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Dear Digital Futures Team

Submission to the Department of Health and Aged Care Consultation on Safe and Responsible Artificial Intelligence in Health Care – Legislation and Regulation Review

The Australian Psychological Society (APS) welcomes the opportunity to contribute to the Department of Health and Aged Care's consultation on the Safe and Responsible Artificial Intelligence in Health Care – Legislation and Regulation Review. As the peak body for psychologists in Australia, we are dedicated to advancing the scientific discipline and ethical practice of psychology in the communities we serve to promote good psychological health and wellbeing for the benefit of all Australians.

Benefits and risks of AI in healthcare

(Consultation questions 1, 2 and 3)

The APS recognises the substantial benefits and potential risks associated with Artificial Intelligence (AI) applications in healthcare. We note that the rapidly growing body of research literature provides far greater detail and nuance on these issues than could, or should, be comprehensively covered in a submission of this scope.¹⁻⁸

The APS has also previously emphasised that notwithstanding this research, there are significant gaps in our collective understanding about the use, experiences and consequences of AI by Australians.⁹⁻¹¹ We highlighted the importance of supporting innovative Australian research to better understand the unique impacts and applications of AI within our health system. For instance, in our *Pre-Budget Submission 2024-25*,¹⁰ we recommended several key AI-related initiatives, including:

1. Funding a psychology-led discovery project led by the APS to research the impact of AI on the mental health of young Australians. We proposed a longitudinal project that would leverage the capability and reach of psychologists and psychological scientists across Australia to develop our understanding of how young Australians engage with AI, how this is evolving over time, and the psychological and mental health impacts of this engagement.
2. Supporting the APS in developing AI-related training, guidance, and resources for psychologists. This will ensure the profession is well-equipped to ethically and effectively navigate AI's role in

psychological therapy, assessments, and in broader social contexts. Additionally, this work would further our collective understanding about the psychological and mental health risks and impacts of AI.

We were disappointed that these initiatives were not funded in this year's Budget but remain hopeful that they will be considered in future Budget cycles. Investment in high-quality, locally relevant research will be critical to advancing knowledge about the effectiveness, limitations, and ethical implications of AI in healthcare. Such targeted, collaborative and relevant research is essential for developing robust frameworks that guide AI integration in healthcare in a manner that is both ethical and culturally appropriate, respecting Australia's diverse population needs and ensuring equitable access to benefits across all demographics.

Specific regulatory reforms

(Consultation questions 2, 4, 6, 9, 12, 14, 17 and 18)

In **Table 1**, we set out considerations for specific regulatory reforms which seek to find an appropriate balance in the use of AI in healthcare for both health practitioners, patients and the wider community. An overarching theme in these suggested reforms is the need to ensure equity in the use of AI within healthcare. In particular, the APS strongly believes that:

- The advantages of AI, including improved outcomes for patients and increased efficiency for practitioners, should not be limited to those who can pay to access commercial AI technologies. Additionally, regulatory guardrails must aim to prevent inequities through tiers of AI accessibility where there is an increasing trade-off between cost, on one hand, and privacy, safety and transparency, on the other.
- AI platforms and models must be relevant to the Australian population, including Australian patients, health practitioners and the Australian health ecosystem. A range of regulatory and non-regulatory measures need to be developed to ensure that there is sufficient transparency, accountability and integrity in AI systems, especially in systems developed and trained on data which does not represent people and systems in Australia. The risk of systemic biases and epistemic injustice, particularly for already marginalised and vulnerable groups, must be proactively minimised.¹²⁻¹⁴
- The public good in health information and data – including from sensitive patient information and practitioner-patient encounters – must not merely be handed over to for-profit and closed providers of AI systems. There is an increasing use of patient and health service data for AI model training, including where this information is obtained in the course of publicly funded or subsidised health services. It is imperative that the Australian public also benefits from advances in models, data and insights obtained through this information, and in an equitable and sustainable way.
- Beyond regulation, further investment by the Government is needed to ensure that the health workforce is equipped to make use of evolving AI technologies. This includes funding for training, supervision and resource development to support health professionals to develop appropriate level of AI knowledge which informs critical thinking and ethical decision-making.

