Australian Securities & Investments Commission

Inquiry into the uptake of AI technologies in Australia

Submission by the Australian Securities and Investments Commission

May 2024

Contents

Overview **3**

A ASIC's engagement on AI developments **4**
- AI as a key priority 4
- How ASIC is using AI 7

B ASIC's approach to regulating the use of AI **9**
- General obligations: Director duties, licensee requirements and consumer protections 9
- Other corporations and financial services laws applicable to the use of AI 12

C Opportunities, risks and harms in financial services **13**
- AI opportunities 13
- Consumer risks and harms 14
- Market risks and cyber security 19

D Realising the benefits and opportunities of AI **20**
- ASIC's engagement 20
- Whole-of-government law reform on AI 21
- International learnings 21

Key terms **23**

Overview

1 The Australian Securities and Investments Commission (ASIC) welcomes the opportunity to make a submission to the Select Committee on Adopting Artificial Intelligence (Select Committee).

2 ASIC is supportive of the safe and responsible use of artificial intelligence (AI) by Australian businesses. ASIC is also very interested in how AI can be used as a tool to enhance regulation.

3 ASIC's submission to the Select Committee is focused on the topics set out in Table 1.

Table 1: Overview of ASIC's submission

Section A: ASIC's engagement on AI developments	This section examines: • ASIC's general approach to AI; • the work that ASIC is currently undertaking in relation to the use of AI by our regulated population; and • the work that ASIC is currently undertaking in relation to our own use of AI.
Section B: ASIC's approach to regulating the use of AI	This section discusses how existing corporations and financial services laws apply to AI and how ASIC will apply those laws.
Section C: Opportunities, risks and harms in financial services	This section examines some of the benefits, opportunities, risks and harms we have seen, or may see, as a result of AI.
Section D: Realising the benefits and opportunities of AI	This section discusses how governments, regulators, industry and consumer groups can work together to foster the responsible use of AI in Australia.

4 For the purposes of this submission, we use the definition of AI outlined in the 2023 discussion paper released by the Australian Government:

> An engineered system that generates predictive outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives or parameters without explicit programming. AI systems are designed to operate with varying levels of automation.
>
> Note: Department of Industry, Science and Resources, Safe and responsible AI in Australia [discussion paper], June 2023, p 5.

A ASIC's engagement on AI developments

Key points

ASIC supports the safe and responsible use of AI.

Effective AI tools may bring enormous benefits to businesses and end-users. Conversely, the irresponsible or malicious use of AI tools may cause considerable harm to consumers.

ASIC is currently looking at how our regulated population uses AI. We are also examining the potential use of AI for ASIC's regulatory purposes, including undertaking trials to test its capabilities.

We consider that the safe and responsible use of AI may be realised through strong governance, transparency and accountability, including human oversight, as well as robust information security.

5 ASIC is Australia's integrated corporate, financial services, consumer credit and markets regulator. Our role includes facilitating and improving the performance of the financial system and the entities within it. Our role also includes promoting confident and informed participation by investors and consumers in the financial system.

6 ASIC supports innovation in the financial system that is balanced with appropriate consumer protections and market integrity safeguards.

7 We are extremely interested in the use and impact of AI technologies in the financial system. Effective AI tools may bring enormous benefits to businesses and end-users, as well as consumers. However, irresponsible or malicious use of AI tools may cause or amplify harm to consumers and investors and may ultimately impact market integrity.

8 We consider that safe and responsible use of AI may be realised through strong governance, transparency and accountability, including human oversight, as well as robust information security to protect data and privacy.

AI as a key priority

9 AI is as a key priority for ASIC. We have a range of work underway relating to AI. We are actively monitoring the deployment of AI across our regulated population to better understand how it is used, as well as its benefits and risks. We are also engaging with industry, other regulators and the public on AI developments.

Note: See ASIC Corporate Plan 2023–27 for further discussion on how ASIC is prioritising AI.

Industry engagement and guidance

10 We understand that parts of ASIC's regulated population are already using AI or have plans to do so. We regularly discuss these issues with Australian financial services (AFS) and credit licensees as part of our general engagement.

Note: See paragraphs 64–67 for more information on ASIC's industry engagement.

11 ASIC has issued guidance setting out our expectations around the laws applicable to the use of technologies in the following regulatory guides:

(a) Regulatory Guide 221 *Facilitating digital financial services disclosures* (RG 221);

(b) Regulatory Guide 241 *Electronic trading* (RG 241); and

(c) Regulatory Guide 255 *Providing digital financial product advice to retail clients* (RG 255).

