



HERBERT  
SMITH  
FREEHILLS

# THE DIRECTORS' CUT

**AI GOVERNANCE FOR DIRECTORS**

Exploring the challenges and opportunities

Thursday, 12 September, 12.00pm (AEST)

# Acknowledgement of Country

The Bunya Mountains in southern Qld have  
become an Indigenous tourism site



# AI Governance for Directors

Exploring the challenges and  
opportunities

## MODERATOR



**Susannah Wilkinson**  
Director of Generative AI,  
Herbert Smith Freehills

Susannah leads the firm's adoption of Generative AI (GenAI) globally, focusing on seizing the opportunities presented by GenAI and strengthening the firm, and the service we deliver to clients, for a future shaped by digital innovation.

For almost a decade, Susannah has been engaging with clients on AI. Prior to her current role, Susannah led the firm's Emerging Technology Group in APAC, advising on cutting-edge issues arising with the adoption of emerging technologies (specialising in AI, digital assets, immersive tech, and spatial computing).

Susannah is Deputy Chair of the Digital Commerce Committee of the Law Council of Australia (Business Law Section), Expert Advisor to the Australian Human Rights Commission on Neurotechnology and AI, and Co-Founder and Director of the Digital Law Association.

## PANEL



**Anna Gudkov**  
Senior Policy Adviser,  
Australian Institute of  
Company Directors (AICD)

Anna is a Senior Policy Adviser at the AICD undertaking advocacy and thought leadership work to promote world-class governance. Anna has a specific focus on innovation and AI, as the secretary of the AICD's Governance of Technology and Innovation Committee, as well as climate change.

Anna is also a qualified lawyer with over 9 years post-qualification experience in climate change, insurance and commercial litigation. Prior to joining the AICD, Anna was a commercial and insurance litigation solicitor working at national and international law firms including Norton Rose Fulbright.

In 2017 she was a finalist in the Lawyers Weekly "30 under 30" awards in the insurance category.



**Prof. Nicholas Davis**  
Co-director  
Human Technology Institute (HTI),  
University of Technology Sydney

Nicholas Davis is Co-Director of the Human Technology Institute (HTI) and Industry Professor of Emerging Technology at the University of Technology Sydney.

Nick was formerly the World Economic Forum's Head of Society and Innovation and a member of the Forum's Executive Committee. With Professor Klaus Schwab, he is the co-author of *Shaping the Future of the Fourth Industrial Revolution*. Nick is concurrently a Professor of Practice at ASU's Thunderbird School of Global Practice, an Associate Fellow at the University of Oxford's Said Business School, a Visiting Fellow at ANU in the School of Cybernetics, an Associate Fellow at the Geneva Centre for Security Policy and serves on a number of boards and advisory committees including ASIC's Consultative Panel and AICD's Technology Governance and Innovation panel. He holds degrees from the University of Oxford and University of Sydney.

# AICD and HTI Governance of AI resource suite



[A Director's Introduction to AI](#)



[A Director's Guide to AI Governance](#)



ROLES & RESPONSIBILITIES	PEOPLE, SKILLS & CULTURE
<ul style="list-style-type: none"> <li>Identify the management and board individual/body accountable for AI decision-making.</li> <li>Identify those involved in, and responsible for, AI system procurement, development and use.</li> <li>Consider whether decision-making processes applied by key accountable persons incorporate consideration of AI risk and opportunity.</li> </ul>	<ul style="list-style-type: none"> <li>Verify that management have assessed the organisation's AI skills, capabilities and training needs, and implement upskilling programs (including at the director-level).</li> <li>Discuss the potential for AI to impact the workforce and workforce planning.</li> <li>Consider how AI governance structures can incorporate a diversity of perspectives, including expert views, to aid diversity of thought and avoid 'group think'.</li> </ul>

[Eight Elements Snapshot](#)



This checklist sets out suggested steps for AI governance in small and medium-sized enterprises (SMEs) and not-for-profit (NFP) organisations. Each organisation will be at a different stage of this process and will have different resources available to them.

- Stage 1: Foundations**
- Understand where your organisation is already using AI: Create an AI inventory or register that your organisation can rely on, including AI incorporated within existing cyber or tech products. Establish a process to keep this updated.
  - Assess where AI could add value to your organisation: Discuss with management how AI can be used to achieve your organisation's strategic objectives. AI use should align with the values and strategy of the organisation, avoiding "AI for AI's sake".

