



NSW Government Response to the Parliamentary Inquiry into AI

October 2024



Introduction

The NSW Government is committed to ensuring the safe, ethical, and responsible development and use of Artificial Intelligence (AI) across NSW. Central to the NSW approach to AI is building public trust in ethical and responsible decision-making and use of data, with a clear focus on community outcomes. The NSW Government welcomes the opportunities presented by AI, while maintaining a commitment to the values of transparency, community benefit, fairness, privacy and security, and accountability.

The framework for the responsible use of AI in NSW Government consists of the AI Strategy, AI Ethics Policy, the Digital Assurance Framework and the AI Assessment Framework. The Assessment Framework is a self-assessment tool supported by an expert AI Review Committee (AIRC). In addition, use of AI by NSW Government agencies is governed by the NSW privacy framework and must comply with existing NSW privacy, data protection and information access legislation.

The NSW Government has reviewed the recommendations of the Legislative Council's Portfolio Committee No. 1 - Premier and Finance *Inquiry into Artificial Intelligence in NSW (AI Inquiry) Final Report* and thanks the Committee for their detailed review into Artificial Intelligence in NSW. Out of the 12 recommendations made to the NSW Government:

- four are supported in full
- four are supported in principle
- two are noted for further consideration
- one is not supported

It is noted that recommendation 9 is addressed to the NSW Legislative Council and not included in this response.

The specific recommendations of the Committee are addressed below.

Response to recommendations

Recommendation 1: That the Government investigate how the Artificial Intelligence Assurance Framework could be effectively integrated into the Procurement Policy Framework.

Response: Supported

The NSW AI Assessment Framework (formerly the AI Assurance Framework) ensures that procurement of AI solutions align with ethical standards, to mitigate risks and enhance public trust. The NSW Government will investigate appropriate integration of the AI Assessment Framework into the NSW Government Procurement Policy Framework, ensuring AI ethical considerations are consistently addressed throughout the procurement process.

Actions the NSW Government has already taken to mitigate AI procurement risks across agencies include:

- All NSW Government agencies are mandated to use the AI Ethics Policy and the NSW AI Assessment Framework when building and buying AI enabled solutions.
 - The AI Ethics Policy ensures AI procurement is appropriate, bias-free, transparent, secure, privacy-compliant, and human-reviewed, promoting fairness and accountability.
 - The AI Assessment Framework identifies procurement risks and aligns with the AI Ethics Policy, including questions to assess and manage risks related to procurement process and contracting with suppliers.
- In June 2024, Digital NSW (within Department of Customer Service) published the AI Procurement Essentials, which provides NSW Government buying teams with key considerations for sourcing and managing AI enabled systems. It maps the recommendations of the AI Assessment Framework to Plan, Source and Manage phases of the NSW Government Procurement Policy Framework.

Additionally, the NSW Government's contribution to the National Assurance Framework and ongoing consultation with other jurisdictions will promote consistent AI assurance in procurement, minimising diverse interpretations and reducing unnecessary costs for government contracts.

Recommendation 2: That the Department of Education prioritise the provision of specific guidance and training for all teachers on the ethical and effective use of artificial intelligence within education.

Response: Supported

The NSW Department of Education works collaboratively with other states and territories through the National AI In Schools Taskforce to ensure schools are guided in the ethical and effective use of AI in education. This has led to the development of the *Australian Framework for Generative Artificial Intelligence in Schools*.

A suite of professional learning tools has been released to NSW public schools to enhance understanding of generative AI and assist staff to operationalise the *Australian Framework for Generative Artificial Intelligence in Schools*. Key concepts outlined include data privacy and security, ethics, academic integrity and accountability.

The department is also trialling its own generative AI tool, NSWeduChat which provides a safe and secure environment for teachers and staff to explore ethical and effective use of AI. The trial supports the department in developing key guidance and training materials to further support AI capability uplift.

In addition, the NSW Department of Education has released Guidelines regarding the use of generative AI to NSW public schools. These guidelines include information on enabling generative AI opportunities while managing risks, navigating legal considerations for generative AI use and exploring generative AI educational uses.

Recommendation 3: That the NSW Government advocate to the Australian Government for greater protection of the copyright and intellectual property of those working in creative industries in light of the challenges presented by generative artificial intelligence.

Response: Supported

The NSW Government is committed to working with the Australian Government to ensure the rights of artists are protected with regards to the use of AI.