12 We are also currently considering additional guidance to industry clarifying the application of corporations and financial services laws to the use of AI.

13 We are actively engaging on the use of new technologies by market participants, including high-frequency trading, the use of algorithms and automated order processing. ASIC has introduced new market integrity rules to respond to these developments. These rules are aimed at promoting the technological and operational resilience of securities and futures market operators and participants: see Media Release (22-045MR) *ASIC amends market integrity rules and other ASIC-made rule books* (10 March 2022).

14 ASIC plans to consult on extending these market integrity rules to include futures market participants. We are also planning to consult on updating the guidance in RG 241 to include futures market participants and to ensure that guidance reflects developments with AI.

Review of the use of AI and advanced data analytics

15 ASIC is currently looking at how banks, credit providers, insurers and financial advisers are using AI and advanced data analytics. We want to understand how they are identifying and mitigating potential harms to consumers. We will also consider the extent to which these businesses are realising potential benefits for consumers, as well as their AI and advanced data analytics risk management and governance practices.

16 We are reviewing over 20 entities based on their use of AI and advanced data analytics as at late 2023. We anticipate releasing the findings of our review in the second half of 2024.

17 The findings of this review will better enhance our understanding of how AI is being deployed in Australia and where we may need to focus our regulatory work in the future.

Public engagement

18 ASIC is actively engaging in the public debate on AI. For example, ASIC's Chair has regularly spoken on the challenges and opportunities of emerging technologies, such as AI. Recent speaking engagements have included keynote speeches on the following topics:

(a) The critical human and intellectual skills required for lawyers to adapt to technological developments such as AI: see *Technology in the professional toolkit*, speech by ASIC Chair, Joe Longo, Centre for Artificial Intelligence and Digital Ethics Ninian Stephen Law Program Oration, Melbourne, 16 April 2024.

(b) The increasing compliance challenges for directors and boards arising from developments including AI: see *Being a director isn't meant to be easy*, speech by ASIC Chair, Joe Longo, Australian Institute of Company Directors Australian Governance Summit, Melbourne, 21 March 2024.

(c) The current and future state of AI regulation and governance: see *We're not there yet: Current regulation around AI may not be sufficient*, speech by ASIC Chair, Joe Longo, Human Technology Institute Shaping Our Future Symposium, University of Technology Sydney, 31 January 2024.

19 ASIC has also partnered with the University of Technology Sydney to host a symposium on emerging issues in AI regulation. The symposium will be held on 21 May 2024, and will feature two sessions. The first session will be a closed roundtable discussion where experts across industry, government and academia explore and debate complex topics on AI regulation. The second session will be an open forum with a panel of regulators, including ASIC, exploring the regulatory framework applicable to AI and how AI is changing the way regulation is carried out.

20 ASIC views this type of industry and regulator engagement as important to raise awareness on the opportunities, risks and harms of AI, and the regulation of AI in the financial system. We expect that the AI symposium will further public discussions on how AI can be effectively regulated in Australia. We also expect insights from the symposium to increase ASIC's understanding of the ways that industry are using, or plan to use, AI, and the steps that they are taking to mitigate AI-related risks and harms.

International engagement

21 We are actively involved in a number of reviews by international organisations. For example, ASIC is a member of the Fintech Task Force of the International Organization of Securities Commissions (IOSCO) that is leading a review of the use of AI in member jurisdictions: see IOSCO, *IOSCO publishes an updated Workplan* (PDF 159 KB) [media release], 12 April 2024.

22 ASIC also regularly engages with overseas regulators such as the US Securities and Exchange Commission (SEC), the UK Financial Conduct Authority and the European Securities and Markets Authority to share information and understand the impact of AI. We are closely monitoring developments in the regulation of AI in other jurisdictions.

Note: See paragraphs 72–74 for more information on our international engagement.

How ASIC is using AI

23 Internally, ASIC is undertaking a digital transformation program to support our vision of becoming a leading digitally-enabled and data-informed regulator by 2030. Part of this vision is the safe and responsible adoption of AI. Our ability to regulate the use of AI in the financial sector will be materially enhanced by gaining expertise in and experience with AI.

24 We anticipate that AI could make the work we undertake more productive and efficient by, for example:

(a) assessing the high volume of reports of misconduct and reportable situations we receive;

(b) more easily and quickly detecting and disrupting financial harms (e.g. scams);

(c) analysing vast data sets to more easily assess where threats may be occurring to assist in prioritising work;

(d) cutting down on standardised, high-volume manual processes; and

(e) more efficiently capturing and storing information.

