DIGITAL RIGHTS WATCH

Submission to the Productivity Commission

regarding

Harnessing Data and Digital Technology

September 2025

Who we are

Digital Rights Watch is a charity founded in 2016 to promote and defend human rights as realised in the digital age. We stand for privacy, democracy, fairness, and freedom. Digital Rights Watch educates, campaigns, and advocates for a digital environment in which rights are respected, and connection and creativity can flourish. More information about our work is available on our website: www.digitalrightswatch.org.au

Acknowledgement of Country

Digital Rights Watch acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land and community. We acknowledge the Aboriginal and Torres Strait Islander peoples as the true custodians of this land that was never ceded and pay our respects to their cultures, and to elders past and present.

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Introduction and general remarks

Digital Rights Watch (DRW) welcomes the opportunity to submit comments to the Productivity Commission in response to the interim report regarding the "Harnessing Data and Digital Technology" inquiry. DRW is excited for the possibilities digital technology brings to our lives. The Internet has done wonderful things for humanity and we can't wait for the next wave of life-improving technology

However, we are also concerned by the threats that new technology, particularly in the hands of powerful companies and governments, can pose to our human rights and wellbeing. As there are many companies commenting on the supposed benefits of their AI-driven tools, in this submission we focus on areas of concern - particularly those areas where we believe that the Productivity Commission has taken a wrong turn in its interim report.

As an organisation working on the protection of digital rights, we are concerned about business practices that encourage the over-collection and over-retention of personal information that threatens people's fundamental right to privacy, increases the harms associated with data breaches, and threatens national security by creating 'honeypots' of information.

We are also concerned about the under-regulation of AI businesses and the "race to the bottom" to provide an environment in which Australians' rights and wellbeing are placed second to the desires of enormous global corporations to extract value from us.

We actively participate in public consultations regarding the development of legislation and policy in relation to technology and human rights. Our recent submissions most relevant to data and digital technology include:

- Submission to the Office of the Australian Information Commissioner regarding the Children's Online Privacy Code[1]

[1] Digital Rights Watch Submission to the Office of the Australian Information Commissioner on Phase 2 of the Consultation on the Children's Online Privacy Code, August 2025 https://digitalrightswatch.org.au/2025/08/08/submission-to-the-oaic-regarding-the-childrens-online-privacy-code/

- Submission to the Department of Industry, Science and Resources regarding Introducing mandatory guardrails for AI in high-risk settings[2]
- Submission to the Treasury regarding the Review of AI and Australian Consumer Law 2024[3]
- Submission to the Select Committee on Adopting Artificial Intelligence regarding the inquiry into the opportunities and impacts for Australia arising out of the uptake of AI technologies in Australia[4]
- Submission to the Department of Industry, Science and Resources in response to the Safe and Responsible AI issues paper[5]
- Submission to the Digital Technology Taskforce in response to 'Positioning Australia as a leader in digital economy regulation - Automated Decision Making and AI Regulation' Issues Paper[6]
- Submission to the Senate Economics Committee Inquiry into the influence of international digital platforms[7]

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[2] Digital Rights Watch Submission to the Department for Science, Industry, and Resources regarding Introducing mandatory guardrails for AI in high-risk settings, October 2024 https://consult.industry.gov.au/ai-mandatory-guardrails/submission/view/320

[3] Digital Rights Watch Submission to the Treasury regarding Review of AI and Australian Consumer Law, November 2024 https://digitalrightswatch.org.au/2024/11/24/submission-review-of-ai-and-australian-consumer-law-2024/

[4] Digital Rights Watch Submission to the Select Committee on Adopting Artificial Intelligence regarding the inquiry into the opportunities and impacts for Australia arising out of the uptake of AI technologies in Australia, 17 May 2024, Available at: https://digitalrightswatch.org.au/2024/10/07/submission-the-opportunities-and-impacts-for-australia-arising-out-of-the-uptake-of-ai-technologies/