Creative Communities, the NSW Government's 10-year integrated policy for arts, culture and the creative industries, acknowledges that technology is rapidly changing the way many things are done. In particular, digital technology, AI and software are transforming how artists and creative businesses make and share work.

While there are several ethical, legal and social implications to consider, the creative sector is exploring innovative uses of AI and machine learning to enhance access to creative experiences. However, the NSW Government acknowledges the importance of considering copyright issues when navigating this technological environment, particularly where the training and development of AI systems draw upon protected inputs that were not created by the AI developer.

The Commonwealth is responsible for intellectual property law and policy in Australia, including copyright. It manages intellectual property legislation including the *Copyright Act 1968 (Cth)*. The Commonwealth Attorney General has established the Copyright and Artificial Intelligence Reference Group as a standing mechanism to engage with stakeholders across a wide range of sectors on issues at the intersection of artificial intelligence and copyright. Its initial focus is on the use of copyright material as inputs for AI Systems.

Recommendation 4: That the Department of Communities and Justice examine the ways in which access to courts and the justice system in New South Wales could be expanded through the appropriate use of artificial intelligence, while ensuring that judicial discretion remains intact.

Response: Noted for further consideration

The Department of Communities and Justice (DCJ) recognises that artificial intelligence could have a role to play in expanding access to justice and have broad implications across the justice system. Further analysis of the specific potential uses of artificial intelligence and consultation with legal stakeholders would be required for DCJ to come to a firm position on whether it should be used to improve access to justice, noting that:

- the recommendation cuts across a wide range of justice agencies within DCJ
- the use of artificial intelligence could have far-reaching consequences for users of the justice system
- there are significant and complex risks in implementing artificial intelligence in the justice setting, as noted in the Parliamentary Inquiry's report.

Recommendation 5: That the Government consider maintaining a publicly available register of automated decision-making systems available within Government and its agencies and when they are applied.

Response: Support in principle

NSW Government recognises the need to ensure transparency around the availability and use of automated decision making (ADM) by government. Creating a register for the broad category of ADM systems is unlikely to be feasible given the ubiquitous nature of ADM and the lack of universally accepted definitions which are subject to ongoing debate. The resource implications of such an approach, including administrative burdens on agencies, would also be considerable.

The NSW Government will consider how to improve visibility over its use of ADM, exploring options to deliver the intent of the recommendation in a way that is effective and fiscally responsible. For instance, NSW Government will consider the merits and feasibility of a register of high-risk use cases, consistent with global best practice. The NSW Government may also assess existing obligations under the *Government Information (Public Access) Act 2009*, as well as reporting mechanisms and agency compliance obligations under the AI Assessment Framework, with consideration given to ensuring that public reporting does not require agencies to disclose confidential or sensitive information. The NSW Government will also consider the work of the NSW Ombudsman in mapping and analysing the use of ADM systems in government, noting these reports have been characterised as a "starting point" by the NSW Ombudsman.¹

It is noted that a register alone will not address all transparency needs. Currently, the NSW AI Assessment Framework requires agencies using AI to ensure that they can clearly explain any AI-influenced decisions, articulate safeguards and have accessible appeal processes.

Recommendation 6: That the Government deliver a community education campaign about artificial intelligence, that informs the public about its risks, and to encourage effective and safe use.

Response: Not supported

The NSW Government recognises the need to inform the public about the risks of AI and promote safe and responsible use. However, at this stage, there is no plan for the NSW Government to deliver a general community education campaign about AI. There may be benefit in undertaking more targeted campaigns about specific risks or to encourage safe and responsible use of AI in specific contexts, but any such

¹ NSW Ombudsman, *Automated Decision-Making in NSW: Mapping and Analysis of the use of ADM systems by state and local governments*, March 2024, p. 37.

campaigns would need to be carefully considered, including a scan of existing educational information and consultation with the Commonwealth to avoid duplication.

Recommendation 7: That NSW Government Ministers liaise with their state and federal counterparts to ensure a consistent approach in the governance of artificial intelligence.

Response: Supported

The NSW Government supports coordinated efforts with state and federal counterparts to ensure a consistent approach in the governance of AI.

NSW has participated in the Data and Digital Ministers Meeting (DDMM) since its establishment in 2018 as the Australian Data and Digital Council (ADDC). The DDMM drives effective intergovernmental cooperation on national data and digital priorities for smarter service delivery and improved policy outcomes for all Australians.