25 We have already undertaken a number of ‘proof of concept’ trials to test the capability of AI to support ASIC’s work, particularly with work that is high-volume or manual. We are continuing to explore and refine how AI could be adopted into ASIC’s work, recognising that AI continues to develop at a rapid pace.

Example 1: ASIC's document summarisation AI 'proof of concept'

ASIC has recently completed an initial 'proof of concept' trial to assess the capability of a generative AI Large Language Model (LLM) to summarise a sample of public submissions made to a parliamentary inquiry. The trial was focused on measuring the quality of the generated output and understanding the potential use of generative AI. It was an exploratory trial only and was not used for regulatory or operational purposes.

Over a 5-week period, selection, experimentation and optimisation of the LLM culminated in a final phase of testing to assess the performance of the AI-generated summaries compared to human-generated summaries. The final results showed that the AI summaries performed lower on all criteria compared to the human summaries. Of note was the LLM's limited ability to pick up the nuance or context required to analyse submissions. These point-in-time results relate to the use of certain prompts using a specific LLM, for a particular use-case, and therefore should not be extrapolated more widely.

However, ASIC has taken a range of learnings from the trial, notably, given the rapidly evolving AI landscape, the importance of providing a safe environment that allows for rapid experimentation to ensure ASIC has a continued understanding of uses for AI, including its shortcomings.

26 As part of exploring how AI can support ASIC's work, we are also developing appropriate governance structures and building capabilities within our teams:

(a) **AI Policy**—ASIC has adopted an AI policy setting overarching responsibilities and considerations for the development and use of AI at ASIC.

(b) **AI Assurance Framework**—We are participating in whole-of-Government initiatives to develop policies, procedures and an AI Assurance Framework comprising AI controls, measurement and assessment, monitoring and reporting, roles and responsibilities.

(c) **Foundational technologies**—We are investigating and adopting fit-for-purpose technology to support the use of AI.

(d) **People capabilities**—We are building on our digital literacy program, enhancing staff knowledge around AI technologies through training and investigating how best to equip staff with the skills and expertise needed for the safe and responsible use of AI.

B ASIC's approach to regulating the use of AI

Key points

ASIC supports the responsible use of new and emerging technologies, such as AI.

Existing obligations and requirements under corporations and financial services laws are technology neutral. This means that they continue to apply to new and emerging technologies, such as AI. We expect that Australian businesses will consider how these laws apply when seeking to develop and deploy technologies responsibly.

When enforcing and giving effect to corporations and financial services laws, ASIC will balance any action with the statutory objectives of facilitating markets and promoting trust and confidence in the financial system.

27 ASIC has a long history of adapting our regulatory approach in response to new and emerging challenges and technologies. Our approach to AI will be no different.

28 We administer laws that are technology neutral. This means that they apply equally to AI and non-AI systems and processes. It also means that existing corporations and financial services laws and related guidance will continue to apply to protect consumers and investors. We expect businesses to consider how these laws apply when exploring, developing, deploying and using new technologies such as AI.

29 ASIC will balance any action to enforce and give effect to the laws that we administer, with statutory objectives aimed at facilitating markets and promoting trust and confidence in the financial system.

Note: See Information Sheet 151 *ASIC's approach to enforcement* (INFO 151).

General obligations: Director duties, licensee requirements and consumer protections

30 In Australia, corporations and financial services laws contain a number of obligations and prohibitions that apply generally to a broad range of circumstances. These include:

(a) the duties applicable to directors and officers of companies;

(b) general governance obligations, such as those applicable to AFS and credit licensees;

(c) general conduct obligations governing the way that members of ASIC's regulated population deal with consumers and investors; and

(d) the consumer protections applicable to the provision of financial services.

Director duties and general governance obligations

31 Company directors and officers are bound by certain duties, including obligations to exercise powers and discharge duties with an objective degree of care and diligence. These duties are general in nature and extend to the adoption, deployment and use of new technologies by companies, including AI. This means that directors and officers are required to be aware of developments in the use of AI and other technologies within their companies. They may also need to consider how, and the extent to which, they rely on information generated by AI-systems to discharge their duties.

32 Alongside director duties sit other corporate governance obligations, such as those imposed on AFS and credit licensees to have adequate risk management systems.

33 ASIC has previously taken action to enforce these obligations. In May 2022, the Federal Court found that RI Advice Group Pty Ltd (an AFS licensee) failed to have adequate risk management systems in place to manage cyber security risks. This finding came after a significant number of cyber incidents occurred at authorised representatives of RI Advice, including one incident that resulted in the potential compromise of confidential and sensitive information from several thousand clients: see Media Release (22-104MR) *Court finds RI Advice failed to adequately manage cyber security risks* (5 May 2022).

