16 September 2025

Our ref: [KS:PDTIP]

Dr James Popple
Chief Executive Officer
Law Council of Australia
Level 1, MODE 3
24 Lonsdale Street
Braddon ACT 2612

By email: ██████████████

Dear Dr Popple

Productivity Commission Interim Report: Harnessing data and digital technology

Thank you for the opportunity to provide feedback on the Productivity Commission's Harnessing data and digital technology interim report (**the interim report**).

This response has been compiled by the Privacy, Data, Technology and Intellectual Property Law Committee.

Our comments in response to the interim report are set out below.

Productivity and the regulation of AI

Our committee members have raised significant reservations with the proposal to pause steps to implement mandatory guardrails for high-risk AI until reviews of the gaps posed by AI to existing regulatory structures are completed.

QLS has previously submitted the significant risks posed by the use of AI justifies a strengthened and precautionary approach to AI regulation.

QLS supports progress towards an AI Act to instil mandatory guardrails with a clear articulation of which AI capabilities, pose the greatest risk.

AI regulation and interaction with IP and Privacy

The interim report outlines AI risk areas including consumer protection and intellectual property.

There remains a lack of clarity as to how intellectual property rights are impacted by the use of AI systems.

For example, the Law Council has previously identified Indigenous cultural and intellectual property may be considered a "high-risk" AI system.

The failure to implement mandatory guardrails in a timely manner risks significant impacts to the respectful and culturally appropriate protection of Indigenous intellectual property.[1]

Additionally, data scraping poses significant privacy and security risks as noted in the interim report.

Generative AI tools are often trained by scraping and analysing large amounts of publicly available data. The Clearview AI Inc case demonstrates the substantial privacy implications for individuals whose personal information, including biometric data is increasingly and unlawfully scraped from the internet to develop AI models.

Ensuring adequate protection of privacy emphasises the need to prioritise both existing privacy and AI reform measures to ensure they are fit for purpose and respond to existing risks to data privacy and security.

Security risks

Finally, without mandatory guardrails, developers and deployers of AI systems will be insufficiently persuaded to imbed data security frameworks into these technologies.

Supply chains must be incentivised to create secure-by-design AI systems, adequately evaluate data quality, identify limits and constraints of AI systems and prioritise data security.[2]

Whilst we support the avoidance of regulatory duplication and unnecessary complexity, there are real public interest risks with delaying steps to mandate appropriate guardrails.

We suggest steps be taken to implement mandatory guardrails in consultation with cross-disciplinary experts as a priority.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully
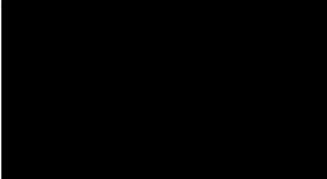
Genévieve Dee
President

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[1] Calls to protect Indigenous intellectual property from AI 'cultural theft' - ABC News
[2] Engaging with artificial intelligence | Cyber.gov.au