

## Snapshot of Key Laws and AI

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This summary outlines how several areas of law currently operate and how AI would be treated. It also notes where the Government has commenced reviews.

- There is uncertainty regarding the extent to which Australian laws are effective in addressing the harms of AI. Whilst this will become clearer as cases progress through the courts, there are gaps in the current laws.
- A number of laws referred to below are responsive, rather than preventative, in that they rely on an individual identifying that they have been harmed, commencing proceedings after the event, and/or making a complaint to the relevant regulator after the event. This is not an exhaustive list of all relevant laws. For example, relevant laws apply to certain sectors or industries including those administered by the Australian Securities and Investment Commission and the Australian Prudential Regulation Authority.

### Negligence

- Action in negligence relies on an individual being aware of the harm caused and bringing an action in the courts for damages.
- At common law, a duty of care will generally arise when the defendant should have foreseen that their conduct could result in injury to the plaintiff.
- There are recognised categories of relationship which give rise to a duty of care, such as doctor to patient, solicitor to client, road user to road user and manufacturer of goods and supplier of services to a consumer. In such categories of relationships, parties will need to take extra care if they decide to make use of AI.
- Liability for negligence when AI is used is likely to depend on when someone has a duty of care and breached that duty, causation, the reasonable foreseeability of the risk of harm, and the remoteness of the risk. The common law will ultimately develop as cases are brought in the courts.
- The further back one goes in the development chain of AI, the more issues with proximity and foreseeability there are likely to be. Contributory negligence and vicarious liability may also be relevant.

### Privacy

- The *Privacy Act 1988* (Cth) (Privacy Act) contains 13 Australian Privacy Principles (APP) that govern the standards, rights and obligations on regulated entities (APP entities) around:
  - collection, use and disclosure of personal information
  - governance and accountability
  - integrity and correction of personal information
  - rights of individuals to access their personal information.
- The Privacy Act applies to the actions (including actions occurring overseas) of Australian Government agencies and private sector organisations with an annual turnover exceeding \$3

million but only if those organisations have an ‘Australian link’ (eg a body corporate incorporated in Australia or an organisation that ‘carries on business’ in Australia).

- The APPs are technology neutral and apply to information handling by APP entities regardless of developments in technology over time. This includes where personal information is used in the design, training or testing of an AI model or deployment of an AI system.
- The Privacy Act regulates (among other aspects):
  - the use of personal information as an input to AI and security in connection with such use
  - the generation of new information about an individual (including regarding the accuracy of that information)
  - and the use of biometric templates and other biometric information for biometric identification (which generally requires consent).
- If an individual believes that an organisation or agency has mishandled their personal information, the individual needs to complain to the organisation or agency before lodging a complaint with the Office of the Australian Information Commissioner (OAIC).
- The Privacy Commissioner also has enforcement, guidance, monitoring and advisory functions under the Privacy Act for privacy-related matters. In October 2024, the Office of the Australian Information Commissioner (OAIC) published *Guidance on Privacy and the Use of Commercially Available AI Products*, as well as *Guidance on Privacy and Developing and Training Generative AI Models*. The latter recommends developers take steps to ensure compliance with the Privacy Act and take a ‘privacy by design approach’, including conducting a privacy impact assessment (PIA).
- The new statutory tort of privacy, introduced in Schedule 2 to the Privacy Act, which commenced on 10 June 2025, also creates a cause of action for individuals who have experienced serious invasions of their privacy. An individual would need to commence court proceedings. Only individuals can sue for serious invasions of privacy; corporations cannot.
- Recent changes to the Privacy Act (due to commence on 10 December 2026) as part of “tranche 1” of the Privacy Act reforms include a new requirement to include in privacy policies, among other things, the kinds of personal information used in the operation of computer programs (APP 1.7-1.8). The term ‘computer program’ in APP 1.7(a) is intended to take its ordinary meaning and encompass a broad range of matters, including pre-programmed rule-based processes, artificial intelligence and machine learning processes to make a computer execute a task.
- The OAIC, in its recent non-binding guidance,<sup>1</sup> stated that, as a matter of best practice, organisations should update their privacy policies and notifications with clear and transparent information about their use of AI generally.
- The Government Response to the Privacy Act Review Report agreed to introduce a right for individuals to request meaningful information about how substantially automated decisions with legal or similarly significant effect are made.<sup>2</sup> This could conceivably also capture AI. The

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<sup>1</sup> Office of the Australian Information Commissioner, [Guidance on privacy and developing and training generative AI models](#) and [Guidance on privacy and the use of commercially available AI products](#).

<sup>2</sup> [Government Response](#), Privacy Act Review Report, Proposal 19.3, page 32.

government is yet to announce whether this recommendation will be implemented as part of “tranche 2” of the Privacy Act reforms. The Attorney-General’s Department is leading this work.