[AI Governance Checklist for SME and NFP Directors](#)



## POLL

# What is the current state of AI governance within your organisation?

Select one that applies

- A** We have implemented AI-specific governance mechanisms
- B** We are discussing or developing AI-specific governance mechanisms
- C** We are using existing governance (e.g. IT) or risk management to govern AI systems
- D** We aren't using AI systems
- E** I'm not sure

# Today we will cover:

1

Why is AI different from other technology & what are the implications for governance?

2

How is AI being governed and regulated?

3

Effective, safe & responsible AI governance for boards

1

What is AI? Why is AI different to other technology?

2

How is AI being governed and regulated?

3

Effective, safe & responsible AI governance for boards

ONE

# What is AI? Why is AI different to other technology?





# What is AI?



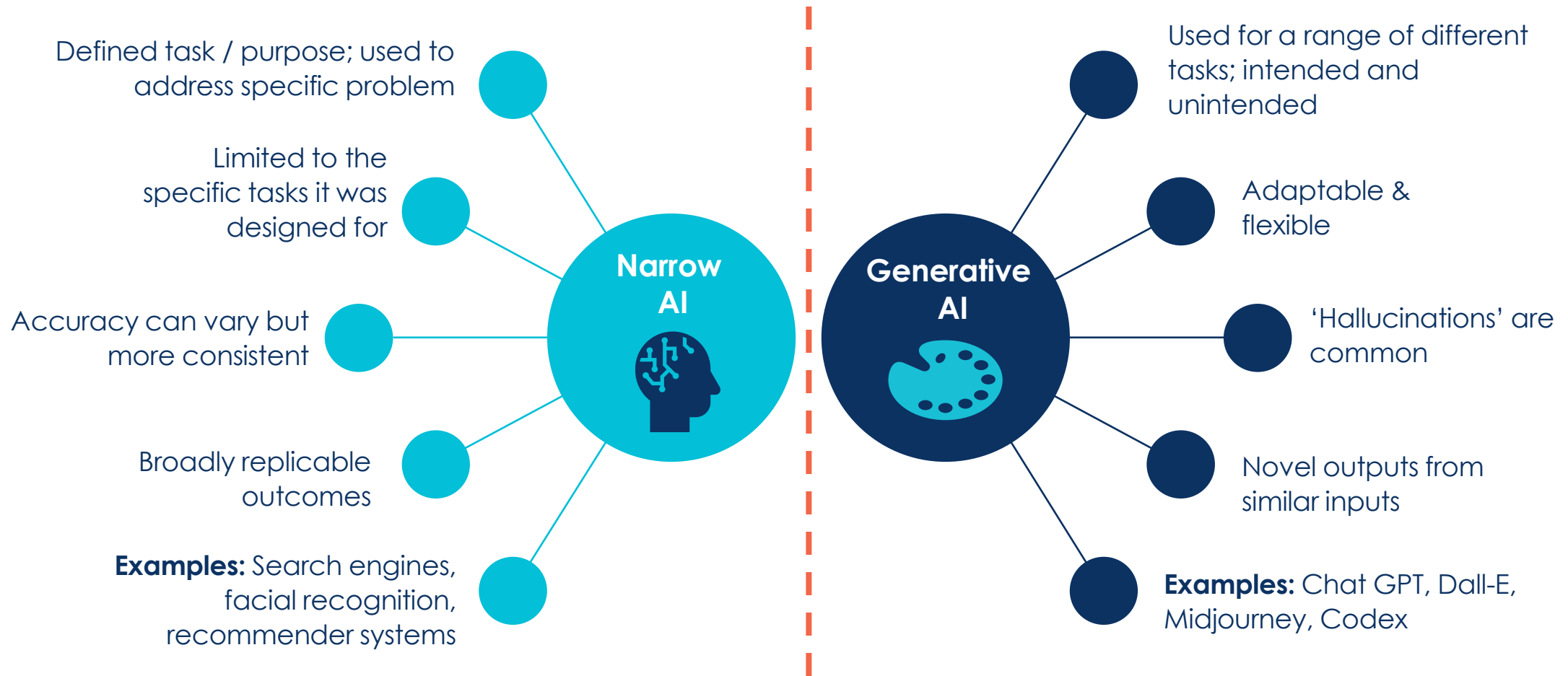
Artificial intelligence (“AI”) is a collective term for machine-based or digital systems that use machine or human-provided inputs to perform advanced tasks for a human-defined objective, such as **producing predictions, advice, inferences, decisions, or generating content.**

*Source: HTI definition adapted from work by EU and OECD*

## What kinds of systems are usefully defined as AI:

- Machine learning systems
- Expert systems
- Natural language systems
- Facial recognition technologies
- Recommender systems
- Automated decision-making systems
- Robotic process automation
- Virtual agents and chatbots
- Generative AI
- AI-powered robotics

# Not all AI is generative AI....



# How is AI different from other technology?



**Opacity of existing use:** AI is embedded in many procured IT products and services, making it difficult to identify existing AI use.