General conduct obligations

34 General conduct obligations in corporations and financial services laws govern the way that members of ASIC's regulated population—including their agents and representatives—deal with and treat consumers and investors.

35 For example, AFS and credit licensees must ensure that the financial services or credit activities covered by their licence are provided efficiently, honestly and fairly. Insurers are required to act with the utmost good faith when interacting with customers under a contract of insurance. Superannuation trustees must act fairly when dealing with beneficiaries. Market participants must not do anything that results in a market for a financial product not being both fair and orderly or fail to do anything where failure has that effect. These obligations do not change with the uptake of new technology.

36 ASIC is active in enforcing these general conduct obligations, particularly where there has been consumer or investor harm. An example of this is the proceedings commenced recently against subsidiaries of Insurance Australia Group Limited (IAG). ASIC alleges that IAG breached its general conduct obligations, including by making misleading claims to customers about loyalty discounts, which we say enticed customers to renew their home insurance policy and to take out a policy with the same IAG brand. We argue that IAG's contraventions of the general conduct obligations arose from the way that the insurer operated its pricing algorithm, which we allege rendered promised loyalty discounts misleading: see Media Release (23-228MR) *ASIC alleges IAG misled home insurance customers on pricing discounts* (25 August 2023).

Consumer protection provisions

37 ASIC regulates Australian consumer law that is applicable to the supply of financial products or financial services. These consumer protections apply to a diverse range of situations and interactions and prohibit behaviours including unconscionable conduct and the making of false or misleading representations.

38 We have previously taken action to respond to consumer harm arising from the use of certain technological systems by our regulated population. For example, we successfully established that the National Australia Bank Limited (NAB) acted unconscionably towards its customers by charging fees that the bank knew it was not entitled to charge. The central cause of this overcharging was identified by the Federal Court as NAB's 'inability to manage its own computer systems and its unwillingness to apply sufficient resources to remedy the problem in a timely manner': see Media Release (23-258MR) *NAB penalised $2.1 million for unconscionable conduct over account fees* (22 September 2023).

39 We have also taken action to respond to harm arising from misleading or deceptive practices, such as advertising that fabricates information about financial products and services. For example, ASIC successfully established that AGM Markets, OT Markets (OTM) and Ozifin Tech (all in liquidation) breached consumer protections while providing over-the-counter derivative products to retail investors in Australia. One aspect of this misconduct involved an advertisement purporting to be a news article about a popular television show. In reality, the article was published on the internet by OTM to lure in potential investors and made false or misleading representations about a product that had featured on the show and testimonials given by show participants. The advertised product—a Bitcoin trading platform that operated using an automated trading algorithm—did not feature on the show, was not the subject of testimonials by show participants and was not a product that OTM offered to clients in Australia: see Media Release (20-246MR) *Federal Court imposes $75 million penalty on OTC derivative issuer AGM Markets and former authorised representatives OT Markets and Ozifin* (19 October 2020).

Other corporations and financial services laws applicable to the use of AI

40 There is a range of other statutory obligations enforceable by ASIC that could be relevant to the development, deployment and use of AI systems by our regulated population, including:

(a) market misconduct prohibitions, such as those banning market manipulation and insider trading, under Pt 7.10 of the *Corporations Act 2001* (Corporations Act);

(b) operational, outsourcing and other requirements applicable to market operators and participants set out in the *ASIC Market Integrity Rules (Securities Markets) 2017* (Securities Market Integrity Rules) and *ASIC Market Integrity Rules (Future Markets) 2017*;

(c) automated order processing rules applicable to trading market participants of Australian securities markets as set out in Pt 5.6 of the Securities Market Integrity Rules;

(d) accountability obligations applicable to accountable entities and persons under Pt 3 of the *Financial Accountability Regime Act 2023*;

(e) internal dispute resolution requirements applicable to certain financial firms under s912A(1)(g) of the Corporations Act, s47(1)(h) of the *National Consumer Credit Protection Act 2009* (National Credit Act), Regulatory Guide 271 *Internal dispute resolution* (RG 271) and *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98*;

(f) hawking prohibitions applicable to unsolicited offers, requests or invitations for the issue or sale of financial products under s992A of the Corporations Act;

(g) obligations relating to the provision of financial advice, such as requirements to act in the best interests of clients and to give priority to clients' interests under s961B and 961J of the Corporations Act;

(h) obligations relating to financial product disclosure, such as the preparation and content of Product Disclosure Statements, under Pt 7.9 of the Corporations Act;

(i) outsourcing responsibilities for corporations and responsible entities under s601FB, 769B and 911B of the Corporations Act;

(j) obligations relating to organisational competence, training and resourcing applicable to AFS and credit licensees under s912A(1)(d)–(f) of the Corporations Act and s47(1)(g) and 47(1)(k) of the National Credit Act; and

(k) the design and distribution requirements relating to financial products for retail consumers under Pt 7.8A of the Corporations Act.

