Safe and responsible AI in Australia – Discussion paper

Twilio Comments

July 2023

Twilio welcomes the opportunity to comment on the 2023 Discussion Paper released by the Department of Industry, Science and Resources (**DISR**) in relation to governance of Artificial Intelligence (**AI**) in Australia. We support DISR's assessment that AI is already delivering significant benefits across Australia and acknowledge the consideration given in the Discussion Paper to appropriate and future thinking management of this technology.

Twilio's comments are summarised as follows and explained further below:

- *Definitions*. Twilio supports the definitions of "Artificial Intelligence (AI)", "machine learning", and "algorithm" being based on those from the International Organisation for Standardization (**ISO**), and recommends that future definitions remain internationally-aligned and also targeted to ensure that systems or scenarios are not unintentionally captured.

- *Cross-Government Coordination of AI Approaches.* In view of the multiple sectoral and subject matter areas that AI regulation would affect, as well as the different government reviews or inquiries underway, Twilio strongly encourages the Government to ensure cross-government coordination and alignment when developing its approach to AI.

- *Approaches suitable for Australia.* In developing its regulatory framework for AI, Twilio recommends that the Australian government incorporate four key elements that are being considered or used in other jurisdictions around the world: (1) international consistency; (2) technology neutrality; (3) risk- based systems, and (4) allocating responsibilities according to entities' function in the supply chain and their nexus to the end user.

ABOUT TWILIO AND STATEMENT OF INTEREST

Twilio is a global provider of cloud communications and customer engagement services, with over 300,000 active customer accounts globally. Twilio's products and services allow organizations of all sizes, including non-profits, governments, and businesses, to embed communications capabilities in their web, desktop, and mobile applications, enabling them to communicate more efficiently and effectively with their customers.

Twilio leverages AI to support the company's mission of enhancing communications. Twilio uses AI and high-quality data training sets to create products that help companies build better relationships with their customers, stop and prevent fraud, and better detect unauthorized log-ins. In June 2023 Twilio launched CustomerAI, the use of large language models and natural language processing to allow customers to obtain better and more real-time insights from data derived from their interactions with their end users, ultimately allowing customers to further enhance and develop their relationships with their end users while maintaining our principles of trust and privacy that have been central to Twilio since it was founded.

Twilio has been present in Australia since 2018, and powers the communications behind thousands of organizations across Australia in numerous sectors. Major brands we support include Westpac, Domino's Pizza, and Woolworths. We are also proud to enable the crucial work of not-for-profits such as the Royal Flying Doctors Service, Lifeline Australia, and the Butterfly Foundation.

Australia continues to be an important market for Twilio, and we are keen to continue participating in policy discussions and developments in the country, including those relating to the development of responsible AI, which will shape Australia's digital future.

TWILIO COMMENTS

Definitions

Twilio supports DISR's definitions of "Artificial Intelligence (AI)", "machine learning", and "algorithm" being based on those from the ISO, as proposed in the Discussion Paper. Twilio also suggests that all other definitions used in Australia's AI regulatory framework should be internationally aligned to create consistency and support the interoperability of AI services globally. Twilio also encourages the Government to ensure that definitions relating to AI remain narrowly targeted on the subject matter to be regulated, as broader definitions risk inadvertently covering systems or scenarios that are not commonly understood to be AI-driven.

Cross-Government Coordination

Twilio recommends that the Government ensure cross-government coordination when developing its approach to AI.

In Section 3.1 of the Discussion Paper, DISR rightly notes that there are multiple general and sector-specific regulations that are relevant to AI, and that reforms are already underway for some of these (e.g., laws to address misinformation/disinformation, and the Privacy Act Review). We also note that there are other major reviews or inquiries in progress which touch on AI, for example:

- the Digital Platform Services Inquiry by the Australian Competition and Consumer Commission (ACCC);
- the online safety codes and standards that have been registered or are being developed by the eSafety Commissioner; and
- the 2023-2030 Australian Cyber Security Strategy run by the Department of Home Affairs.

To achieve the Government's aims of encouraging innovation and industry engagement in this field, a level of business certainty is required in the overall legal and regulatory regime. Cross government coordination will be critical in this regard.

Approaches suitable for Australia

There are elements of AI regulatory frameworks from around the world that Twilio is supportive of, many of which are replicable and future proof. Each of these will help ensure that approaches to AI policy and regulation in Australia would foster innovation and a strong local economy, while ensuring seamless interactions with the rest of the world. We encourage the Government to consider incorporating each of these into Australia's regulatory approach to AI:

- International consistency
- Technology neutrality
- Risk-based systems
- Functional responsibility

International consistency

As part of Government efforts to foster the AI ecosystem in Australia, international consistency in approaches to AI policy and regulation should be one of the Government's central priorities. International consistency is a major factor in enabling Australian consumers to benefit from global developments in AI. It is important that Australia support ongoing efforts of internationally-recognized standards bodies, such ISO/IEC, that are working to develop international standards on AI.

For local businesses building products and services here, an internationally coherent framework would facilitate easier understanding of similarly aligned regimes of other countries, hence enabling easier business explanation overseas. Businesses based overseas would also be more inclined to invest in and make their products and services available in countries that have a familiar regulatory regime to their home country. An Australian regime that is inconsistent with global standards would be a barrier to Australian businesses seeking to internationalise, as well as for Australians to access international products and services.