**Opacity of AI outcomes:** AI's ability to analyse millions of data points and form connections can make it difficult to test, validate, explain, and reproduce its outputs.



**Scalability and diversity of use cases:** AI use crosses organisational barriers and reporting lines. This decentralization makes it difficult to control.



**Fundamental reliance on data:** While other types of technology may also depend on data, AI systems fundamentally rely on data for both input and training.

# AI offers new opportunities and risks

## AI Opportunities



Increased efficiency and productivity



Quality improvements and fewer errors



New products and services



Improved customer experience



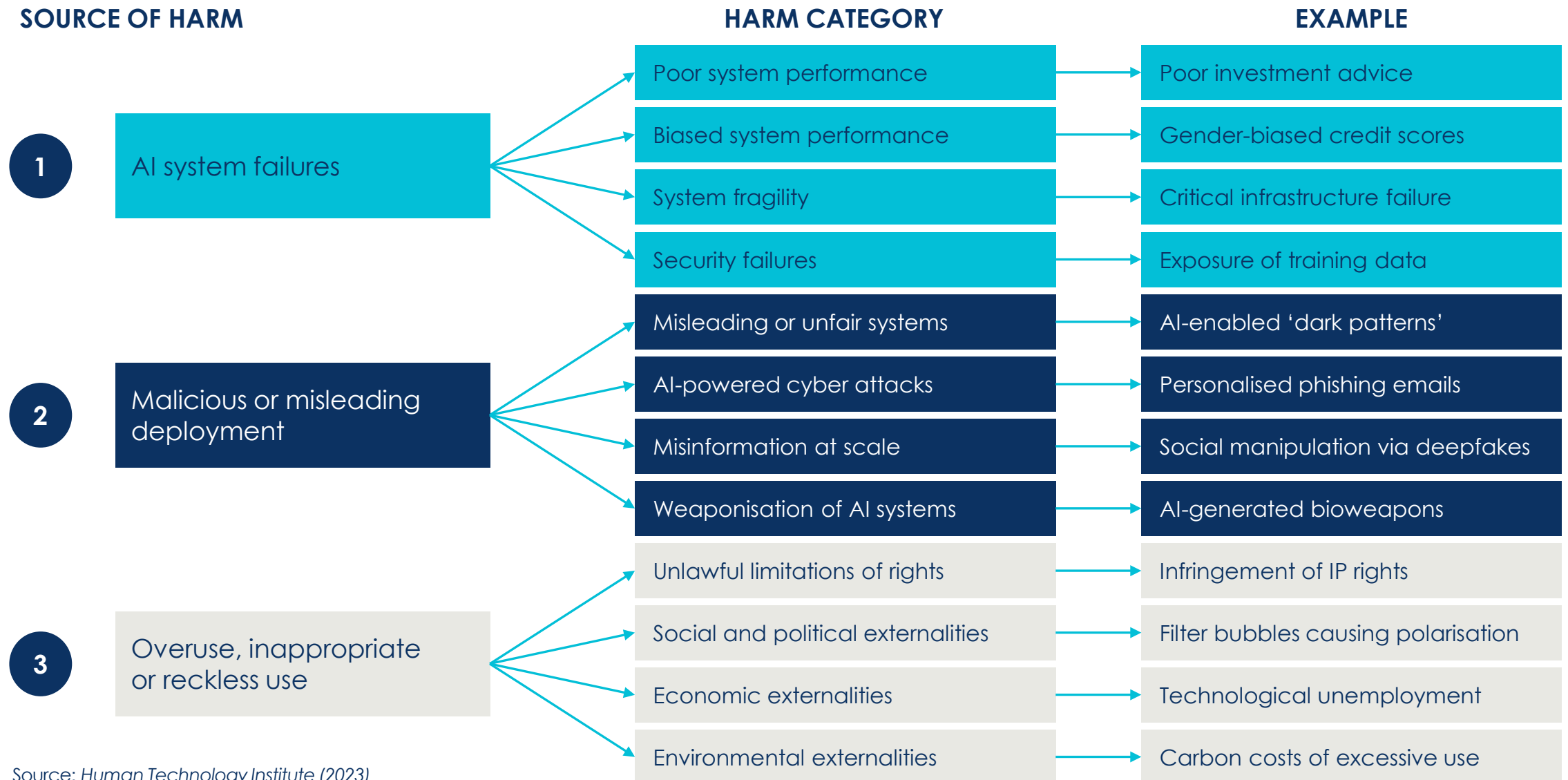
Improved employee experience