C Opportunities, risks and harms in financial services

Key points

AI presents a number of opportunities, such as the capacity to improve consumer outcomes or assist industry in meeting compliance obligations. However, these opportunities need to be responsibly balanced with the potential for AI-related risks and harms.

AI may pose distinct risks to consumers in financial services depending on how the systems are deployed and what types of controls are put in place. There are also significant risks to the operation and stability of markets and an entity's cyber security if AI is used in harmful ways.

AI opportunities

41 AI is already prevalent in Australian society and is continuing to develop and evolve at a rapid pace. The use of AI offers the possibility of significant efficiencies in the provision of financial services, and in the financial markets. Of particular interest to ASIC is the potential for AI to improve consumer outcomes, such as through greater accessibility and personalisation, or to assist in meeting compliance obligations.

42 In our monitoring of the development of AI, we have become aware of AI being used by financial services entities in Australia or internationally for:

(a) efficient product development (e.g. coding and data analytics) and improving prediction accuracy for high-frequency trading;

(b) natural language processing and generative AI to extract news, information and research from a range of sources, and creating trading insights;

(c) refining sales and marketing (e.g. customer segmentation, content generation) and implementing predictive analytics;

(d) trading and execution services by identifying investment opportunities and assisting with forecasting asset price and asset allocation decisions;

(e) pre- and post-trade process automation for securities transactions such as trade validation, and producing trade reports and regulatory submissions;

(f) help developing risk mitigation and hedging strategies for trading and portfolio management;

(g) investor, customer and member services (e.g. chatbots, triaging customer engagement and requests);

(h) financial advice (e.g. digital advice, portfolio construction and financial modelling, using AI-created video simulations to provide client updates);

(i) claims assessment, fraud detection and underwriting in insurance;

(j) client ID verification and credit scoring;

(k) cyber security, including threat, phishing and anomaly detection, automated response and authentication;

(l) generating synthetic data to support efficient model development and stress testing;

(m) scams prevention and disruption to encourage customers to scrutinise new payee details before authorising payments; and

(n) assisting surveillance activities and monitoring regulatory compliance including identifying deepfake AI deceptions, real-time monitoring of trading and identifying misconduct and information leaks with voice and transaction monitoring.

Note: For further information see Ontario Securities Commission and Ernst & Young LLP, *Artificial intelligence in capital markets exploring use cases in Ontario* (PDF 2.9 MB) [report], October 2023 and Association for Financial Markets in Europe and PricewaterhouseCoopers International Limited, *Artificial intelligence: Challenges and opportunities for compliance* [report], September 2023.

43 In Australia, many financial services entities are already using AI and continuing to explore how it can be implemented into their business models. However, not all financial services are doing so. ASIC expects that, as AI technology evolves, there will be more opportunities to use AI to greater benefit consumers.

Consumer risks and harms

44 Use of AI can amplify existing risks, but also create new risks. There are a number of general risks associated with the use of AI that may arise in the financial services and markets sectors. These include risks around bias and discrimination, loss of privacy, misinformation and disinformation, lack of explainability and transparency, unethical conduct and copyright issues.

45 AI may also pose distinct risks to consumers in financial services depending on how the systems are deployed and the controls in place. Examples of those risks and harms, which we discuss below, include:

(a) scams and fraud;

(b) credit scoring;

(c) price optimisation and discrimination;

(d) misleading or deceptive practices;

(e) unfair marketing and advertising; and

(f) customer services, claims and complaints handling.

46 These risks have actualised overseas with cases of consumer harm arising. With AI still evolving in Australia, the harms from some of these risks are yet to become prevalent. However, without proper safeguards in place, it is foreseeable that they will, resulting in consumers being harmed. ASIC is closely monitoring cases of poor consumer outcomes in other jurisdictions to inform the focus of our regulatory efforts in Australia.

47 While many of these risks and challenges are not new, businesses must factor them in when designing and implementing AI in their business models to ensure they are not misleading consumers or producing poor consumer outcomes.

Scams and fraud

48 Generative AI is now being used in fraud and sophisticated scams on a mass scale (e.g. voice impersonation, highly personalised content and the creation of false investment endorsements using deepfake audio or video). Evidence of the use of generative AI to deceive consumers has been noted widely, with financial service providers—specifically banks—among the first companies to be targeted.