Regulatory structures

(Consultation question 8)

The APS supports a targeted regulatory approach to AI in healthcare that ensures patient safety, data integrity, and ethical oversight while avoiding undue administrative burdens on health practitioners, including psychologists. As indicated in Table 1, specific regulatory measures focused on AI platforms, providers and informed consent are essential to safeguard public trust and manage risk.

However, the APS is cautious about introducing additional regulatory bodies or subjecting health practitioners to further layers of regulation, as this could inadvertently add complexity and administrative burden to the healthcare system—a scenario that would be counterproductive given that one of AI's core promises is to streamline non-clinical and administrative aspects of healthcare.

Instead, the APS advocates for regulatory bodies and frameworks to concentrate on AI technology providers and platform developers who are directly responsible for designing, deploying, and maintaining AI systems in healthcare settings. These entities are best positioned to address concerns regarding data security, model transparency, and algorithmic fairness. A targeted focus on these AI providers would relieve health practitioners of added regulatory demands and preserve their focus on clinical and therapeutic aspects of their work.

To encourage a well-rounded regulatory environment, the APS supports the establishment of an advisory body dedicated to AI in healthcare, one that collaborates closely with health professions to offer profession-specific guidance and address the broader ethical, operational, and social implications of AI. This body could serve as a forum for engaging with the "big questions" surrounding AI development, such as patient consent, data ethics, and the long-term impact of AI on the practitioner-patient relationship. Such an advisory body would ensure that AI regulations in healthcare remain responsive, inclusive, and attuned to the evolving needs of both patients and practitioners.

A collaborative approach

In previous submissions, the APS has advocated for policies that not only support AI research but also actively encourage interdisciplinary collaboration to ensure the inclusion of psychological expertise. Psychologists bring critical insights into the human-centred dimensions of AI beyond its implications for mental health services, including considerations about the psychological impact of AI use on behaviour, relationships, decision-making.¹⁵⁻²⁷ Psychologists also bring theoretical and clinical expertise to understanding the social determinants of health that shape AI interactions with diverse populations.

We believe that the thoughtful and evidence-informed integration of psychological perspectives into AI healthcare initiatives will play a key role in identifying and mitigating risks while maximising AI's potential to contribute positively to healthcare in Australia. The APS therefore looks forward to working directly and collaboratively with the Department in designing, developing and evaluating regulatory approaches which benefit health practitioners, patients and the Australian community alike.

Thank you again for the opportunity to provide a submission to the Department's consultation on Safe and Responsible Artificial Intelligence in Health Care. If any further information is required from the APS, I would be happy to be contacted through our National Office on (03) 8662 3300 or by email at: z.burgess@psychology.org.au

Yours sincerely

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Table 1: Proposed regulatory strategies

