

28 October 2021

digitalidentity@dta.gov.au**Re: Consultation Phase 3 of Australia's Digital Identity Legislation**

This response by the Australian Privacy Foundation (APF), the country's leading privacy advocacy organization, follows up our letter of 25 October regarding the Stage Three consultation about the Trusted Digital Identity Framework legislation (TDIF).

The proposed legislation represents a radical and weakly-substantiated extension of existing Commonwealth identity proposals in ways that will fundamentally affect a range of rights that are fundamental for Australia as a liberal democratic state.

The erosion of those rights cannot be based on administrative convenience or on an assurance by the Government that at some indefinite time in the future key aspects of the regime will be developed or clarified.

We note that the legislation pre-empts the broader privacy review announced by the Government. That disregard of meaningful consideration is consistent with the Government's practice of announcing Bills that erode privacy protection and mean that any recommendations in the review are likely to be irrelevant.

We note that the proposed legislation relies on the Office of the Australian Information Commissioner (OAIC), an entity that continues to be underfunded (and under-skilled) relative to its responsibilities. Its credibility as an effective watchdog in the public interest is being weakened on an ongoing basis through a balkanization in which there is an incoherent sharing with the Ombudsman, eSafety Commissioner and other national government entities.

We note that oversight of the TDIF is to be the responsibility of an entity that as yet has been undetermined. This hole in the regime is deeply problematical. It is equivalent to a claim that people should embrace the equivalent of the Australia Card on the basis that the Government will at some stage provide something with teeth. We cannot support a very erosive regime whose benefits to ordinary Australians are unclear when it is unclear whether the Government is contemplating a rottweiler, an amiable poodle or merely a goldfish.

We again note the failure of the Government to adopt recommendations by a succession of Commonwealth and state/territory law reform bodies for the introduction of a statutory cause of action regarding serious invasion of privacy.

In considering the vague explanation of the Government's approach to introduction of the TDIF, which given the pattern of such legislation over the past twenty years is likely to 'creep' in ways that further erode privacy protection, we note the systemic weakness of Australia's Freedom of Information regime and the Government's ongoing resistance to establishment of a national integrity commission.

The Government is asking the community to trust both its bona fides and the efficiency with which it will administer the TDIF. Systemic failures such as RoboDebt and obscurity in how the TDIF regime will operate mean that trust is unavailable.

We accordingly cannot endorse the proposed legislation as it stands.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Vaile', written in a cursive style.

David Vaile
Chair
Australian Privacy Foundation