Since early 2023, AI governance has been a central focus for the DDMM. Notably, NSW played a key role in co-designing the *National Framework for the Assurance of Artificial Intelligence* (published on 21 June 2024) through its collaboration with other states and Territories and the Commonwealth. NSW will continue to engage with other jurisdictions on this issue.

Recommendation 8: That the Government conduct a regulatory gap analysis, as soon as possible, in consultation with relevant industry, technical and legal experts to:

- assess the relevance and application of existing law to artificial intelligence
- identify where changes to existing legislation may be required
- determine where new laws are needed.

Response: Supported in principle

Given the rapid development of AI, NSW recognises the need to ensure that regulatory frameworks are fit for purpose. NSW acknowledges the views of some stakeholders that there may be gaps or opportunities for reform of NSW laws to better respond to AI.

This recommendation will be considered in line with the NSW Digital Strategy. Specifically, commitment 26 which states ‘Consider whether NSW legislation and regulations are fit for purpose to effectively mitigate risks and manage harms associated with AI’. In line with the Digital Strategy, it is noted that any regulatory review would take a risk-based approach, be guided by existing frameworks such as the NSW AI Ethics Policy, seek to align with other jurisdictions and standards, and leverage existing partnerships and interjurisdictional networks.

NSW Government is also aware that many areas where regulation or reform may be needed are the responsibility of the Commonwealth, and that most stakeholders have agreed on the need for a consistent approach across jurisdictions. Related work being undertaken by the Commonwealth include consideration of introducing mandatory guardrails for AI in high-risk settings and implementation of recommendations of the review of the *Privacy Act 1988* (Cth), including recommendations directed at mitigating the privacy risks associated with Facial Recognition Technology (FRT), a form of AI.

NSW will be informed by results of the consultation on introducing mandatory guardrails for AI in high-risk settings and the Commonwealth’s approach to reform in determining how to best approach any review of NSW regulation.

NSW will also continue to work with other stakeholders, including industry legal and technical experts, in this process.

Recommendation 9: That the Legislative Council pursue the establishment of a Joint Standing Committee on Technology and Innovation to provide continuous oversight of artificial intelligence and other emerging technologies.

Response: Noted

The NSW Government notes that Recommendation 9 is an action for the Legislative Council.

Recommendation 10: That the Government appoint a NSW Chief AI Officer, supported by Chief AI Officers in departments and agencies, to maximise the responsible use of artificial intelligence in a rapidly changing technology landscape, including:

- working across all government departments and offices, including with the Information and Privacy Commissioner, Chief Scientist and Chief Data Officer, to assist the responsible uptake and regulation of AI technology by Government
- providing ongoing strategic advice to the Government about trends, opportunities and risks of AI use in NSW government departments
- leading public education initiatives.

Response: Noted for further consideration

The NSW Government is committed to establishing clear accountabilities for the responsible use of AI. Currently, accountabilities across government are managed through the AI Assessment Framework. Under this framework, Digital NSW is collaborating with departments to establish compliance plans, which require established accountabilities, ensuring governance and assurance oversight for responsible AI practices, and transparency through annual reporting.

The NSW Government considers that a flexible approach to accountability is needed to accommodate for the differences in agency size and subject matter, AI usage, capacity, and statutory responsibilities. This is similar to the approach taken by the Australian Government's Digital Transformation Agency Policy for the responsible use of AI in government, which identifies accountable officials rather than requiring Chief AI Officers in every agency.

NSW will consider the roles and responsibilities of the proposed NSW Chief AI Officer and agency Chief AI Officers, and explore options for the optimum allocation of these responsibilities across NSW Government, in line with the NSW AI Assessment Framework.

Recommendation 11: That the Government investigate creating a NSW Office of AI with the resources and expertise to ensure the state's service delivery is protected and enhanced through the responsible use of AI technology, including:

- working across government departments to assist the uptake of AI technology to enhance service delivery, including procurement and internal development
- updating the NSW AI Assurance Framework and other AI guidelines periodically, to maintain relevance, legality, national and global alignment and appropriateness for use in NSW
- undertaking public safety campaigns. For example, to raise awareness about deepfake content, misinformation and disinformation online.

