Universities Australia's response to the Department of Industry's Proposals Paper

Introducing mandatory guardrails for AI in high-risk settings

4 October 2024

Introduction

Universities Australia (UA) welcomes the opportunity to provide input into the Department of Industry, Science and Resources' (DISR) consultation on its proposals paper for introducing mandatory guardrails for artificial intelligence (AI) in high-risk settings.

UA's 39 member universities are constantly adapting to the evolving nature of AI. This relates to how AI tools may be used to support teaching, learning and operational functions and activities, and any guidance required for the appropriate use of AI for students and staff. Australian universities are also investing significantly in research into all aspects of AI, producing world class research with 22 per cent of Australian AI research in the top 10 per cent of published research (compared to 16.2 per cent for China and 21 per cent for the US who are dominating AI research globally).[1]

Over the past couple of years, UA has provided responses to various consultations and inquiries concerning AI. For a more comprehensive overview of how universities have responded to the introduction of AI tools into the sector, we refer DISR to our submissions to the House Standing Committee on Employment, Education and Training's inquiry into the digital transformation of workplaces, the Senate Select Committee's inquiry on Adopting Artificial Intelligence, TEQSA's Assessment Reform, and the House Standing Committee on Employment, Education and Training's inquiry into the use of generative AI in the Australian education system.

Recommendations

UA has considered the mandatory guardrails and approach to defining high-risk AI outlined in the proposals paper and recommends that:

- The Government continues to enable a principle-based approach to AI in the higher education sector, driven by providing guidance to student and staff on the appropriate use of applications with the aim to realise the applications' potential.

[1] Australian Government, AI Technologies. https://www.industry.gov.au/publications/list-critical-technologies-national-interest/ai-technologies

- Any future potential regulatory approach to AI should offer some sort of specification to the sector it attempts to regulate and that a one size fits all approach will have deleterious effects on Australia's knowledge economy.
- The Government does not apply a list-based approach to defining high-risk applications.
- UA continues to work with the sector and the Government on Australia's future response and approach to AI.

Supporting a principle-based approach

UA welcomes the Government's efforts to implement a system which is fit for purpose to respond to the distinct risks AI poses to social and economic wellbeing. As argued in the proposals paper, UA acknowledges that AI presents new risks such as bias, discriminatory behaviour against minority groups and disinformation, with some applications potentially leading to serious harm to our communities and national security. Australian universities are committed to ensuring that AI tools are used in a safe and appropriate manner to realise the benefits of AI tools to our sector, such as enhancing student learning and increasing productivity in research. UA acknowledges that there is still significant work to do to ensure we get the balance right, and that this work will be constantly under review as our understanding evolves.

Universities have taken a principle-based approach in responding to the emergence of AI. The approach is in line with the Government's ten guardrails under the Voluntary AI Safety Standard and UA welcomes the guidance these voluntary guardrails provide to the sector and beyond on how to use AI safely and responsibly.

UA has previously made the case for why universities are uniquely placed to offer guidance on the use of AI to staff and students within their institutions. The sector is acutely aware of the risks overreliance on AI poses, and as such the sector offer guidance to staff and students on ethical use of AI. With leading AI experts within our institutions, the sector is constantly revising its guidelines, policies and approaches as our understand evolves and deepens. As early adapters and promoters of AI tools in research and teaching, universities have a solid understanding of what best practice looks like.

The higher education sector is unique in its ability to create safe innovation sandboxes which can explore the possibilities of AI and develop and refine solutions and approaches in a safe space. UA therefore urges the Government to not regulate the use of AI within universities at this stage.

UA recognises the Government's attempt to prevent harm from AI applications by introducing mandatory guardrails, it is a step towards a more regulatory approach to AI in Australia, not aligning with the principles-based approach the sector needs. UA acknowledges that as our knowledge of AI and its impacts evolves, greater regulation may become appropriate in the higher education sector.

UA also believes that any regulatory approach to AI should offer some sort of specification to the sector it attempts to regulate and that a one size fits all approach will have deleterious effect on Australia's knowledge economy. From the proposals paper, it is not clear how the mandatory guardrails will affect universities (i.e. are universities considered developers, deployers or end-users) and the obligations that may flow from that. Any regulation of the sector should be clear on requirements, compliance and consequences.

As such, universities should retain the autonomy to manage the opportunities and risk associated with AI within their own institutions.

Continue to monitor global AI regulation

Understandably, the Government as well as universities are looking at measures global peers take to AI guidance and regulation. From the proposals paper, it is clear that the Government is monitoring the experiences of other jurisdictions, especially the EU. UA has in previous submissions highlighted that it may be in Australia's interest to watch these experiences play out before rolling out comprehensive regulation of AI.

Defining high-risk AI is important. Doing so provides users of AI and the broader community with guidance as to what the mandatory guardrails would apply to. The proposals paper suggests, as one of the options, a list-based definition largely based on the EU's categorisation[2] of AI applications. As an example, EU has listed "education and training" as high risk in certain use cases where systems are used in determining admission, evaluating learning outcomes or monitoring student behaviour. UA acknowledges that using AI in these cases can cause harm if used inappropriately, and that strong guidelines are required. By applying a similar approach in Australia, higher education or parts of higher education would likely be captured under the high-risk definition, and the obligations associated with the mandatory guardrails would be applicable. As previously outlined in this submission, UA believes this approach is premature and that risks can be mitigated with strong guidance and policies at this stage.

UA urges the Government to be cautious about regulating AI in the higher education sector. UA would not be supportive of a list-based approach to defining high-risk as outlined in the proposals paper. While keeping up to date with movements in other jurisdictions, it may be in Australia's interest to monitor the implementation (and potential unintended consequences) of AI regulation around the world for now. While other countries' experiences serve as good guidance, they may not be fully fit for purpose in Australia as different approaches are driven by national values and priorities.

Continued collaboration on AI

To support our universities adapting to AI within their institutions, UA has established two working groups focusing on AI in teaching and AI in research. These groups bring together senior leaders and experts in the sector to lead and advise on constructive and ethical use of AI. They have been instrumental in exploring the opportunities of AI, identifying what best practice for the sector may look like and subsequently providing guidance on how to safely include AI tools in research and teaching practices. Through UA, they have provided advice to the Government on AI at various inquiries and consultations.

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[2] In its AI Act, EU has categorised AI applications into three categories of risk: First, applications and systems that create an unacceptable risk, such as government-run social scoring of the type used in China, are banned. Second, high-risk applications, such as a CV-scanning tool ranking applicants, are subject to specific legal requirements. Lastly, applications not explicitly banned or "high-risk" are largely unregulated. https://www.europarl.europa.eu/topics/en/topic/artificial-intelligence

UA already serves as the link between the sector and leading experts and the Government on other occasions. Through its membership and work already undertaken in understanding AI tools, UA is well positioned to continue to work closely with the Government on Australia's future response and approach to AI. Playing a coordinating role across the sector, UA will continue to work with the Government in ensuring that when the times come where regulation may be required, that it is sector specific and fit for purpose. Given its access to deep expertise, UA stands ready to work with the Government on this important endeavour.