Problem	Policy Intent	Potential regulatory measures	APS contribution
<ol style="list-style-type: none"> 1. The privacy of sensitive personal and health information is at risk through the unregulated use of AI technologies in health services. 2. Patients may not be providing free and informed consent for the use of AI technologies in health services. 3. The lack of regulatory support for health practitioners to use and communicate about AI tools creates risks for professional and ethical practice. 	<p>Safeguard patient privacy and facilitate the provision of informed consent for AI use within clinical practice.</p> <p>Support patient choice and autonomy in the use of AI health technologies.</p> <p>Provide support and assurance to health professionals about the use of regulated AI technologies and facilitate the safe use of AI in health services.</p>	<p>Develop a standardised information statement template and informed consent process for AI use, which explains to patients how AI will be used in their health service and the choice available to them (with clearly stated risks and benefits). Mandate AI service providers to make use of this resource in their products.</p> <p>Use regulatory structures to balance practitioner autonomy with patient privacy. For example, introduce a legislative provision that deems a practitioner to be compliant with health privacy and informed consent requirements if the model information statement and consent process has been followed.</p>	<p>Establish a co-design process with the APS and other professional and consumer organisations to develop, trial and evaluate the model information statement template and informed consent process.</p>
<p>Unregulated use of autonomous AI models in relation to Australian' mental health and wellbeing creates multiple risks including direct harm, denial of procedural fairness, epistemic injustice, and increased administrative burdens (e.g., in seeking limited avenues for human review of AI-based decisions with low levels of explainability or transparency).</p>	<p>Assure the Australian public that decisions relating to their mental health are not being made by AI systems, and that any use of AI is subject to rigorous and appropriate oversight by mental health practitioners including psychologists.</p>	<p>Through legislation, prohibit the use of autonomous AI models in relation to mental health (including the making of decisions, inferences or predictions about mental health).</p> <p>This prohibition should apply across federal legislation, including but not limited to health and mental health, disability, social security, private health insurance, veterans' affairs and compensatory schemes.</p>	<p>Work with the APS in developing guardrails and regulatory measures to ensure the safe and appropriate use of AI as part of administrative decision-making and in the exercise of a statutory function.</p> <p>Fund the APS to conduct research about the psychological and mental health implications of AI use.</p>
<p>There is limited visibility and assurance about the assumptions, training data and limits of AI models, and the relevance of these models to</p>	<p>Increase the transparency, explainability and validity of AI systems used in health services, with measures to ensure that AI providers – particularly commercial and</p>	<p>Through legislation, require AI providers whose services are used by practitioners who receive public funding (e.g. Medicare, DVA), to show</p>	<p>Seek input from the APS and its members in terms of auditing AI models for appropriateness for</p>

<p>the Australian population and to Australian practitioners.</p>	<p>international providers – can assure practitioners and patients that AI systems and models are relevant to the Australian population (including First Nations Australians, people in rural and remote communities, and people from a culturally or linguistically diverse background).</p>	<p>evidence that their models are based on appropriate Australian training data (e.g. by audit, independent verification using test data, or through an annual disclosure).</p>	<p>psychology and mental health services in the Australian context.</p>
<p>AI-based mental health services, including conversational AI services, can be interpreted by users as having equivalence to services delivered by a qualified and regulated human practitioner, such as a psychologist. This creates unacceptable risk to patients.</p>	<p>AI and human-based health services should be clearly differentiated, AI-based services (with limited or no clinical direction or oversight) should not be held out to be equivalent to human-based services.</p>	<p>Prohibit AI-based health services from making representations about the equivalence with a human-based professional services.</p> <p>Similarly, prohibit AI-based health services from making representations about the ‘intelligence’ of the service, or that the service has inherently human capabilities (e.g. empathy, care or wisdom).</p>	<p>Coordinate with the APS and patient organisations to ensure that the public is protected from harmful consumer-facing AI-based mental health services and tools.</p> <p>Fund the APS to conduct research about the psychological and mental health implications of AI use.</p>
<ol style="list-style-type: none"> 1. Regulatory ambiguity about how AI is used in health practitioner compliance activities creates inconsistent with the behavioural objectives of compliance measures. 2. The unregulated use of AI or algorithmic decision-making for compliance purposes creates risks of harm and adverse outcomes to providers. 	<p>Provide certainty about the use of AI in health practitioner compliance activities, in order to guide positive and compliant health practitioner behaviour.</p> <p>Ensure that the use of data and predictive models in compliance activities aligns with the contemporary clinical practice, including through oversight by practitioners.</p>	<p>Through legislation, prohibit the use of autonomous AI models to make a compliance decision about a health practitioner.</p> <p>Under a legislative framework, develop guidelines together with health professions for the appropriate use of AI in health practitioner compliance activities (e.g., Medicare provider compliance and decision-making, including extra-legislative compliance activities).</p>	<p>Work with the APS and other professional bodies to develop guidelines for AI use in health practitioner compliance activities.</p> <p>Collaborate with the APS to ensure appropriate professional oversight and transparency about targeting decisions targeting compliance.</p>

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