[5] Digital Rights Watch Submission to the Department of Industry, Science and Resources in response to the Safe and Responsible AI issues paper, 14 August 2023, Available at: https://digitalrightswatch.org.au/2023/08/14/safe-responsible-ai/

[6] Digital Rights Watch Submission to the Digital Technology Taskforce on the Issues Paper 'Positioning Australia as a leader in digital economy regulation - Automated Decision Making and AI Regulation', 22 April 2022, Available at: https://digitalrightswatch.org.au/2022/04/22/submission-regulating-ai-and-automated-decision-making-in-australia/

[7] Digital Rights Watch Submission to the Senate Economics Committee inquiry into the influence of international digital platforms, 14 March 2023. Available at: https://digitalrightswatch.org.au/2023/04/26/democratising-digital-economies/

Summary

Digital Rights Watch is disappointed by the Productivity Commission's rose-tinted view of AI & productivity.

The Productivity Commission's interim report on "Harnessing Data and Digital Technology" is quick to highlight the benefits of a supposedly inevitable AI productivity boost, but we must ask who will be the recipients of those benefits and who will be paying for them. It is clear that the answer is "big tech corporations in America" and "regular Australian people", respectively.

We should also consider the potential for AI not just to improve productivity, but to unalter or even to worsen it. The cost of AI subscriptions to end-users are increasing due to the lack of profitability of large AI companies. Given the vast capital sums invested in AI, there is a significant chance of the bubble bursting, presenting risks to the Australian economy that increase the more deeply-invested the country becomes in AI.

The interim report advocates for a pause on regulation and discusses approaches that would roll-back the few existing protections that we have. This is at odds with most Australians who want the government to act to protect them from harm by unaccountable and unfair AI systems.

This dystopian view of the world, where Australians' rights and wellbeing are sacrificed on the altar of big tech profitability cannot remain unchallenged and must not be brought about.

Our recommendations

- AI companies need to be required to offer transparency of their algorithms, models, and training data so that they can be tested and audited for practices such as illegal discrimination, copyright infringement, or other illegal business practices. AI companies must not be allowed to use the complexity of their systems to obfuscate poor corporate behaviour.
- Existing regulators such as the ACCC and OAIC need to be better resourced to address breaches of existing regulation by AI companies
- There is a requirement for AI-specific regulation in addition to existing business regulations. It is not acceptable to weaken existing regulatory frameworks at the behest of AI companies profitability.
- There are high-risk uses of AI. We cannot wait for reviews to see if existing regulations are sufficient and there must be a moratorium on their use.
- Copyright protections for Australian creators must not be weakened to benefit AI companies through TDM exemptions or other means.
- “Alternative pathways” for compliance with privacy laws are a watering-down of the few privacy protections that we enjoy and therefore they are to be rejected. Australians’ privacy rights are not for sale to AI companies.
- The right to erasure is an important privacy reform that must be passed. AI companies must take responsibility for the data in their systems, and that includes gathering consent. Consent without possibility of later revocation is not meaningful consent.

Commentary on proposed interim recommendations

Artificial Intelligence

Draft recommendation 1.1: Productivity growth from AI will be built on existing legal foundations & Draft recommendation 1.2: AI-specific regulation should be a last resort

We agree with the Productivity Commission's assertion that *"consistent and reliable regulation can help promote trust in AI technology"*[8] and reject the false dichotomy presented that *"some stifling of innovation is the unavoidable cost of adequate consumer protection"*. [9] Technical innovation requires guardrails to ensure not only a level playing field for players in the industry, but also that investors can feel confident that new products brought to market are suitable.

It is out of touch to propose a pause on regulation at a point in time when we need it urgently. Most people want better regulation of big tech: 64% of Australians want stronger AI regulation, and 83% say they would be more willing to trust AI systems when assurances are in place. Australians also want stronger privacy protections, not workarounds like *"alternative pathways"* designed to allow big tech to circumvent our existing privacy principles. We've got good reasons for this: a 'let it rip' regulation-as-a-last-resort approach to AI is a policy that favours big tech's power over the human rights of everyday Australians.

