



10 October 2023

**Submission to the National Consultation on the Exposure Draft of the Commonwealth Digital Identity Legislation and Rules**

The ACT Human Rights Commission welcomes the opportunity to make a submission to the 2023 National Consultation on the Exposure Draft of the Digital ID Bill 2023 and Associated Rules.

The Commission recognises the objectives underpinning the proposed draft Digital Identity (ID) legislation, including to strengthen the privacy and security of personal information, convenience for consumers accessing services, and to deliver a range of economical benefits through the use of Digital IDs for consumers and business users, service providers, government and the broader economy.

While we appreciate that initial consultation on a Digital ID scheme began in 2021, the very short consultation period on the current exposure draft and associated rules has meant the Commission has not been able to provide detailed consideration in the time frame available. This short submission is therefore limited to raising high level concerns that impact key human rights.

The proposed Digital ID scheme has significant human rights implications, including at the state and territory level, that will require a range of complex issues to be properly balanced. Importantly, the ACT is a human rights jurisdiction, and the proposed legislation will engage the Territory's *Human Rights Act 2004* (HR Act). In the ACT, section 12 of the HR Act prescribes that everyone has the right not to have their privacy interfered with unlawfully or arbitrarily. This includes respect for private and confidential information, the storage, use and sharing of such information; and the right to control the dissemination of an individual's information. It is essential to show that any limitation on an individual's right to privacy is reasonable, necessary, and proportionate in accordance with section 28 of the *HR Act*. The Australian Government has also made its own commitments to protecting human rights under several international instruments, including the *International Covenant on Civil and Political Rights*. Additionally, other states also have privacy protections which should be considered prior to advancing the Digital ID Bill. We therefore encourage close consultation with state and territory human rights institutions and organisations to ensure human rights impacts from the Digital ID Bill are fully considered and understood.

The Commission holds initial concerns with aspects of the draft legislation, including:

- *Voluntariness* – while the Digital ID scheme is a voluntary service, we are concerned that in practice, individuals who do not wish to use Digital ID may be excluded from accessing accredited services that either rely on or require the use of Digital ID where an exemption has been granted.

- *Disclosure of information* – the legislation must adequately prevent against the disclosure of personal information, including biometric information. We are particularly concerned about law enforcement agencies accessing information, including through mechanisms such as subpoenas.
- *Oversight mechanism* – an oversight mechanism for the Digital ID scheme must be adequately resourced and capable of providing both technical and regulatory monitoring and compliance functions.
- *Misuse of the scheme by perpetrators of family and domestic violence* – the scheme must consider adequate protections against misuse of the scheme from those who may be able to access a person's Digital ID (including biometric information) through violence or coercive control. In this context, the ability for a person to request their information be deleted or to create a new Digital ID will be critical.

We also question the timing of the exposure draft given the parallel progression of significant privacy reforms. We understand that the Australian Government has committed to overhauling Australia's privacy laws following recommendations made by the *Privacy Act Review Report*. Given there has now been a commitment to significant privacy reform and recognising that these reforms may significantly impact the proposed scheme, we are concerned that the Digital ID Bill will inadvertently undermine the intent of those reforms which appear to be protective of human rights. In particular, the Commonwealth has agreed in principle to the 'right to be forgotten', that is, the ability for individuals to require an entity delete or de-identify their personal information, which includes biometric information. As it currently sits, it is unclear how the Digital Identity scheme provides for the deletion or de-identification of an individual's personal information if they decide to 'opt-out' of the scheme. The proposed reforms also recognise that the current mechanism of 'express consent' may not be effective in ensuring informed consent has truly been obtained where there is collection, use and disclosure of information – particularly in circumstances that require complex data processing that enable secondary use of or access to information.

If you have any questions or would like more detailed information on any of the issues raised in his submission, please do not hesitate to contact us on (02) 6205 2222.

Yours sincerely

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