## Risks to organisations from AI use

### Risks to organisations



# Sources of harms from AI



Source: Human Technology Institute (2023)

1

Why is AI different to other technology & what are the implications for governance?

2

How is AI being governed and regulated?

3

Effective, safe & responsible AI governance for boards

TWO

# How is AI being governed and regulated?



# There are a range of emerging governance approaches

## Current



**Guru-based governance**



**Review-based governance**

## Emerging



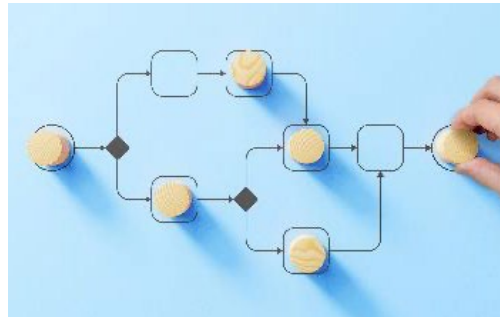
**Hierarchical governance**



**Committee-based governance**



**Principle-based governance**



**Process-based governance (eg IT)**



**Information-based governance**



**Culture-based governance**

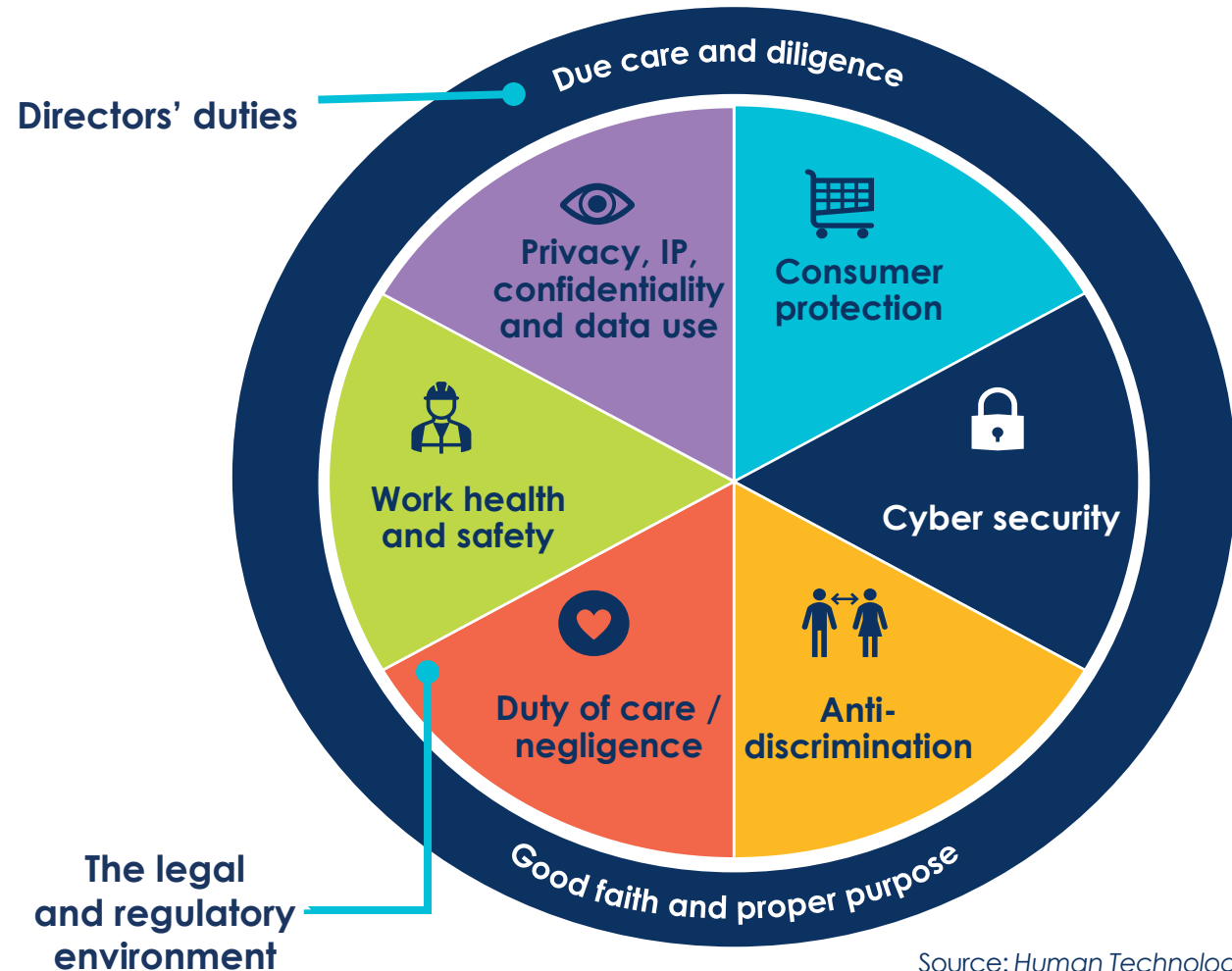
Source: *Human Technology Institute (2023)*