Note: See I Bousquette, '[Deepfakes are coming for the financial sector](#)', *The Wall Street Journal*, 3 April 2024 and J Davidson, '[How cyber criminals use ChatGPT to make better scams](#)', *The Financial Review*, 19 September 2023.

49 ASIC supports and works with the National Anti-Scam Centre (NASC), which has been established to coordinate efforts across government and the private sector to combat specific scam activity more effectively. This includes co-leading with the Australian Competition and Consumer Commission (ACCC) the first NASC investment scam fusion cell, which has been active in disrupting investment scams such as online investment trading platform scams, including scams using AI.

50 As part of this, ASIC has been working with a cybercrime detection and disruption firm to remove or limit access to investment scam and phishing websites that deceive consumers by creating an illusion that the scam is a legitimate investment opportunity.

Example 2: Deepfake scams in Australia

The ACCC reported losses of $1.3 billion by Australian consumers to investment scams in 2023: see ACCC, *Targeting scams* [report], April 2024.

An example was quoted where a report was made to Scamwatch about an elderly woman who lost her life savings after seeing a deepfake Elon Musk video on social media. She clicked on the link and registered her details online. She was assigned a 'financial adviser' and could see on an online dashboard that she was apparently making returns, but she could not withdraw her money.

ASIC is also seeing this type of conduct increasing as part of our scam website takedown capability. This includes the use of AI generated videos impersonating public figures to entice consumers into investing in fake products.

Credit scoring

51 Some banks and lenders are reporting that they are using or plan to use AI to varying degrees in the credit assessment process. AI-powered credit scoring can use both conventional and unconventional data sources (e.g. social media activity and mobile phone use) to evaluate credit worthiness. These practices can unfairly discriminate and risk financial exclusion for the most vulnerable, particularly with opaque AI systems making it difficult to challenge outcomes.

Example 3: Using AI for credit scoring

The US Financial Stability Board (FSB) analysed customer-focused applications of AI and machine learning in financial services, including credit scoring applications: see FSB, *Artificial intelligence and machine learning in financial services* [report], November 2017. In relation to credit scoring, it noted that there was a lack of explainability of the credit score and an associated difficulty in challenging the score. It also referenced the risk of bias arising from the use of unconventional and unstructured data sources (e.g. rating a borrower from a particular ethnic minority at higher risk of default).

Price optimisation and discrimination

52 Insurers and other financial service providers use machine learning and consumer data to evaluate individual consumers at an increasingly granular level, maximising profit to the detriment of certain consumers and undermining the more equitable outcomes that arise from risk pooling. This could lead to higher premiums for some consumers and financial exclusion for the most vulnerable.

Example 4: Price optimisation in insurance

ASIC is pursuing action against IAG, which used an algorithm in a way that ASIC alleges rendered their promised loyalty discounts misleading: see 23-228MR.

ASIC alleges loyalty discounts encouraging customers to renew their home insurance policies were misleading, as loyal customers may have had their premiums increased before the discounts were applied. It is argued that the insurer used an algorithm to determine a customer’s likelihood of agreeing to renew at different premium levels. The alleged purposed of that algorithm was to allocate a smaller relative price increase to policies of customers who were less likely to renew and a larger relative price increase to policies of customers who were more likely to renew.

Misleading or deceptive practices

53 Misleading or deceptive practices in Australia are not new and ASIC has been active in taking action against this type of conduct. However, the speed and extent to which information can be disseminated with the use of AI may exacerbate the potential harms to consumers where information is misleading or deceptive.

54 Many generative AI tools are designed to persuade and can produce authoritative-sounding content that looks convincing and appears correct, but contains factual errors or fallacies. Inaccurately generated AI information could cause harmful outcomes for consumers engaging in financial services, particularly vulnerable consumers.

55 The rise of 'AI washing' (i.e. making misleading claims about the use of AI) can also harm investors who are misled about a business' use of AI, particularly where such statements may be material to an individual's investment decision making.

Example 5: AI washing

The SEC charged two investment advisers for, among other things, making false and misleading statements about their purported use of AI: see SEC, *SEC charges two investment advisers with making false and misleading statements about their use of artificial intelligence* [media release], 18 March 2024. It was claimed that the advisers marketed to clients and prospective clients (in media releases, websites and social media) that they were using AI in certain ways in relation to their investment processes when they were not.

The charges were settled in March 2024, with the two investment advisers agreeing to pay total penalties of US$400,000.