Response: Supported in principle

The NSW Government agrees that responsible uptake and use of AI requires cross-agency expertise and leadership to ensure that that NSW keeps pace with global best practice. The Government will investigate the best approach to ensuring agencies have access to best practice and up to date policy advice, ethical guidance, educational materials, and support in implementing responsible AI practices.

This will include consideration of whether a new centralised office is needed or whether to leverage existing structures, such as Digital NSW and Data NSW, to deliver on the intent of this recommendation. Digital NSW currently plays a role in delivering the responsibilities outlined in this recommendation. Digital NSW plays a leadership role in AI and engages in cross-departmental collaboration to implement the NSW AI Assessment Framework, ensure compliance and provide guidelines for responsible AI practices.

The Government may look to other comparable jurisdictions that have successfully established AI offices to lead strategy, policy, and industry coordination to inform the approach to this recommendation.

The delivery of public safety campaigns will be considered in line with recommendation 6.

Recommendation 12: That the Government extend partnerships with industry academics, experts and professionals to ensure New South Wales is at the forefront of trends that enhance and protect the state's interests related to AI technology, including:

- a) providing public reports on matters, such as:
 - i) new technologies relevant to state service delivery,
 - ii) the landscape of AI regulatory frameworks, and
 - iii) trends, risks and opportunities for the state associated with artificial intelligence. For example, the impact of artificial intelligence on NSW labour markets,
- b) providing ongoing strategic advice to the Government about trends, opportunities and risks of AI use in New South Wales,
- c) testing AI models to provide public advice on their use in New South Wales. For example, plain language explanations of Large Language Models and the operation of social media algorithms,
- d) providing advice on educational requirements to enhance the state's AI capability, including through primary, secondary, vocational and tertiary education,
- e) partnering with private enterprise to undertake projects that align with the state's public interest while upskilling the technology industry through a dedicated AI Engineers apprenticeship program,
- f) collaborating with the Federal Government's AI Safety Institute to enhance the country's capability and alignment, provide security to the public, attract global talent in the AI industry and offer certainty to business and investors.

Response: Supported in principle

The NSW Government acknowledges that partnering with industry leaders and experts is critical to harnessing the opportunities presented by AI and protecting the state's interests related to AI technology. NSW recognises that much of the nation's AI expertise lies outside government and is committed to strengthening links with these stakeholders and partners to access insights on emerging technologies and inform decisions on law, policy, and service delivery. This includes advisory capabilities at senior government levels.

NSW has a strong history of strategic partnerships with other jurisdictions, industry and academia, an ongoing strategic priority defined in the NSW Digital Strategy. Examples of NSW's partnerships include:

- NSW collaborates with the Federal Government through the DDMM and partners with key Commonwealth departments to enhance AI safety, regulation and business certainty.
- Strategic advice on AI trends and safe development is obtained through multiple channels, including NSW AI Review Committee meetings, industry consultations such as the Australian Information

Industry Association, regular meetings between Chief Information Officers and external digital partners, and initiatives supported by the NSW innovation procurement pathways program.

- Public reports on AI-related matters are conducted by statutory authorities and industry, covering critical topics and trends such as ADM, NSW's regulatory approach, and the opportunities and risks of generative AI.
- Investment NSW is currently exploring partnerships with private enterprise to upskill the local workforce and develop R&D in NSW. Whether this would involve a specific apprenticeship program has yet to be finalised. Investment NSW is proactively targeting a pipeline of global AI businesses to land and expand in NSW, bringing and developing top AI talent in the State.
- The NSW Department of Education is focused on supporting AI capability development through its role in the National AI in Schools Taskforce and AI-focused initiatives such as NSWeduChat. The NSW Education Standards Authority's (NESA) syllabus development integrates expert advice on AI challenges and opportunities and enhancing AI capability in new K-12 curricula.
- At a sector-to-sector level, NSW has the Waratah Research Network as a key vehicle to enable agencies to benefit from university-based research capability, assistance, and promote cross-sector engagement. This Network is led by the NSW Chief Scientist and Engineer (Premier's Department) and the Deputy Secretary, Education and Skills Reform (DoE).
- Investment NSW focuses on education and capability building in AI by collaborating with universities and vocational institutions such as TAFE NSW's Institute of Applied Technology.

The NSW Government will continue to consider how to expand and strengthen partnerships with industry leaders and experts to harness the opportunities presented by AI while upholding the highest ethical standards.