Our ref: 1810049

18 January 2024

Mr Alan Raine

Committee Secretary

Senate Economics Legislation Committee

By electronic submission

Dear Mr Raine

Inquiry into Digital ID Bill 2023 and the Digital ID (Transitional and Consequential Provisions) Bill 2023

Thank you for your letter dated 11 December 2023, inviting a submission from the Queensland Office of the Information Commissioner (**OIC**) on the *Digital ID Bill 2023* (**the Bill**), currently the subject of inquiry by the Senate Economics Legislation Committee (**Committee**).

About the OIC

OIC is an independent statutory body that reports to the Queensland Parliament. We have a statutory role under the *Right to Information Act 2009* (**RTI Act**) and the *Information Privacy Act 2009* (**IP Act**) to facilitate greater and easier access to information held by government agencies. We also assist agencies to understand their obligations under the IP Act to safeguard personal information that they hold.

OIC's statutory functions include mediating privacy complaints against Queensland government agencies, issuing guidelines on privacy best practice, initiating privacy education and training, and conducting audits and reviews to monitor agency performance and compliance with the RTI Act and the IP Act. Our office also reviews agency decisions about access and amendment to information.

OIC's submission

OIC made a submission on the exposure draft of the Bill (and accompanying rules), during consultation undertaken by the Department of Finance. A copy of that submission, dated 9 October 2023, is **enclosed** for the benefit of the Committee.

The review we have undertaken of the Digital ID Bill suggests that much of the substance of our October 2023 submission remains relevant.[1]

[1] Allowing for some minor clause renumbering - OIC notes, for example, that clause 34 of the exposure draft of the Bill canvassed in our October 2023 submission now appears as clause 36.

Having said that, we are gratified to see that one of the concerns raised in our earlier submission has been addressed, following passage by the Commonwealth Parliament of the *Identity Verification Services Bill 2023*.

We hope that our October 2023 submission assists the Committee in its inquiry.

Should you have any queries or require further information, please do not hesitate to contact us at administration@oic.qld.gov.au or via telephone 07 3234 7373.

Yours sincerely

Stephanie Winson

Acting Information Commissioner

Paxton Booth

Privacy Commissioner

Encl OIC submission dated 9 October 2023

Our ref: 1810037

9 October 2023

Australia's Digital ID System
Department of Finance

By electronic submission

Digital ID Bill 2023

The Queensland Office of the Information Commissioner (**OIC**) welcomes the opportunity to provide a submission on the exposure draft of the *Digital ID Bill 2023* (**the Bill**).

About the OIC

OIC is an independent statutory body that reports to the Queensland Parliament. We have a statutory role under the *Right to Information Act 2009* (**RTI Act**) and the *Information Privacy Act 2009* (**IP Act**) to facilitate greater and easier access to information held by government agencies. We also assist agencies to understand their obligations under the IP Act to safeguard personal information that they hold.

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OIC's submission

OIC notes the Commonwealth Digital Identity strategy has been the subject of prior consultation, over a relatively extended period of time. OIC has previously made submissions on earlier iterations of the proposed regulatory framework,[1] by way of correspondence dated 16 December 2020 and 27 October 2021. The comments in this letter largely reiterate certain of the high-level observations made by us in those earlier submissions where they remain relevant, together with some additional comments.

1. **Privacy protections and safeguards**

In our submission dated 21 October 2021, we noted as follows:

> *OIC considers the privacy protections contained in the Bill, with regulation and oversight of the additional privacy safeguards by the Australian Information Commissioner, address a number of privacy concerns raised by the establishment of a digital identity system such as data profiling, surveillance, and use and disclosure of biometric information. Additional privacy protections entrenched in the Bill include:*
>
> - *requirement for express consent to disclosure of attributes of individuals to relying parties*
> - *prohibition on single identifiers*
> - *restrictions on collecting, using and disclosing biometric information*
> - *prohibition on data profiling*
> - *prohibition on certain marketing purposes*

[1] Premised on a voluntary accreditation scheme.