# The use of AI is regulated by a range of existing laws

Directors have duties under the *Corporations Act 2001* (Cth)

The use of AI systems is also subject to various Australian laws and legal obligations

Directors should be aware of how these apply.



Source: Human Technology Institute (2023)





1

Why is AI different to other technology & what are the implications for governance?

2

Key AI regulatory developments

3

Effective, safe & responsible AI governance for boards

## THREE

# Effective, safe & responsible AI governance for boards



# Eight elements of AI governance



**ROLES &  
RESPONSIBILITIES**



**GOVERNANCE  
STRUCTURES**



**PEOPLE, SKILLS  
& CULTURE**



**PRINCIPLES, POLICIES  
& STRATEGY**



**PRACTICES, PROCESSES  
& CONTROLS**



**SUPPORTING  
INFRASTRUCTURE**



**STAKEHOLDER  
ENGAGEMENT & IMPACT  
ASSESSMENT**



**MONITORING, REPORTING  
& EVALUATION**



## DISCUSSION

# Which of the eight elements of governance do you think would be most challenging for your organisation to address?

Type the top 3 into the chat

- |  |   |
|--|---|
| <b>1</b> Roles & Responsibilities        | <b>5</b> Practices, Processes & Controls            |
| <b>2</b> Governance structures           | <b>6</b> Supporting infrastructure                  |
| <b>3</b> People, Skills & Culture        | <b>7</b> Stakeholder engagement & Impact assessment |
| <b>4</b> Principles, Policies & Strategy | <b>8</b> Monitoring, reporting and evaluation       |

# Questions?



# Key AI Governance resources

## Director's Introduction to AI



[FIND OUT MORE](#)

## A Director's Guide to AI Governance



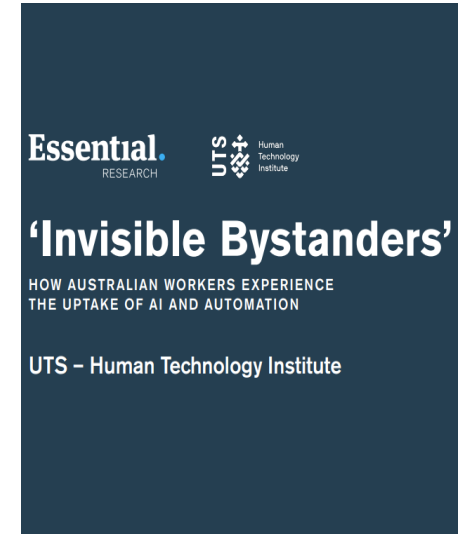
[FIND OUT MORE](#)

## The State of AI Governance in Australia



[FIND OUT MORE](#)

## Invisible Bystanders: impact of AI on workers



[FIND OUT MORE](#)

## SME and NFP Checklist

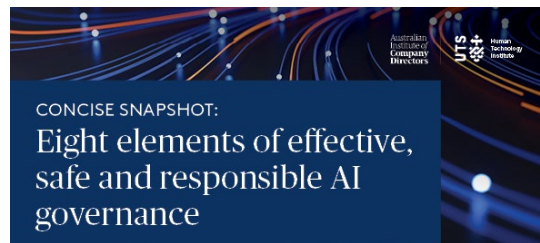


This checklist sets out suggested steps for AI governance in small and medium-sized enterprises (SMEs) and not-for-profit (NFP) organisations. Each organisation will be at a different stage of this process and will have different resources available to them.