Unfair marketing and advertising

56 AI has the potential to enhance marketing and advertising practices in ways that could lead to unfair outcomes for consumers. For example, by allowing for faster testing and iteration of marketing and advertising material, as well as bespoke micro-targeting of consumers, businesses can identify and enhance the most influential parts of advertising campaigns and optimise which consumers see them to ensure that their use of behavioural influencing techniques have a greater impact. Although these practices can be used in a positive way to help consumers and deliver tailored products or services, businesses can also use behavioural techniques in unfair ways, leading to consumer harm.

Note: See ASIC, 'Helping or harming? How behavioural levers can influence people's financial outcomes', *The Behavioral Economics Guide*, 2022, 45–51; LE Willis, 'Deception by design', *Harvard Journal of Law and Technology*, 2020, 34:115.

Example 6: Targeting financially vulnerable consumers

In the US, it has been reported that payday lenders buy data from third-party data brokers who use data collection algorithms to identify consumers who are experiencing financial distress, in order to offer them predatory loans with high interest rates. These lenders have found ways to evade bans against advertising predatory loans introduced by both Facebook and Google on their platforms. We are aware of similar practices in Australia—that is, the collection of data that enables entities to target customers in financial distress—that could be augmented by the use of AI, exacerbating consumer harm: see The Greenlining Institute, *Algorithmic bias explained* [report], February 2021 and C Jones, J Eaglesham, A Andriotis, 'How payday lenders target consumers hurt by Coronavirus', *The Wall Street Journal*, 3 June 2020.

Customer services, claims and complaints handling

57 The use of AI for customer facing services may cause a reduction in the quality of these services with the risk of over-reliance on AI to respond to customer queries, claims and complaints. For example, ASIC is aware of the extensive use of chatbots by financial services providers in Australia to respond to consumer inquiries.

Example 7: Chatbot services

Research conducted by the US Consumer Financial Protection Bureau (CFPB) in 2023 found that financial institutions are increasingly using chatbots as a cost-effective alternative to human customer service: see Chatbots in consumer finance on the CFPB website. Their review found that each of the top 10 largest commercial US banks have deployed chatbots as a component of their customer service. The CFPB's review of customer complaints and the market found that customers can experience poor outcomes and there is potential for widespread harms, including:

- inaccurate, unreliable or insufficient financial information;
- automated responses received from a chatbot that fail to provide meaningful assistance and instead lead customers into a continuous loop of repetition, unhelpful jargon or legalese without an offramp to a human customer service representative;
- a lack of tailored services in complaints handling and in complex consumer situations such as financial hardship or consumer distress, which may hinder access to timely, individualised human intervention; and
- raised privacy and security risks.

Market risks and cyber security

58 Broader risks may arise that could lead to risks in the market, including:

(a) herding behaviour, which can affect market stability (i.e. where automated decisions are based on similar models or underlying data), increase volatility and exacerbate extreme market events;

(b) market abuse where machine learning-based trading algorithms can learn to manipulate market prices when designed to seek out and generate profitable trades; and

(c) autonomous pricing models' algorithms used by online vendors learning to collude (see Artificial intelligence, algorithmic pricing, and collusion on the CEPR website), leading to anti-competitive and higher prices.

Note: Market related risks have also been the subject of commentary by the Chair of the SEC in July 2023: 'AI may heighten financial fragility as it could promote herding with individual actors making similar decisions because they are getting the same signal from a base model or data aggregator. This could encourage monocultures. It also could exacerbate the inherent network interconnectedness of the global financial system.'

59 AI can also pose risks for cyber security. AI decision-making technology used by businesses may be a target for cyber attacks, for example, by data poisoning and data leaks. AI systems are more vulnerable because of the dependency of an AI system on the data used to train and test it.

Note: The Australian Signals Directorate (ASD) summarises some important threats related to AI systems, including data poisoning, and prompts organisations to consider steps they can take to engage with AI while managing risk: see Engaging with artificial intelligence on the ASD website.

60 This may leave those businesses open to the risk of theft or disruption of services, particularly in circumstances where there are weaknesses in their cyber defences.

D Realising the benefits and opportunities of AI

Key points

While the widespread adoption of AI is still a new phenomenon, it is important that governments, regulators, industry and consumer groups work together to ensure we have the right frameworks in place to ensure AI is being used safely and responsibly.

It is important that we are all engaging to share information and learnings as the debate on AI adoption and how it is regulated continues to evolve.

61 ASIC's primary interest in relation to AI is to ensure the safety and integrity of the financial system and to protect consumers from harm as they engage in financial services.

62 We recognise that there are many parties that have an important role to play to ensure AI is used in a safe and responsible way. This includes governments, regulators, industry and consumer groups.