### Consumer law

- The Australian Consumer Law regulates relationships between suppliers, manufacturers and consumers. It therefore provides a framework for minimising potential AI-related consumer harms. The framework relies on a consumer taking action after the event.
- The Australian Competition and Consumer Commission also has a number of regulatory powers.
- When a consumer suffers damage or loss because of a problem with a product or service, they are entitled to compensation.
- Compensation should put the consumer back in the financial position they were in before the problem happened.
- Businesses must pay for loss or damage that is caused by the failure to meet a consumer guarantee and reasonably foreseeable.
- A business does not have to pay for damage or loss that was not caused by its products or services or relates to something independent of the business, after a product left its control.
- To seek compensation, a consumer contacts the business, verbally or in writing, to explain the problem and ask for compensation.
- There are various regulators and ombudsman schemes in the consumer law space. The Australian Competition and Consumer Commission cannot make formal decisions on whether a person or business has breached the law as only the courts can do this.
- Treasury is leading a review into the implications of AI on the Australian Consumer Law.<sup>3</sup> A discussion paper was released for comments between 15 October 2024 and 12 November 2024.
- Treasury asked whether the Australian Consumer Law remains suitable to protect consumers who use AI and support the safe and responsible use of AI by businesses.
- The fundamental principles that underpin existing consumer laws and the mirror provisions of the Australian Consumer Law contained in the *Australian Securities and Investments Commission Act 2001* which regulate financial products and services were not in scope of the Review. Instead, the Review was designed to support consideration of whether further work is required to harmonise or modify consumer protections in other laws, including those applying to the provision of financial products and services.
- The consultation process led by Treasury will inform work on Australia's consumer protection framework and to clarify and strengthen existing laws to address AI-related risks and harms. Treasury is briefing the new Assistant Minister and the Treasurer on a final report to this consultation (refer [Attachment F](#)).

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<sup>3</sup> The Treasury, [Review of AI and the Australian Consumer Law](#).

## Discrimination

- Discrimination laws currently apply to certain protected attributes (for example, age, disability, race, sexual orientation, gender identity, intersex status, marital or relationship status (among other individual characteristics)).
- Where the use of AI leads to discrimination under Australia's anti-discrimination laws and an individual can identify this, the individual may seek redress through the Australian Human Rights Commission (AHRC). Under federal anti-discrimination legislation, the AHRC has the power to investigate and attempt to conciliate complaints of discrimination, including from AI-informed decision-making. If conciliation is unsuccessful, in certain cases a complainant may commence legal proceedings in the Federal Court of Australia or the Federal Circuit and Family Court of Australia. The department is not aware of any proposed reviews of discrimination laws and AI.

## Defamation

- Individuals, incorporated associations, large companies, and government bodies can be sued for defamation in Australia.
- Where a defamatory statement is made over the internet or otherwise across borders, complex issues of private international law can arise.
- The main defamation risk in AI arises when AI 'hallucinates' and makes up its own facts.
- Defamation cases rely on individuals bringing costly proceedings in State and Territory courts (or Federal courts if there is a related federal claim).
- All states and territories have passed a Defamation Act in 2005 or 2006 in a substantially similar form ('the Uniform Acts' following the 'Model Defamation Provisions').
- The common law continues to apply to cases involving publication occurring outside of Australia. Whether or not an Australian court will exercise jurisdiction depends on whether it is the "appropriate forum".
- The limitation period for an action in defamation claims is one year following the publication of the defamatory material.
- There are limited rights of corporations to sue for defamation.
- The usual remedies available to the plaintiff in an action for defamation are damages for non-economic (reputational damage) and/or economic loss and in appropriate cases, an injunction can be sought.
- Publications across borders, such as through the internet, can give rise to complex legal issues relating to choice of law and choice of jurisdiction.
- Recent changes to the Model Defamation Provisions concerned internet intermediary liability in defamation for the publication of third-party content.
- The process for future changes to the Model Defamation Provisions requires consultation and agreement by the Standing Council of Attorneys-General. The Standing Council of Attorneys-General

(SCAG) comprises Attorneys-General from the Australian Government, all states and territories, and the New Zealand Minister for Justice. SCAG convenes quarterly.

- The department is not aware of any proposed reviews of defamation laws and AI.

#### Intellectual Property Laws (IP)<sup>4</sup>

- Generative AI is created through significant data input. For example, Large Language Models are trained using enormous volumes of text. Multimodal Foundation Models (machine learning algorithms that predict an output) are trained on data, images and speech. They are used to analyse medical images, to analyse and generate legal documents, and to generate creative material across visual art, music, and film.
- The main risks to IP relate to data inputs for AI models/systems. These issues concern whether a developer of an AI system is permitted to use certain material for training purposes, whether a user of an AI system is permitted to input certain material into the AI system to generate an output and where those materials themselves may be protected by IP property laws.
- Australia's current IP legal framework assumes human authorship over the material/content to which IP rights and ownership may be claimed. This is because one of the key purposes of IP laws is to reward creators for intellectual effort.
- The patentability of an AI generated invention is determined on a case-by-case basis under the *Patents Act 1990*. This Act specifies that an 'invention' (such as an AI created invention) is patentable if it is not explicitly excluded (which AI algorithms are not) by the Act and if the invention:
  - is in a manner of manufacture within the meaning of s 6 of the 'Imperial Act known as the Statute of Monopolies';
  - is novel and involves an innovative step when compared to the prior art base;
  - is useful; and
  - was not secretly used in the patent area before.
- The invention should not be 'obvious' to someone with common general knowledge of that specific technology field.
- Under current law, AI is not recognised as an 'inventor' and there are no specific laws to guide who should be able to file a patent for an improved system when algorithms end up training and building themselves.
- It also is uncertain whether a human has any legal rights to the AI generated output in the circumstances that their IP is used to train the AI technology.

