Traditional Owners of Australia and their ongoing strength in practising the world's oldest living culture. We acknowledge the Traditional Owners of the lands and waters on which we live, learn, play and work, and we acknowledge that sovereignties of these lands and waters were never ceded. We pay our respects to Traditional Owners' Elders past and present, and commit to supporting them and Indigenous emerging leaders to create more equitable, healthy, and safe workplaces for all Australians, and in particular for those most disadvantaged.

About us

The Australian Institute of Health and Safety (AIHS) is the national association for people who work in generalist health and safety roles (practitioners and professionals). The AIHS represents more than 1,000 occupational health and safety (OHS) practitioners and professionals in Victoria, and more than 4,000 nationally. Beyond our membership, we advocate for the >20,000 people who work in health and safety across Australia.

In July 2019 our name changed from the Safety Institute of Australia to emphasise the importance of occupational health as well as safety. For more than 70 years we have worked towards our vision of safe and healthy people in productive workplaces and communities.

Our voice as a profession and association of health and safety experts is often distinct from those of government, employers, and workers. Our focus is on the science-, evidence-, and risk-based practice of OHS, to create safer and healthier workplaces.

As the peak body representing those who advise workplace stakeholders on OHS risks, including those related to artificial intelligence (AI) and automated decision-making (ADM), we thank you for the opportunity to contribute.

Background

In Australia, OHS is primarily regulated by nine state, territory, and federal regulatory agencies.

A core tenet of OHS practice is the provision of practical, actionable advice to duty holders to help them meet their obligations. The provision of this advice occurs both internally within organisations (e.g. OHS Advisors, Managers and Leaders), and externally from OHS consultants.

A tangible example of the risks of AI and ADM technologies today is duty holders using tools such as ChatGPT to search for and receive advice on OHS matters. We have concerns that these types of tools will provide misleading or inaccurate advice.

More broadly AI is and will continue to change the nature of work. It is therefore inherently linked to OHS.

Our submission

We submit:

1. All the example challenges outlined in section 2.2 of the paper can be viewed through an OHS lens, since AI and ADM technologies often operate in a work context. AI and ADM technologies are already and will continue to change the inherent nature of work, which makes them intrinsically linked to OHS.
2. OHS regulations should be added to the lists in section 3.1 of the paper.
3. OHS legislation and regulatory schemes across the country have been strong drivers and enablers of Australian workplaces being some of the safest and healthiest in the world. The advancement of AI and ADM technologies must not degrade, undermine, or repeal these schemes.
4. Like all laws, OHS regulatory schemes are open to disruption from emerging technologies. Rapidly evolving hazards, such as silica, occupational violence, and hazardous substances, have challenged these schemes in the past. But overall these schemes have withstood these challenges and continued to protect workers, hold duty holders to account, and regulate economic activities.
5. Some aspects of the existing state, territory, and federal OHS regulatory schemes can be adapted or are already suited to risks associated with implementation and/or use of AI technologies.
6. Existing obligations imposed on duty holders are useful universal requirements, regardless of technologies.
7. However some aspects of the legislation are not fit for purpose, such as the hierarchy of controls.
8. The advancement of AI technologies has, to date, generally benefitted corporations/employers more than individual users. Whilst as consumers, students, system users, workers, or patients, Australians have gained some utility (e.g. receiving services more efficiently), it has ultimately been productivity and profit-driven motives behind rising development and implementation of AI technologies. The development of these technologies has not always been user-centred, or implemented from the perspective of the worker's health and safety, both physical and psychological.

9. Since corporations and employers stand to gain the greatest benefits from the development, implementation and use of AI and ADM technologies, our view is they should bear the greatest regulatory responsibility.
10. In the same way an employer is responsible for ensuring that a piece of machinery in a workplace is safe, our view is that those who stand to gain the greatest profit and ultimate benefit from AI and ADM technologies should be obligated to ensure these same technologies do not harm workers and other persons impacted from the organisation's business activities.

Definitions

1. **Do you agree with the definitions in this discussion paper? If not, what definitions do you prefer and why?**

We find the use of the term "risks" problematic within the paper. In an OHS sense, risk has traditionally been considered as a function of the **likelihood** of a hazard impacting a person/s, and the potential **consequence** of that impact. Thus duty holders are required to perform risk assessments to aid the mitigation of impacts to person/s health and safety.

We believe it is appropriate to use the ISO standards definition provided; particularly as a lot of work we do in safety/health/risk management is framed around ISO standards.

Potential gaps in approaches

2. **What potential risks from AI are not covered by Australia's existing regulatory approaches? Do you have suggestions for possible regulatory action to mitigate these risks?**

In a workplace context, given the rapid pace of technology change, we don't believe we have a full understanding of the potential risks. We suggest we approach AI risk management in accordance with ISO3100 and adopt the new ISO/IEC 23894 Information Technology – Artificial Intelligence – Guidance on risk management standard. Specifically, AI risks for an organisation, as with any other risk, should be identified, quantified, or qualitatively described, and prioritized against risk criteria and objectives relevant to the organisation. When assessing the consequences identified in the risk assessment, the organisation should distinguish between a business impact assessment, an impact assessment for individuals, and a societal impact assessment.