Stage 1: Foundations

- Understand where your organisation is already using AI; Create an AI inventory or register that your organisation can rely on, including AI incorporated within existing cyber or tech products. Establish a process to keep this updated.

## Eight Elements Snapshot



- ROLES & RESPONSIBILITIES**
  - Identify the management and board individuals/body accountable for AI decision-making.
  - Identify those involved in, and responsible for, AI
- PEOPLE, SKILLS & CULTURE**
  - Verify that management have assessed the organisation's AI skills, capabilities and training needs, and implement upskilling programs (including

# Roles and responsibilities

1



**ROLES &  
RESPONSIBILITIES**

## SUGGESTED DIRECTOR STEPS

- Identify the management and board individual/ body accountable for AI decision-making.
- Identify those involved in, and responsible for, AI system procurement, development and use.
- Consider whether decision-making processes applied by key accountable persons incorporate consideration of AI risk and opportunity.

## KEY QUESTIONS FOR DIRECTORS TO ASK

- How are we tracking AI use within the organisation?
- Which individual or body at the board or management level is responsible for data governance?
- Which individual or body at the board or management level is responsible for decisions regarding the development and use of AI within the organisation?
- Which individual or body is responsible for making procurement decisions and identifying, assessing and reporting the risks associated with procurement? Are they tracking which procured products and services use AI?
- Is there an escalation protocol in place for proposed higher-risk AI uses?

# Governance Structures

## 2



### GOVERNANCE STRUCTURES

#### SUGGESTED DIRECTOR STEPS

- Verify that management has assessed the skills, capabilities and training required across the organisation to benefit from AI systems and manage risks
- Invest in appropriate management and director training on the strategic opportunities, risks and appropriate governance approaches related to AI-systems.
- Discuss the potential for AI to impact the workforce and workforce planning.

#### KEY QUESTIONS FOR DIRECTORS TO ASK

- Which existing board and management committees are most appropriate for supporting oversight of AI?
- Do the relevant board and management committee charters / Terms of Reference need to explicitly stipulate board oversight of AI?
- Should the relevant board and management committee leverage external expertise? If yes, how?
- How, and how often, does management report on AI to the board/ relevant board committee?



# People, Skills & Culture

## 3



### PEOPLE, SKILLS & CULTURE

#### SUGGESTED DIRECTOR STEPS

- Determine which existing or new board and management governance structure would most appropriately support AI oversight.
- Review board and management committee charters to determine whether and how they incorporate AI issues.
- Consider how external experts can be leveraged within existing governance structures.
- Consider the nature and frequency of management reporting to the board/relevant board committee.

#### KEY QUESTIONS FOR DIRECTORS TO ASK

- What baseline level of AI knowledge (i.e. minimum viable understanding) is required across the organisation?
- What AI capabilities are required by key accountable people?
- What AI-related training do staff receive at different levels and across functions?
- What training can directors receive to increase knowledge of AI risks and opportunities?
- How will AI impact the skills required of our workforce? Are there opportunities for training and redeployment?
- Have we communicated AI impacts to our workforce?
- What consultation or communication is taking place with our workforce on potential AI impacts?

# Principles, Policies, and Strategy

## 4



### PRINCIPLES, POLICIES, AND STRATEGY

#### SUGGESTED DIRECTOR STEPS

- Require that AI is considered and, where appropriate, embedded within the organisation's strategy.
- Engage with management to discuss how high-level safe and responsible AI principles, such as Australia's AI Ethics Principles, have been actionable via specific policies.
- Introduce an organisational AI use policy to facilitate safe and responsible AI use and reduce shadow AI use.
- Integrate AI into relevant policies (such as privacy, data governance, cyber and procurement) for a holistic strategic and risk management approach. These policies should be reviewed periodically for currency.