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<sup>4</sup> PWC, 'Real' Laws for Artificial Intelligence: an introductory guide to AI regulation.  
<https://www.pwc.com.au/services/artificial-intelligence/regulating-ai-article.pdf>

## Copyright<sup>5</sup>

- AI is generally trained using large amounts of data, which can include works protected by copyright, such as poems, articles, drawings, photographs, or song recordings. Under current Australian law, the extent to which permission from copyright owners to use their work in this way is required is not clear. As far as the department is aware, compensation has not been paid to date to any copyright owners for the use of their works to train AI.
- Copyright exists in some works and other subject-matter by virtue of the *Copyright Act 1968* (Cth) (Copyright Act).
- If work is protected by copyright, the owner of the copyright is automatically granted a set of exclusive rights and copyright is infringed when someone else exercises these rights over the work. These rights include: the right to copy/reproduce the work in a material form, the right to publish the work and the right to communicate the work to the public.<sup>6</sup>
- Legal protection, by way of copyright, automatically subsists over any original creative material. In order for a work to be sufficiently 'original' to attract protection under the *Copyright Act 1968*, there needs to be an exertion of human skill, creativity and 'sweat of the brow'. As the law currently stands, an AI cannot itself be credited as the author of any output that it generates.<sup>7</sup>
- As well as copyrighted works being used to train AI, an AI tool can be used by an individual to create a new copyrighted work. As AI tools do not have a legal status, they cannot own copyright. It would therefore be the human contributor who would theoretically own copyright if a work is protected.
- Given AI tools do not have a legal status there is currently no legal obligation to indicate that AI was used to generate a work. A digital copy of works could be used to train AI, which use would require permission from the copyright holder.
- Copyright provides legal protection for people who express original ideas and information in certain forms. The most common forms are writing, visual images, music and moving images. Another form is a computer program.
- Although the Copyright Act recognises computer programs as protected 'literary work', it is yet to be tested if an AI model, algorithm or system would be considered as a form of a computer program.<sup>8</sup>
- Copyright does not protect ideas or information, only the original expression of ideas or information. Copyright does not prevent someone else from independently producing the same work.
- Generally, copyright is infringed if a person does one of the exclusive acts reserved to the copyright owner without that owner's permission. There can be infringement if a 'substantial part' of the copyright item is used. The Copyright Act provides exceptions which enable some use of copyright

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<sup>5</sup> Much of the summary below comes from: AGD website, Copyright Basics, <https://www.ag.gov.au/rights-and-protections/copyright/copyright-basics>

<sup>6</sup> PWC, 'Real' Laws for Artificial Intelligence: an introductory guide to AI regulation. <https://www.pwc.com.au/services/artificial-intelligence/regulating-ai-article.pdf>

<sup>7</sup> WC, 'Real' Laws for Artificial Intelligence: an introductory guide to AI regulation. <https://www.pwc.com.au/services/artificial-intelligence/regulating-ai-article.pdf>

<sup>8</sup> WC, 'Real' Laws for Artificial Intelligence: an introductory guide to AI regulation. <https://www.pwc.com.au/services/artificial-intelligence/regulating-ai-article.pdf>

material without the permission of the copyright owner in certain circumstances. The most important exceptions permit 'fair dealings' with copyright material for certain purposes such as research or study, criticism or review and reporting of news.

- It is unknown if any of the fair dealing exceptions (such as research or study) could be relied upon where prior permission has not been obtained to use copyrighted works to train an AI system and/or used to create the output of the AI algorithm.<sup>9</sup>
- Often, overseas copyright material is protected in Australia. A key factor is whether the material is made by a national of a country that is a party to one of the relevant copyright conventions to which Australia is also a party.
- On 5 December 2023, the Attorney-General announced the establishment of a Copyright and Artificial Intelligence Reference Group (CAIRG) to better prepare for future copyright challenges emerging from AI.
- In September 2024, the Attorney-General's Department asked CAIRG participants to respond to a discussion paper on copyright and AI transparency issues.<sup>10</sup>

#### **Criminal law**

- There are several offences under Division 474 of the Criminal Code relating to the use of a carriage service to cause harm, including using a carriage service to menace, harass or cause offence, using a carriage service to supply suicide related material and using a carriage service for sexual activity with, or causing harm to, a person under 16. These offences could apply to the online use of AI technology.

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<sup>9</sup> WC, 'Real' Laws for Artificial Intelligence: an introductory guide to AI regulation.  
<https://www.pwc.com.au/services/artificial-intelligence/regulating-ai-article.pdf>

<sup>10</sup> Attorney-General's Department, Copyright and AI – Transparency discussion paper, available at:  
<https://www.ag.gov.au/rights-and-protections/publications/copyright-and-ai-transparency-discussion-paper>.