

## **27 October 2021**

Digital Transformation Agency

Australian Government Digital Identity System

50 Marcus Clarke Street

Canberra

ACT 2601

Submitted online.

### **REIA SUBMISSION TO CONSULTION ON PHASE 3 OF AUSTRALIA'S DIGITAL IDENTITY LEGISLATION – REGULATION IMPACT STATEMENT (RIS)**

The Real Estate Institute of Australia (REIA) is the national body and voice for the real estate profession in Australia.

REIA's primary function since 1924 has been advocacy for policies that support a successful real estate industry.

REIA's members are the State and Territory Real Estate Institutes (REI's), through which around 85pc of Australian real estate agencies are collectively represented.

REIA represents an integral element of the small business sector, with 99pc of Australia's 46,793 real estate agencies being small businesses. Additionally, 11pc of all small businesses are affiliated with real estate. Only 0.6pc of businesses employ 50 persons or more.

Real estate agencies employ approximately 130,000 Australians, which includes business brokers, property managers, principals, real estate agents and representatives. The real estate sector underpins a combined workforce of 1 in 4 Australian jobs.

Property represents around 13pc of Australia's GDP annually in economic activity and CoreLogic's October research estimates the total value of residential real estate in Australia has surpassed a new record of \$9.1 trillion and is Australia's biggest store of household wealth. This puts housing values at around 28.2pc higher than the value of superannuation, the ASX and commercial real estate combined.

REIA has provided research and well-informed advice on a range of issues affecting the property market to decision makers for nearly one hundred years.

The release of our first Strategic Policy Agenda: *Getting Real – policy priorities for Australia's real estate agents and agencies*, which articulates our primary areas of focus. REIA's Getting Real aims for trusted real estate agents, fair real estate markets and prosperous real estate businesses.

*Getting Real* addresses a range of issues facing the real estate industry, and Australia more broadly. Our modern world is seeing rising house prices, a global pandemic, climate change, the expansion of technology and changing consumer behaviour, among other dramatic shifts.

Relevantly to the Digital ID project, *Getting Real* identifies the need to:

- Investigate opportunity to make real estate agencies more efficient through regtech
- Support the creation of a better regulatory environment to facilitate more transactions
- Support the Commonwealth's Digital Economy Strategy, including identifying opportunities to leverage for both agents and agencies

Moving to an expanded Digital ID system is therefore broadly supported and *Getting Real* can be downloaded [here](#).

## **Introduction**

The REIA welcomes the opportunity to provide feedback on the Regulation Impact Statement (RIS).

The RIS seeks to identify effective regulatory action to address risks and gaps which may inhibit the use of Digital Identity. In particular, the RIS identifies:

- 1) The absence of legal authority for participation of non-Government agencies in the System as relying parties (providing online digital services to people with a digital identity), and for a charging framework
- 2) A potential lack of trust in the System's privacy and security safeguards
- 3) The absence of a permanent oversight body and legislative government

Our submission responds to these gaps and risks as they relate to real estate practise.

## **Comments**

Option 1 and 2 do not support the expansion of the use of the Digital Identity System (the System) for non-Commonwealth entities, thus REIA sees most value in Option 3, which will establish an oversight body and allow for private businesses, such as real estate agencies or banks, and their clients to make use of the System's technology.

Option 3 also allows for broader benefits for the economy at large, based on the Consultation RIS research estimating full System coverage to be worth \$2-\$11 billion, or 3-13pc of GDP, derived from increased efficiencies for businesses and individuals.

With 99pc of real estate agencies being small businesses, REIA assumes that the majority of real estate industry businesses will participate with Digital Identity by way of becoming a relying party, rather than an onboarded entity.

Relying parties will not be subject to extensive regulatory requirements, and REIA commends the Consultation for being mindful to not place excessive burdens on entities without the capacity to comply.

### *No charging framework*

However, relying parties are faced with uncertainty when they may require the services of an onboarded entity, as there is no fee structure provided. While the Consultation advises that fees should incentivise the use of the System, businesses may take advantage of the benefits offered by the System to charge high fees. Relying parties and individuals would be more likely to use the System and modernise if there was a known fee schedule.

### *Limits on Participation and Competition*

Entities who are onboarded into the System require approval from the legislative authority, giving a high degree of Ministerial discretion to who participates and in what capacity they may participate.

While legislative authority helps to ensure that requirements (such as privacy regulations) are met, the System expansion may not be as broad or equitable as it could be with another alternative application approval system, such as approval upon providing certain documentation and signing of agreement. A lower bar to entry would allow for a broader and more equitable uptake of onboarding. With proper safeguards and criteria, this should not pose a security risk.

Reduced Ministerial discretion would also have the effect of fostering more competition, as recommended by the Murray Review. By allowing for further expansion of the System, private and public competition to supply Digital Identity services will be better positioned to flourish.

### *Building Trust and Increasing Confidence*

Option 3 relies on privacy and security measures to provide trust in the System, also asserting that the System will reduce instances of theft and Cyber Security threats.

While the security measures in place are necessary and useful, many Australians will not initially feel that Digital Identity is the safer option. Many are used to paper documentation.

More needs to be done to prepare Australians to use the System and to feel confident in doing so. This requires investment in a long-term communications and awareness campaign.

### *Negative Impacts of Increase in Privacy Legislation*

The regulatory scheme will increase existing privacy legislation to:

- Restrict the creation and use of a single identifier
- Impose strong conditions upon the use of biometric information
- Impose data breach action and reporting requirements which are not currently in place
- Restrict the capacity for aggregation and use of personal data

While the protection of personal data is required, particularly for individual users to have confidence in the System, clarification on restrictions and further exemptions are required.

Under Option 3, relying parties must change data handling processes and take on additional reporting obligations to the Oversight Authority. For small businesses, this will pose a burden to efficient operation and limit the potential for use of data. Reporting will also cost businesses and sole operators time, and implementing these changes will require training.

Government support will be needed to assist small businesses to be trained and equipped to undertake reporting obligations and the Consultation should consider additional exemptions to allow the use of customer data, under certain protections. Once more, further information and clarification is required on investment required by small businesses to achieve this.

### *Intersecting reform*

Introducing Digital Identity for state government and private entities is a significant step forward in modernising business operation to create more efficiency and profitability.

Further reform to support an overall modernisation of business operation remains an objective of the Commonwealth.

Parallel reform processes should therefore be as streamlined and as integrated as possible to provide the best consumer protection and least burden on small business. This includes but is not limited to:

- 1) Modernising document execution
- 2) Anti-money laundering and counter-terrorism financing
- 3) Digital vaccination passports
- 4) Know-Your-Customer (KYC)

#### *Closing considerations*

In progressing this RIS, REIA supports the following further considerations:

- Provide guidance on expected fees associated with using System services from an onboarded entity and benchmark best practice
- Develop an alternative approval process for onboarded entities to allow for a broader, more equitable System expansion and improve public/private competition
- Consider additional exemptions for the use of customer data under certain protections for the betterment of businesses; and at the very least, provide additional information
- Aid relying parties to fulfil additional reporting obligations so as to place as minimal burden possible on small businesses
- Extend the reform of Digital Identity to take a holistic approach to improving and integrating digital processes and capture any intersecting reform processes