



Business Council of Australia

28 July 2021

Peter Alexander
Acting Chief Executive Officer
Digital Transformation Agency
PO Box 457
Canberra City
ACT 2601

Dear Peter

Thank you for the opportunity to provide feedback on the design of Australia's Digital Identity legislation.

A simple, safe, and secure digital identity system will be fundamental to ensuring Australia becomes a leading digital economy by 2030. Expanding the digital identity system will be vital if Australia is to successfully shift to an increasingly paperless, cashless, and virtual society.

The Business Council supports the rollout of a digital identity system that makes life easier for individuals and businesses. There is a real opportunity to reduce identity verification costs and support all parts of our economy and society embracing digital tools and services.

This is a critical piece of legislation in the modernisation and digitisation of Australia. It will be vital that government gets the overall design and specifics of this legislation right. There will only be one chance to do this, and if businesses and citizens do not feel they can trust in or use the system it will be a substantial setback for the country. For this reason, it will be critical that the overall digital identity system has security and user privacy at its core, and includes well-articulated, transparent, and public principles that outline protections for users.

Any framework should be established in a way that delivers outcomes at least-cost and encourages businesses to participate. For this reason we support the DTA continuing to consult with the private sector. This will also help businesses understand the benefits of participating in the digital identity system to encourage uptake and participation.

To ensure the digital identity legislation delivers the maximum benefits for government, businesses, and citizens, I am writing to share feedback from our members on the position paper that the Digital Transformation Agency (DTA) has issued.

Regulatory and legislative harmonisation

As the position paper indicates, the proposed digital identity legislation will cover a range of matters, including privacy protections, legally enforceable rules for accessibility, privacy protection, security, and fraud control.

Level 42, 120 Collins Street,
Melbourne VIC 3000

GPO Box 1472, Melbourne 3001
www.bca.com.au

T 03 8664 2664
F 03 8664 2666

reception@bca.com.au

We strongly support the DTA ensuring that the legislation does not duplicate or contradict requirements set out in other legislation and regulation, such as the *Privacy Act*, anti-money laundering requirements, and prudential requirements. It will be a lost opportunity if the legislation unnecessarily adds to the regulatory burden for businesses and consumers, particularly as one of the key benefits of the digital identity program is through reductions in compliance burdens.

Similarly, the legislation should avoid contradicting other important pieces of legislation, such as Know Your Customer requirements that underpin anti-money laundering and terrorism financing efforts. This is particularly critical where the Bill provides individuals the right to deregister or delete information at user request.

Further, the legislation should account for, and harmonise with, the ongoing review of the *Privacy Act*. This is an opportunity to create a harmonised landscape for privacy protections through alignment between the digital identity legislation and any revisions or reforms to privacy regimes. Missing the opportunity to align these pieces of legislation would be a substantial step back for the digitisation of Australia's economy.

Role of a design authority

The position paper highlights that the minister will have the power to appoint an Oversight Authority, who will be responsible for the non-privacy regulatory functions given to the officeholder by the Bill. The legislation intends that an Advisory Board will advise the Oversight Authority on Digital Identity matters (as specified under the Bill, including privacy, security, and user experience matters).

In addition to this oversight and advisory framework, establishing a 'design authority' will also be critical to the success of the overall digital identity system. While this authority does not necessarily need to be prescribed within legislation, it will be critical that there be a clearly defined body (such as the DTA) who has responsibility for the design of the overall system.

This body should have accountability for ensuring the system is set up according to best practice, including incorporating security by design and clearly articulating and 'building in' the principles (such as privacy and security) that are intended to protect users. Similarly, the design authority should have clear responsibility for specifying the attributes required to establish a digital identity.

I expect the DTA and relevant departments are already undertaking much of this important work. We recommend this role be clearly specified in the governance arrangements (such as those specified in Figure 9 of the consultation paper).

Machine-to-machine transactions

The position paper highlights that once a user's identity has been verified, machine-to-machine credentials will be issued outside of the digital identity system.

We support the legislation providing very clear boundaries for the government's digital identity system. However, where the government's digital identity has been used to establish an identity, even if the overall transaction is taking place outside the government's system, users should still be able to have confidence in the robustness of the transactions. This means these types of transactions should still be able to be audited or recorded in some manner.

We do not recommend this kind of detail be included in the legislation. However, this may be a role for the above-recommended design authority, who can work with businesses and other stakeholders to establish

best-practice record keeping and other practices for machine-to-machine transactions. This will ensure overall confidence in the system is maintained while not adding unnecessary regulatory burden.

Transactions outside the government's digital identity system

The position paper suggests that the legislation will apply to *digital identities* created within the government's identity system. Further, the position paper suggests that, if two registered entities are registered participants in the scheme, *all* transactions would be covered by the legislation.

This would include transactions where the two entities do not intend to conduct the transaction under the government identity system. The outcome of this is that all transactions would be captured by the legislation, even where this is not intended by users, participating businesses or identity exchanges.

This approach is too broad. If participation in the government scheme will create additional obligations or inconsistencies with private schemes, private sector entities may be placed in a position where they would have to choose between participating in the government's scheme or other private identity schemes. A potential outcome of this would be for private entities to choose not to participate in the government's scheme.

We support the recommendations made by the Australian Banking Association to expressly provide that the legislation does not apply where transactions, or classes of transactions, are stated by participants as intended to be conducted under a non-government identity scheme, and the consequential amendments this will require to definitions under the legislation.

Charging and pricing arrangements

It is proposed that the charging amounts and arrangements will be developed through a consultation process later in 2021. We support any charges not being included within the legislation, and instead being considered through secondary legislation or rules. We look forward to the proposed consultation process.

Review of the legislation

This legislation will be foundational to the economy and has the potential to underpin the digitisation of the overall economy. The legislation will establish a new framework that has substantial potential benefits, but also may have unintended or unforeseen consequences. We support the legislation including a formal review two years after receiving Royal Assent. This would mean undertaking a review of how the new legislation is functioning and whether improvements could be made.

I trust this feedback will be useful for the DTA as the draft legislation is developed. We look forward to working with you as this important work is taken forward.

Yours sincerely



Jennifer Westacott
Chief Executive
Business Council of Australia