63 If all parties are working together to ensure there are appropriate safeguards in place for the use of AI, systems are being appropriately designed and laws are being enforced to hold parties accountable, we can fully realise the benefits and opportunities of AI while mitigating the potential risks and harms.

ASIC's engagement

64 ASIC has a range of work underway to better understand how AI is being used in financial services in Australia. This will enable us to better support Government in developing any proposed law reform and inform how we regulate the use of AI within current regulatory frameworks.

65 As well as entity specific engagement, ASIC has established a number of external panels that provide invaluable insights into many industry issues, including the development of new and emerging technology such as AI—for example:

(a) the ASIC Consultative Panel;

(b) the ASIC Consumer Consultative Panel;

(c) the Digital Finance Advisory Panel; and

(d) the Cyber Consultative Panel.

66 ASIC is also able to engage on issues of new and emerging technology through our Innovation Hub, which also helps fintech and regtech start-up

and scale-up businesses—including those with AI-driven products and services—navigate Australia's regulatory framework for financial services.

67 This engagement is a key priority for ASIC to contribute to our understanding of how AI is being used by our regulated population and the opportunities and risks as they evolve. It is also important for us to share information on the risks and harms we are seeing to enable greater visibility and engagement from government, industry and consumer groups.

Whole-of-government law reform on AI

68 The Australian Government, through the Department of Industry, Science and Resources, recently released an interim response to its discussion paper: see Department of Industry, Science and Resources, *Safe and responsible AI in Australia consultation: Australian Government's interim response* [interim response], 17 January 2024.

69 As set out above in Section B, existing corporations and financial services laws already apply to the use of AI. While this is the case, it is important to ensure that the laws clearly facilitate appropriate transparency and oversight around the operation of AI systems so that unfair practices are prevented from occurring. If unfair practices do occur, the laws need to be robust enough to punish and deter misconduct and to ensure that there is appropriate recourse available to affected consumers.

70 ASIC supports the steps outlined by the Government in the interim response. In particular, we support the intention to consider and consult on the case for, and form of, new mandatory testing, transparency and accountability guardrails for organisations developing and deploying AI systems in high-risk settings. We also support further consideration of opportunities to strengthen existing laws to address AI-related risks and harms.

71 ASIC will continue to work with the Department of Industry, Science and Resources, Treasury and other key government stakeholders to advance these commitments and achieve the safe and responsible use of AI in Australia.

International learnings

72 There are different approaches emerging internationally in how the use of AI is being regulated. For example, the European Union has applied a prescriptive approach in banning certain forms of AI, while the United Kingdom has instead focused efforts on how regulators are supervising AI within existing regulatory frameworks.

73 International organisations such as IOSCO and the Organisation for Economic Co-operation and Development are actively engaged in AI, including by regularly issuing publications and guidance and undertaking periodic reviews of AI and regulation in member jurisdictions. The purpose of this engagement is to better understand how AI is developing and how it is being used, and to identify opportunities for improvements to supervision and regulation of AI across member jurisdictions.

74 ASIC is actively involved in this work and we regularly engage with our overseas counterparts to share information and understand the impacts of AI, with key objectives of informing and improving our regulatory work.

Key terms

Term	Meaning in this document
ACCC	Australian Competition and Consumer Commission
AFS licensee	A person who holds an Australian financial services licence granted under s913B of the Corporations Act
artificial intelligence (AI)	An engineered system that generates predictive outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives or parameters without explicit programming. AI systems are designed to operate with varying levels of automation (see discussion paper, p 5)
ASIC	Australian Securities and Investments Commission
CFPB	Consumer Financial Protection Bureau (United States)
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
discussion paper	Department of Industry, Science and Resources, *Safe and responsible AI in Australia* [discussion paper], June 2023
FSB	Financial Stability Board (United States)
IAG	Insurance Australia Group Limited
interim response	Department of Industry, Science and Resources, *Safe and responsible AI in Australia consultation: Australian Government's interim response* [interim response], 17 January 2024
IOSCO	International Organization of Securities Commissions
LLM	Large language model
NAB	National Australia Bank Limited
NASC	National Anti-Scam Centre
National Credit Act	*National Consumer Credit Protection Act 2009*
OTM	OT Markets Pty Ltd
Pt 7.10 (for example)	A part of the Corporations Act (in this example numbered 7.10), unless otherwise specified
s912 (for example)	A section of the Corporations Act (in this example numbered 912), unless otherwise specified

Term	Meaning in this document
SEC	Securities and Exchange Commission (United States)
Select Committee	Select Committee on Adopting Artificial Intelligence