- *digital identity information must not be held, stored, handled or transferred outside of Australia (with limited exceptions)*
- *limits on use of digital identity information for enforcement purposes; and*
- *providing individuals with the right to request an accredited identity service provider to deactivate their digital identity.*

The privacy protections entrenched in the Bill are further strengthened by the expanded definition of 'personal information' under the Commonwealth Privacy Act to include attributes, restricted attributes and biometric information and these new legislated safeguards are additional to existing protections under the Commonwealth Privacy Act. Under the Bill, the Australian Information Commissioner has been granted additional powers to seek enforceable undertakings, seek injunctions and seek civil penalties for breaches of the additional privacy safeguards.

OIC understands that the above safeguards have largely been carried forward into the current exposure draft; OIC again welcomes and supports these measures. We also note:

- section 41 of the Bill, imposing prohibitions on the collection, use or disclosure of particularly sensitive 'prohibited attributes';
- incorporation of a data minimisation principle into the associated Accreditation Rules; and
- additional biometric protections, including prohibitions on one-to-many matching.[2]

OIC supports these additional safeguards.

We had expressed concern in our October 2021 submission that civil penalties for non-compliance with relevant privacy safeguards only appeared to apply if the contravention occurred within what was at that stage referred to as the 'Trusted Digital Identity System'.[3] We note that the current bill does not contain such a limitation[4] – a development OIC welcomes, and which should serve to ensure of relevant safeguards operate as broadly as possible.

2. Introduction of Digital Identity Bill without legislation in place to support the National Driver Licence Facial Recognition Solution

In each of our earlier submissions, OIC raised concerns at the prospect of enactment of digital identity legislation without complementary identity matching legislation. Referring to the *Identity Matching Services Bill 2019* (**IMS Bill**), we noted in our October 2021 submission our:

*.. understanding that the IMS Bill, which is intended to govern the operation of the Document Verification Service (**DVS**) and Face Verification Service (**FVS**), will complement the Digital Identity Legislation. It is OIC's view that the revised and strengthened IMS Bill needs to be passed and the NDLFRS operational before there can be any reliance on it to establish Digital Identity.*

The IMS Bill has been superseded by the *Identity Verification Services Bill 2023* (**IVS Bill**). While OIC notes that the IVS Bill is in various respects materially different to the IMS Bill, it

[2] Proposed section 45(2) of the Bill.
[3] Now the 'Australian Government Digital Identity System' – '**AGDIS**'.
[4] Limiting words that appeared in the relevant provision of the former TDIS Bill – section 73 – not appearing in the current Bill's equivalent section 42.

would nevertheless appear to us prudent to ensure passage of the former in advance of establishing the AGDIS scheme proposed in the Bill.

3. Accredited entities – privacy coverage of state and territory government agencies

OIC notes that the Bill constrains accredited entities from dealing with personal information unless they are, in the case of state and territory agencies, subject to privacy legislation offering protections comparable to those prescribed in in the Australian Privacy Principles (**APPs**) and supporting mechanisms.[5] While OIC supports the concept of equivalency in principle, it is not clear to us who would be charged with assessing and certifying equivalency.

OIC considers that equivalency should not be left to self-assessment by state/territory agencies seeking AGDIS accreditation under the scheme proposed in the Bill, but determined independently by the regulator charged with conferring accreditation.

4. Data Breach Notification

We harbour similar concerns in relation to breach notification equivalency. It is not clear from the relevant provision of the Bill[6] what constitutes a comparable NDB scheme, and which body will make that assessment. We also note that – where there is an equivalent state law – state agencies will have data breach reporting obligations under state law, and certain obligations in relation to the Digital ID Regulator and the Information Commissioner, adding a level of regulatory complexity.

5. State/territory agencies subject to Commonwealth oversight

Finally, OIC endorses the extended privacy obligations set out in Chapter 3, Part 2, Division 2 of the Bill. We understand, however, that state agencies with accredited entity status breaching these obligations would be subject to Commonwealth oversight and enforcement. This introduces an added level of complexity to the privacy regulatory landscape, although we acknowledge that it may be an unavoidable consequence of legislation imposing important privacy protections that extend 'over and above' local state and territory regimes.

OIC appreciates the opportunity to make this submission. Should you have any queries or require further information, please do not hesitate to contact us at administration@oic.qld.gov.au or via telephone 07 3234 7373.

Yours sincerely

Stephanie Winson
Acting Information Commissioner

Paxton Booth
Privacy Commissioner

[5] Section 34 of the Bill.
[6] Section 38 of the Bill.