While we concur that existing regulation should be brought to bear on AI systems, this alone is insufficient and at risk of being functionally equivalent to inaction. Incorporating AI specific regulation into existing regulatory regimes - such as privacy, administrative law, online safety, corporations, intellectual property, competition and consumer protection, and anti-discrimination - is likely to be politically contested and slow. It is an unrealistic approach in circumstances where regulatory action is urgently needed.

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[8] Harnessing Data and Digital Technology, Interim Report, August 2025. p10.
[9] Harnessing Data and Digital Technology, Interim Report, August 2025. p16.

There are aspects of the development of AI products that are unique to those products: The algorithms used in the models, the training data provided, the use of existing AI models to train new AIs, and the nature of probabilistic decision-making. These unique features of AI mean that there are gaps in existing regulation that need to be covered. We feel that it is entirely reasonable to ask that AI products used in Australia provide public transparency into their models, algorithms, and training data so that companies can be audited for regulatory and legal compliance.

We also think that there would be a real benefit in thinking about the powers that an AI regulator might need to be able to promote and monitor compliance with existing and new regulation. This includes seeking transparency from industry, intervening in the processes used by developers to implement the guidelines as needed, and offering guidance for both developers and deployers. There may also be benefit in a bespoke regulator in serving as a clearing house for complaints, and making policy recommendations that arise as a result.

Existing regulators such as the ACCC and OAIC need to be provided with sufficient funding to allow them to work in an environment where “AI” will be used by companies to duck existing regulations and obfuscate their enforcement. Proper regulation of the business environment is a requirement for businesses to be able to operate in the first place, not a barrier to participation.

Draft recommendation 1.3: Pause steps to implement mandatory guardrails for high-risk AI

There is the potential for some kinds of AI to be considered too high-risk and too dangerous such that it should be prohibited. This was envisaged in the European Union AI Act, for example, because the risk categories are attached to consequences. We cannot afford to wait for the proposed complete gap analysis of existing regulations before taking action on high-risk AI usage.. We think a human rights approach leads to an inevitable conclusion that certain development and applications of AI must be banned, including for example, following the lead of the EU and banning:

- AI use cases that pose a high risk to people's human rights, such as in healthcare, education, and policing;
- AI systems that deploy dark patterns, that is "subliminal, manipulative, or deceptive techniques to distort behaviour and impair informed decision-making," or exploit vulnerable people;
- AI systems that infer sensitive characteristics such as someone's political opinions or sexual orientation;
- Real-time facial recognition software in public places; and
- The weaponisation of AI.

In terms of copyright, we recognise that AI systems and their appetite for training data represents an existential threat to Australia's creative industries. Each year, these industries contribute more than $60bn to the Australian economy[10], providing a disproportionate amount of work and revenue to remote-living and First Nations people.[11]

We profoundly reject the call to grant the AI industry a text and data-mining (TDM) exemption[12] to the copyright act, or similar legal shenanigans like "fair dealing". It is not acceptable to force Australian creatives to subsidise the

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[10] "Highlighting the value of our cultural and creative activity", Bureau of Communications, Arts and Regional Research: https://www.arts.gov.au/news/highlighting-value-our-cultural-and-creative-activity

[11] Cultural and Creative Activity in Australia, 2008–09 to 2022–23 (Methodology Refresh)—Statistical Working Paper https://www.infrastructure.gov.au/department/media/publications/cultural-and-creative-activity-australia-2008-09-2022-23-methodology-refresh-statistical-working

[12] Harnessing Data and Digital Technology, Interim Report, August 2025. p27.

world's largest tech companies by granting the latter unfettered and unremunerated use of the former's work. It is critical that Australian creatives are given the ability to refuse consent for AI companies to use their work, or to demand payment when it is used. [13]

The proposed TDM exemption for big tech will see not only industrialised levels of copyright infringement but also an acceleration of mass data extraction and corporate surveillance. This has already caused enormous problems for our democracy by proliferating disinformation in our civic spaces[14]. It also creates enormous cybersecurity risks, as millions of Australians caught up in data breaches know too well. We should be disincentivising these business models, not leaning into them. Most people feel that we missed an opportunity by failing to properly regulate social media. We must not miss the opportunity to regulate AI while we still have the chance.

