

An Act that will rule over the development and deployment of high-impact AI systems.

Sponsor: Minister of Innovation Science and Industry

Current Status: Debated in Senate at second reading on March 7, 2023 (House of Commons) ISED holding consultations August/September 2023 to develop a self-regulatory Code of Practice to govern generative AI in the absence of the law.

Key elements of the Bill:

[The proposed Artificial Intelligence and Data Act \(AIDA\)](#), introduced as part of the [Digital Charter Implementation Act, 2022](#), would set the foundation for the responsible design, development and deployment of AI systems that impact the lives of Canadians. The Act would ensure that AI systems deployed in Canada are safe and non-discriminatory and would hold businesses accountable for how they develop and use these technologies.

Under the AIDA, businesses will be held responsible for the AI activities under their control. They will be required to implement new governance mechanisms and policies that will consider and address the risks of their AI system and give users enough information to make informed decisions.

The AIDA will introduce new requirements for businesses to ensure the safety and fairness of high-impact AI systems every step of the way:

- **Design:** Businesses will be required to identify and address the risks of their AI system with regard to harm and bias and to keep relevant records.
- **Development:** Businesses will be required to assess the intended uses and limitations of their AI system and make sure users understand them.
- **Deployment:** Businesses will be required to put in place appropriate risk mitigation strategies and ensure systems are continually monitored.

What is covered by the AIDA?

The Act is concerned with technological systems that meet the following criteria:

- Process data regarding human activities
- Generate content, or make decisions, predictions, and recommendations.
- Perform their functions autonomously or partially autonomously.
- Use complex techniques such as machine learning.

And proposes the following approach:

- The Act would ensure that **high-impact AI systems** meet the same expectations with respect to safety and human rights to which Canadians are accustomed. Regulations defining which systems would be considered high-impact would be developed in consultation with a broad range of stakeholders to ensure that they are effective at protecting the interests of the Canadian public, while avoiding imposing an undue burden on the Canadian AI ecosystem.
- The Minister of Innovation, Science, and Industry would be empowered to administer and enforce the Act, **to ensure that policy and enforcement move together as the technology evolves**. An office headed by a new AI and Data Commissioner would be created as a centre of expertise in support of both regulatory development and administration of the Act. The role would undergo gradual evolution of the functions of the commissioner from solely education and assistance to also include compliance and enforcement once the Act has come into force.
- **Prohibit reckless and malicious uses of AI** that cause serious harm to Canadians and their interests through the creation of new criminal law provisions.

High-impact AI systems:

Under the AIDA, the criteria for high-impact systems would be defined in regulation, to allow for precision in the identification of systems that need to be regulated through this framework, for inter-operability with international frameworks such as the EU AI Act, and for updates to occur as the technology advances.

The following would be among the key factors to be examined in determining which AI systems would be considered to be high-impact:

- Evidence of risks of harm to health and safety, or a risk of adverse impact on human rights, based on both the intended purpose and potential unintended consequences.
- The severity of potential harms
- The scale of use
- The nature of harms or adverse impacts that have already taken place.
- The extent to which for practical or legal reasons it is not reasonably possible to opt-out from that system.
- Imbalances of economic or social circumstances, or age of impacted persons; and
- The degree to which the risks are adequately regulated under another law.

Systems of specific interest include:

- Screening systems impacting access to services or employment.
- Biometric systems used for identification and inference.
- Systems that can influence human behaviour at scale.
- Systems critical to health and safety

The AIDA would require that appropriate measures be put in place to identify, assess, and mitigate risks of harm or biased output prior to a high-impact system being made available for use. This is intended to facilitate compliance by setting clear expectations regarding what is required at each stage of the lifecycle.

The obligations for high-impact AI systems would be guided by the following principles, which are intended to align with international norms on the governance of AI systems:

1. Human Oversight & Monitoring
2. Transparency
3. Fairness and Equity
4. Safety
5. Accountability
6. Validity & Robustness

Businesses would be expected to institute appropriate accountability mechanisms to ensure compliance with their obligations under the Act and be held accountable for the creation and enforcement of appropriate internal governance processes and policies to achieve compliance.

Oversight and Enforcement:

- In the initial years after it comes into force, the focus of the AIDA would be on education, establishing guidelines, and helping businesses to come into compliance through voluntary means. The Government will allow ample time for the ecosystem to adjust to the new framework before enforcement actions are undertaken. Once passed the Minister of Innovation, Science, and Industry would be responsible for administration and enforcement of all parts of the Act that do not involve prosecutable offences with support by the AI and Data Commissioner.
- The AIDA provides for two types of penalties for regulatory non-compliance – administrative monetary penalties (AMPs) and prosecution of regulatory offences – as well as a separate mechanism for true criminal offences.
- **AMPs** are a flexible compliance tool that could be used directly by the regulator in response to any violation to encourage compliance with the obligations of the Act. While the Act allows for the creation of an AMPs regime, it would require regulations, and consultations, to come into force.

- **Regulatory offences** could be prosecuted in more serious cases of non-compliance with regulatory obligations. Due to the seriousness of the process, guilt must be proven beyond a reasonable doubt, and a firm could defend itself by demonstrating that it had shown due care in complying with its obligations. The Minister would not have any influence on whether to prosecute an offence, and the Public Prosecution Service of Canada would need to determine that a prosecution is in the public interest before it could proceed. For example, a firm could be prosecuted for committing a regulatory offence if it refused to comply with a regulatory obligation, even after receiving a Ministerial order under AIDA.
- True criminal offences are separate from the regulatory obligations in AIDA and relate only to prohibiting **knowing or intentional behaviour where a person causes serious harm**. For example, a person could be prosecuted if they made an AI system available that caused serious harm, and they were aware that it was likely to cause such harm and did not take reasonable measures to prevent it.

Next Steps:

The Government will develop and evaluate regulations and guidelines in close collaboration with stakeholders on a regular cycle. Implementation of the initial set of AIDA regulations is expected to take the following path:

- Consultation on regulations (6 months)
- Development of draft regulations (12 months)
- Consultation on draft regulations (3 months)
- Coming into force of initial set of regulations (3 months)

This would provide a period of at least two years after Bill C-27 receives Royal Assent before the new law comes into force, meaning that the provisions of AIDA would come into force no sooner than 2025.

The focus of the consultations will include:

- What systems that should be considered as high-impact
- Types of standards and certifications that should be considered in ensuring that AI systems meet the expectations of Canadians.
- Priorities in the development and enforcement of regulations, including with regard to an AMPs scheme.
- The work of the AI and Data Commissioner and the establishment of an advisory committee.

In the short-term ISED is consulting with industry to [develop a self-regulatory Code of Practice](#) for generative AI systems

Implications for Digital Advertising Industry

- **Application** – Given the widespread use of AI in the daily business of online advertising – obligations of this AI directive apply to the entire supply chain resulting in confusion on accountability.
- Currently industry uses of AI to provide fundamental benefits to advertisers and consumers like optimized investments and provision of safe media environments, could fall under **definition of “high-impact”** leading to a broad slate of unintended consequences
- Concern with codes of practice being **broadly defined vs sector-specific**.
- Need for standards and frameworks to aid in compliance with notice and transparency requirements and existing privacy legislation.

IAB Canada Activity

IAB Canada is involved in current and future consultations with government on AIDA as well as the development of Codes of Practice with input from our working groups. Also collaborating with our global counterparts to share in learnings and best practices in other jurisdictions. To join our working group, reach out to policy@iabcanada.com

Further Reading

[Full Content of the Bill](#)

[Canadian Guardrails for Generative AI – ISED Consultation](#)