Regulation at the organisational/OHS level should be performance-based to start with.

3. **Are there any further non-regulatory initiatives the Australian Government could implement to support responsible AI practices in Australia? Please describe these and their benefits or impacts.**

We recommend that OHS regulators, as key stakeholders in the OHS regulatory landscape, adopt the new ISO/IEC 23894 Information Technology – Artificial Intelligence – Guidance on risk management standard, and monitor against its implementation.

Regarding digital literacy, we call for investment in digital literacy of the OHS profession and OHS regulators in relation to AI systems at work. This knowledge must cover the foundations of AI systems for the entire lifecycle.

4. **Do you have suggestions on coordination of AI governance across government? Please outline the goals that any coordination mechanisms could achieve and how they could influence the development and uptake of AI in Australia.**

Australian OHS is regulated at both the state/territory and federal levels of government. Safe Work Australia, the national OHS policy agency, facilitates forums between the nine state, territory and federal regulators. Industry and union representatives are also stakeholders in these forums. We recommend Safe Work Australia are supported to include AI and ADM technologies in these briefings, as an efficient way of encouraging uniformity between the country's regulators. Individual regulators adopting variable approaches and responses to any workplace hazard increases the compliance burden and challenges for those entities operating in multiple jurisdictions.

All OHS regulators should consider adopting ISO23894 as a starting point for managing AI risks at work

Responses suitable for Australia

5. **Are there any governance measures being taken or considered by other countries (including any not discussed in this paper) that are relevant, adaptable and desirable for Australia?**

No response.

Target areas

6. **Should different approaches apply to public and private sector use of AI technologies? If so, how should the approaches differ?**

No response.

7. **How can the Australian Government further support responsible AI practices in its own agencies?**

As a significant procurer of goods and services, Australian Government agencies (and if legislative requirements can be met, State and Territory agencies too) can have a significant impact on AI practices, requirements, and outcomes.

As an example of an OHS framework, the Office of the Federal Safety Commissioner provides “model client” framework. This framework guides state (and corporate) entities procuring construction works on how to leverage commercial influence to achieve positive OHS outcomes on projects (<https://www.fsc.gov.au/useful-documents-downloads?s=Model%20Client#s>). Whilst the context is different, it demonstrates how large procurers of goods and services can affect significant change in our economy and communities. A similar approach may be designed to affect positive changes in the context of AI and ADM services or products.

8. **In what circumstances are generic solutions to the risks of AI most valuable? And in what circumstances are *technology-specific solutions* better? Please provide some examples.**

The timelines associated with academic research cycles, government policy analysis, and regulation implementation are orders of magnitude greater than those of AI and ADM technology development. It is therefore impossible for government to devise technology-specific solutions. Industry players will always be too nimble and adaptive. Rather, generic or principle and risk-based solutions should be the goal.

9. **Given the importance of transparency across the AI lifecycle, please share your thoughts on:**
- a. **where and when transparency will be most critical and valuable to mitigate potential AI risks and to improve public trust and confidence in AI?**
 - b. **mandating transparency requirements across the private and public sectors, including how these requirements could be implemented.**

No response.

10. Do you have suggestions for:

- a. Whether any high-risk AI applications or technologies should be banned completely?
- b. Criteria or requirements to identify AI applications or technologies that should be banned, and in which contexts?

No response.

11. What initiatives or government action can increase public trust in AI deployment to encourage more people to use AI?

No response.

Implications and infrastructure

12. How would banning high-risk activities (like social scoring or facial recognition technology in certain circumstances) impact Australia's tech sector and our trade and exports with other countries?

No response.

13. What changes (if any) to Australian conformity infrastructure might be required to support assurance processes to mitigate against potential AI risks?

No response.

Risk-based approaches

14. Do you support a risk-based approach for addressing potential AI risks? If not, is there a better approach?

We believe ISO23894 should be adopted and supported in an OHS context, for example to support ISO31000 (risk management) and ISO45000 (OHS management systems).

15. What do you see as the main benefits or limitations of a risk-based approach? How can any limitations be overcome?

One of the main benefits is it will help us to keep up with the pace of change. A prescriptive, rules-based approach is likely to continually face redundancy.

16. Is a risk-based approach better suited to some sectors, AI applications or organisations than others based on organisation size, AI maturity and resources?

No response.

17. What elements should be in a risk-based approach for addressing potential AI risks?

An AI impact assessment is essential to understand risks.

18. How can an AI risk-based approach be incorporated into existing assessment frameworks (like privacy) or risk management processes to streamline and reduce potential duplication?

Adopting ISO23894 will help to avoid duplication.

19. How might a risk-based approach apply to general purpose AI systems, such as large language models (LLMs) or multimodal foundation models (MFMs)?

No response.

- 20. Should a risk-based approach for responsible AI be a voluntary or self-regulation tool or be mandated through regulation? And should it apply to:**
- a. public or private organisations or both?**
 - b. developers or deployers or both?**

No response.

Should you wish to contact us to discuss any of the points raised above further, please do so via policy@aihs.org.au.

We thank you for the opportunity to provide this submission.

Yours sincerely,

Andrew Heinrichs

AIHS Policy and Advocacy Committee Chair

policy@aihs.org.au

www.aihs.org.au