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[13] https://www.theguardian.com/technology/2025/aug/06/arts-and-media-groups-demand-labor-take-a-stand-against-rampant-theft-of-australian-content-to-train-ai

[14] Hagey & Horwitz, "Facebook Tried to Make Its Platform a Healthier Place. It Got Angrier Instead.", 2021 https://socialmediainjury.com/wp-content/uploads/2022/11/03-Facebook-Tried-to-Make-Its-Platform-a-Healthier-Place.-It-Got-Angrier-Instead.-WSJ.pdf

Privacy regulation

Draft recommendation 3.1: An alternative compliance pathway for privacy

As noted in our previous submissions, many of the harms that arise from AI and automated decision-making stem from inappropriate collection and use of personal information. As such, robust privacy regulation can go a long way toward mitigating privacy-related harms caused by AI.

We completely reject the assertion that regulated entities should be granted *"alternative compliance pathways"* instead of being required to meet their existing obligations under the Privacy Act.[15] This is for two reasons:

First, the Privacy Act, as it stands, still has many deficiencies. We cannot afford to allow companies to continue to play fast and loose with Australians' personal and private information, only at the accelerated pace that AI systems allow. AI companies will never allow *"alternative pathways"* to provide as much protection to Australians as the existing requirements of the Privacy Act and we reject such watering-down of critical legislation. When companies complain that they struggle to follow the Privacy Act[16], the correct response is not to weaken our privacy protections, but for those companies to change their business practices to stop treating Australians as a data-producing asset class to be exploited by big tech.

Second, it is profoundly upside-down to loosen the few privacy protections that Australians enjoy in order to facilitate the invasion of our privacy by AI companies who seek to monetise us and our data. The Productivity Commission needs to realise that strong regulation is required not only to *"build community trust and business confidence"* but primarily to protect Australians from being exploited by the largest tech companies in the world.

Proposing the *"alternative pathways"* is harmful, but to combine them with a *"safe harbour"* proposal[17] is reckless. Not only will large, powerful, wealthy

[15] Harnessing Data and Digital Technology, Interim Report, August 2025. p51.
[16] Harnessing Data and Digital Technology, Interim Report, August 2025. p54.
[17] Harnessing Data and Digital Technology, Interim Report, August 2025. p59.

companies be able to misuse Australians' data, but their misuse will be legally-protected from redress. Given the impact of data breaches can be devastating and permanent for individuals, it is not acceptable for companies to neglect their obligations to treat our data with the diligence required by the Privacy Act.

Draft recommendation 3.2: Do not implement a right to erasure

This is simply wrong. When companies require the data of individuals, they are required to gather our consent. For consent to be meaningful, it must be informed, freely-given, time-limited, and revocable.

If Australians are not allowed to revoke their consent, via a right to erasure or other means, they cannot reasonably be deemed to have granted consent in the first place.

It is not acceptable for big tech to take our personal information for one reason and then use it for an entirely different purpose; this is totally inconsistent with respecting our human rights. If Privacy Act exemptions get implemented retroactively, the information that has already been hoarded about Australians could be used without our consent or even knowledge. This would be extremely damaging not only to the privacy of individual Australians, but also to our collective ability to build an economy on advanced technologies. Australians tell us that they will trust AI if it is properly regulated. If we want a strong, productive economy, training AI systems on our stolen information is exactly where we *don't* want to be, and where we can't afford to be.

The right to erasure is a critical part of Privacy Act reforms and it cannot be sacrificed in order to provide AI companies with *carte blanche* to use and abuse Australians' information without their consent. Without a right to erasure, AI companies will be able to appropriate and hoard Australians' information in perpetuity, potentially causing individuals harm for their entire lives. The "compliance burden" of being required to delete data for which they do not have consent is simply not high enough to justify this dangerous theft of our data.