

ARNECC submission on proposed digital identity legislation—phase 3, October 2021

The Australian Registrars' National Electronic Conveyancing Council (ARNECC) is the national peak body established to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing of real property in Australia.

ARNECC is constituted under an Intergovernmental Agreement (IGA) among the State and Territory Governments. ARNECC membership comprises the Land Titles Registrars (or their nominee) from each Australian State and Territory that has entered into the IGA.

The principal functions of ARNECC are to:

- Advise the State and Territory Governments on any proposed changes to the Electronic Conveyancing National Law (ECNL)
- Develop and publish Model Operating Requirements (MOR) and Model Participation Rules (MPR) as provided for in the ECNL
- Provide authoritative advice to the States and Territories about matters relating to electronic conveyancing
- Ensure that, as far as is practicable, business practices with respect to electronic conveyancing are consistent when implemented by the Registrars in each jurisdiction.

A key aspect of the national regulatory framework is the verification of identity process (VOI) that it requires practitioners to apply when identifying those they represent. Because of this, ARNECC has observed and engaged with the Digital Transformation Agency (DTA) as it progresses proposals for Digital Identity Legislation. ARNECC's focus is to understand how the proposed Digital Identity processes would work and the security of the system in comparison to VOI processes which Registrars currently require conveyancers and lawyers to use. As the primary role of all Australian Registrars is to ensure the integrity of the land titles register in their jurisdiction, a secure VOI process is an integral part of the overall system.

With this in mind, ARNECC has reviewed the stage 3 exposure draft of the Trusted Digital Identity Bill and provides its comments below. Please note that these comments are general in nature.

ARNECC thanks the DTA for the opportunity to make a submission on the proposed Digital Identity legislation and looks forward to future engagement.

Overall comment

The legislation appears to be a robust framework for a Digital Identification (DI) system. ARNECC is generally supportive of its proposals.

Specific comments

It is noted that section 19 of the draft Trusted Digital Identity Rules prescribes the following recordkeeping periods:

- in respect of a record of an entity whose onboarding approval has been revoked – the period of 3 years after the record was created; and
- in respect of other records – the period of 7 years after the record was created is prescribed.

Allegations of fraud or other impropriety sometimes take a number of years to be made. If an allegation of fraud involves the use of a digital identity then the relevant entity's records could be relevant to investigations.

ARNECC suggests further consideration be given to requiring records to be kept for a period of 7 years, irrespective of whether the entity's onboarding approval has been revoked.