

# DIGITAL IDENTITY LEGISLATION

## Comments in response to DTA Position Paper – 14 July 2021

The National Archives of Australia is pleased to provide the following feedback on the Digital Identity Legislation – Position Paper. This is in addition to comments provided by email on 21 December 2020. We have identified four key areas of interest, each of which is discussed briefly below. We look forward to providing further comment as the legislation is developed.

### Key matters

With respect to its legislated role in providing stewardship of Australian Government (Cwth) information assets (records, information and data), the National Archives has identified the below areas for initial comment in relation to the proposed legislation.

1. Offboard participants and record-keeping requirements
2. Technical standards board
3. Glossary definitions
4. Data retention and destruction

### Offboarding of Participants (section 6.6)

The National Archives has assessed that there a lack of clarity regarding the record keeping requirements of Offboarded Participants which may lead to confusion and the following observations are made:

1. What are the record keeping requirements for non-government Offboarded Participants?
2. Further clarity will be required for the retention and disposal requirements under Record-keeping section 7.4.8 as these only relate to Accredited Participants not Offboard Participants.

### Technical standards board

The role of the Permanent Oversight Authority will include governance and regulation of the ‘non-privacy-related provisions of the Legislation.’ (section 6.4.2 pp33-34). Of interest is the establishment of the Advisory Boards or a technical standards board. The National Archives wishes to nominate for membership of this board due to our experience in managing the information management and record keeping requirements of the Commonwealth along with ownership of the [Building Trust in the public record: managing information and data for government and community policy](#).

### Glossary

The National Archives suggests that a definition of “Information” should be included in the legislation as it is not referenced in the glossary of the position paper. Any such definition should be consistent with the meaning of ‘record’ in section 3(1) of the *Archives Act 1983 (Cth)*.

A definition of “Offboard” or “Offboard participant” will help to clarify the obligations of a participant (as already defined).

### Data retention and destruction (section 7.4.8 Recordkeeping)

We note the proposal to specify the destruction period of 7 years after certain actions by users or system administrators for metadata and activity logs (this period may change if the Minister makes additional rules). While a comment is made that this was consistent with the disposal authorities under the Archives Act, the National Archives notes that such destruction permissions were given after a thorough analysis of activities that created data and records in other contexts or systems. While the proposal does not sound unreasonable at first glance, it may need to be substantiated by a sound analysis of data retention requirements.

We note that some data is to be retained for the purposes of maintaining the integrity of the system, including for fraud or criminal investigative purposes. The relationship of this data and the data that is to be destroyed after 7 years is not clear.

The paper confirms that that the obligations in the Archives Act will not be affected by the record keeping requirements outlined in section 7.4.8, 'other than the requirements to destroy Biometric Information'. The National Archives welcomes this intention. However, as the main regulator on destruction of government records and data, we would like to request to be involved in early drafting stages of the parts of the Bill that will refer to data destruction and retention.