As the Discussion Paper notes, there has been much discussion internationally over the past few years around AI governance. The Organisation for Economic Co-operation and Development and governments around the world have been developing principles around AI regulation. In particular, the voluntary U.S. National Institute for Standards and Technology's (NIST) AI Risk Management Framework (RMF) was developed with input from a broad cross section of stakeholders and provides a good roadmap for assessing and managing high-risk AI use cases. Twilio supports Australia maintaining consistency in its domestic regime with key terms and principles that are developed internationally.

Technology neutrality

For an AI regulatory framework to be future-proof, we strongly believe it needs to be technology-agnostic. A technology agnostic approach puts greater policy focus on **what** outcomes are to be achieved, rather than on **how** those outcomes are to be achieved, and would therefore cater for the use of AI across many technologies and scenarios.

Technology-specific policy frameworks would create a significant amount of regulatory overheads that are possibly mis-aligned with global best practices and technology trends, thereby resulting in an unattractive environment for investment and innovation, and potentially locking Australia into the use of specific technologies that may become obsolete. This would create a hurdle for local companies looking to start up, as well as Australians looking to access AI products and services.

The advantage of the Government taking a technology-agnostic approach when developing policies for AI means that Australia can easily and safely stay at the forefront in this developing field. It will encourage investment in the sector by providing confidence while creating space for innovation.

Risk-based systems

Twilio supports a risk-based approach as some jurisdictions globally are considering. Such an approach recognises that AI risks are not the same for every business, customer, or service and it allows for those closest to the end-user to assess and account for the relevant factors. This is discussed further below.

One of the benefits of a risk-based approach is that the overall framework is flexible, and can be applied to all types of AI use cases while appropriately addressing the risks arising out of such use. In adopting a risk-based approach, we strongly encourage the Government to keep focused on

addressing real-world concerns and not be drawn to a level of abstraction that could obscure the potential utility of the framework.

A definition of a high-risk AI system should be based on the risk of the actual **use case** having a severe impact on individuals' lives. It should not be based solely on the sector or industry in which the use occurs. Otherwise, the regulatory framework could become overly onerous and stifle the use of AI tools even in scenarios where there is no or a low risk of harm to individuals.

For instance, AI systems might be used to determine the time when a critical infrastructure business (e.g., an electricity provider) sends emails to customers on new products or services, or in an interactive voice response (IVR) system used by an educational institution to route initial public inquiries to the correct response channels. Such usage of AI in critical or sensitive sectors would be of low risk to individuals.

Conversely, there may also be scenarios where the use of a generally benign AI system might be high-risk. For example, where an IVR system is used in disaster or emergency scenarios to triage and route callers to first responders or other live agents depending on their needs.

Put simply, the success of a risk-based approach to regulation depends on ensuring the definition of 'high-risk' is appropriately precise. Only real high-risk uses should be impacted by strict requirements and obligations, whereas low risk uses should be light touch. Overly broad sectoral or industry approaches to defining 'high-risk' scenarios should be avoided.

In defining what is considered a 'high-risk' vs 'low-risk' scenario, Twilio further cautions against having a prescriptive list of such scenarios. This would lock in the regulatory framework to existing understandings of how AI is deployed, instead of 'future-proofing' the framework; and the framework would be unable to address new high-risk use cases that may subsequently emerge, or conversely account for high-risk use cases that become low-risk due to new technology or circumstances de-risking such use cases.

Functional responsibility

To ensure that AI can be harnessed across the market, while being appropriately governed, responsibilities must be assigned to the party who is in the best position practically to discharge them. This proportionate governance principle is closely tied to the risk-based approach discussed above. In this regard, the Discussion Paper mentions a developer/deployer distinction for the allocation of responsibilities. While this distinction ultimately may prove to be a useful one for regulatory purposes, Twilio cautions that in practice the use of these two broad categories might not adequately reflect the complexity of existing and potential future value chains linked to AI.

Twilio instead recommends allocating responsibilities and obligations to entities based not only on the risk profile of the AI system they use, but also the particular **function** of the entities in the AI supply chain. Under this approach, obligations and liability would be placed on the entity best positioned to mitigate the risk to the end user, i.e., a functional responsibility approach.

This functional responsibility proposal provides a more nuanced and future-proof approach. It also ensures that, especially in the case of a high-risk AI system, the highest level of regulatory obligations (and consequent compliance burden) is targeted to the player with the most influence at the point of risk. Typically, this would be the entity with the direct relationship with the end user. Such an approach also would allow for more tailored regulation in a range of different scenarios. This could include, for example, business to business (B2B) suppliers incorporating existing AI systems into their products while neither developing nor deploying the system to non-business consumers. In a related

scenario, B2B entities act as intermediaries which provide access to an AI system actually deployed in the market by a third party.

This functional responsibility approach also reflects the many potential operational realities of AI systems being used across various industries in different contexts. Like the risk-based approach discussed above, functional responsibility would be a proportionate governance vehicle that better reflects operational and marketplace realities.

CONCLUSION

Twilio believes that AI can be a key driver of business innovation and economic growth in Australia for years to come. We support the Government's approach to proportionate and timely governance responses to build public trust to ensure the full benefits of this technology are fulfilled.

Twilio hopes the comments and recommendations above will aid DISR in striking an optimal balance between managing the potential risks from AI technology and fostering innovation and adoption across the digital economy in Australia.

Twilio thanks the DISR for this additional and valuable opportunity to contribute to the development of Australia's AI ecosystem and looks forward to continuing to engage in constructive dialogue with all relevant stakeholders on this important subject.