#### KEY QUESTIONS FOR DIRECTORS TO ASK

- How does our current and intended use of AI support our overall strategy?
- Are the AI principles, policies and strategy adaptable, scalable and broad enough to capture a wide range of current and potential AI use cases within the organisation?
- How clearly documented is the organisation's approach to AI use?
- What AI-specific policies are in place to guide AI use across the organisation and its supply chain?
- Do we have a clear policy on the use of Generative AI and the risks posed by shadow AI use?
- Do our existing privacy, data governance, cyber and procurement policies address AI? Are these fully aligned with how we intend to leverage AI systems in our strategy?

# Practices, Processes & Controls

## 5



### PRACTICES, PROCESSES & CONTROLS

#### SUGGESTED DIRECTOR STEPS

- Require relevant controls for AI use, and that these controls are regularly reviewed and updated for alignment with best practice
- Confirm with management that there are processes in place to assess supplier and vendor risk.

#### KEY QUESTIONS FOR DIRECTORS TO ASK

- What is our risk appetite for AI use? Have we updated our risk appetite statement?
- What AI Impact Assessment and risk management tools or frameworks are we currently using?
- Does our risk management framework incorporate risks arising from AI? Does it differentiate between high-risk and low-risk AI applications?
- What steps are we taking to be confident that we are meeting our legal and regulatory obligations for the use of AI and associated data collection, storage, and use?
- Do we have robust testing and piloting approaches for AI systems under real-world conditions?
- What process are we using to assess supplier and vendor risk?
- What notification requirements are there for suppliers to advise of AI use or introductions to products?
- What capacity do we have to reject updates (such as software products) if deemed not to be in line with organisational policy on AI use?

# Supporting Infrastructure

## 6



### SUPPORTING INFRASTRUCTURE

#### SUGGESTED DIRECTOR STEPS

- Verify that management has an appropriate AI system and data inventory in place.
- Confirm that data governance policies have been reviewed and updated to account for AI systems' specific characteristics.
- Confirm that cyber security policies have been reviewed and adapted to address AI systems and mitigate novel attacks and misuse.

#### KEY QUESTIONS FOR DIRECTORS TO ASK

- Where, how, and why is AI being used across our organisation? Have we created an AI inventory?
- What internally and externally-sourced data is being - or could be - used as an input or for training to AI systems?
- Have we reviewed the legality of the collection, storage, and use of the data used within our organisation and as input for AI systems?
- How do our data governance and cyber security policies and practices support the responsible use of AI?
- Does the system architecture enable transparency or explanation of decisions made by AI?

# Stakeholder Engagement & Impact Assessment

7



**STAKEHOLDER  
ENGAGEMENT &  
IMPACT  
ASSESSMENT**

## SUGGESTED DIRECTOR STEPS

- Identify and engage with stakeholders to understand AI's impact and stakeholder expectations of AI use and governance.
- Request that management review AI system design and assessment processes and policies to confirm they incorporate accessibility and inclusion practices (so as to reduce the risk of bias)
- Consider whether AI-generated results/ outcomes are explained to stakeholders and whether an appeal process is available.

## KEY QUESTIONS FOR DIRECTORS TO ASK

- How does our AI Impact assessment incorporate stakeholder views?
- What processes do we have in place to understand the potential AI harms arising to impacted stakeholders?
- How are we ensuring the voices of potentially vulnerable stakeholders are represented in engagement mechanisms?
- How do we include the participation of stakeholders in the development of safe and responsible AI principles and policies and governance frameworks?
- What processes are in place for impacted stakeholders to request reasons, contest, or provide redress for decisions made by AI systems?

# Monitoring, Reporting & Evaluation

## 8



### MONITORING, REPORTING & EVALUATION

#### SUGGESTED DIRECTOR STEPS

- Verify that management has implemented a risk-based monitoring and reporting system for AI systems that are mission-critical and/or could cause significant harm, including AI systems and vendor systems.
- Establish clear metrics and outcomes to track and measure the performance of the AI governance framework.
- Develop and implement a monitoring and reporting framework and frequency.
- Consider seeking internal and external assurance.

#### KEY QUESTIONS FOR DIRECTORS TO ASK

- What KPIs are we using to assess whether the AI governance framework is performing as intended?
- What is the appropriate performance framework and reporting frequency to enable the organisation to capitalise on opportunities and address risks?
- How are we identifying and responding to errors in our AI systems?
- How are we using internal and external audit as a check and balance?
- What are the limitations of our internal and external audit processes? Are these clearly disclosed in our reporting?

# Thank you

