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ACCAN thanks the Digital Transformation Agency for the opportunity to contribute to its Phase 3 consultation on the exposure draft of the Digital Identity Legislation.

ACCAN has previously provided feedback in Phase 1 to the consultation paper, and in Phase 2 to the position paper, outlining proposals to strengthen consumer protections in the Digital Identity system. Our Phase 3 submission in response to the exposure draft legislation will focus on the recommendations we have made in previous rounds and other key consumer issues.

Strengthened consumer protections

ACCAN welcomes the strengthened consumer protections that have been introduced to the legislation since the previous round of consultation. The fact that accredited entities must maintain written policies dealing with the management and resolution of digital identity fraud and cyber security incidents, and specify timeframes for resolution of these incidents, offers stronger consumer protection.

Similarly, the requirement for accredited entities and relying parties to contact any individuals or businesses affected by digital identity fraud and cyber security incidents in relation to their services, set up a publicly accessible point of contact for information and support, and 'make all reasonable efforts' to keep affected individuals and businesses informed offers consumers an improved level of customer care.

However, ACCAN reiterates our earlier point that the Oversight Authority needs to play a stronger role in consumer protection, monitoring the outcome of complaints resolution and ensuring consumers are guaranteed redress for loss or damage.

Regulatory oversight of the system

The role of the Oversight Authority in successful implementation of the Digital Identity system is substantial, and adequate resourcing will be needed to enable them to effectively perform these duties. This includes the onboarding and accreditation of entities in the system, the ongoing administration of the system, acting as the complaints body to receive reports of digital identity fraud, cyber security incidents and data breaches as well as providing advice to consumers about resolving those incidents. Furthermore, ACCAN asserts that the success of the Digital Identity System will in large part depend on consumer awareness and trust. Accordingly, adequate funding for extensive consumer education must also be included in resourcing the Oversight Authority.

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We note that the Digital Transformation Agency has acknowledged the need for adequate resourcing of any oversight body to fulfil all these duties, although there appear to be no specifics in the legislation about how this might be achieved. ACCAN would like to see transparent disclosure of any proposed funding of the system to be certain that adequate financial provision has been made.

Penalties and enforcement

ACCAN welcomes the fact that entities can face revocation of accreditation if the Oversight Authority reasonably believes that an accredited entity has contravened the legislation, or if there has been a cybersecurity incident, or is an impending cybersecurity incident, involving the entity.

The fines payable by accredited entities - up to \$330,000 – in circumstances where they have disclosed the individual attributes to relying parties without authorisation will serve as a deterrent to small to medium organisations, but may not be sufficient to deter larger organisations from breaching the legislation either intentionally or unintentionally.

Privacy and consumer safeguards

ACCAN welcomes new privacy protections and consumer protections introduced to the Digital Identity legislation which expand on those already provided through the *Privacy Act*. Restrictions on the use of consumers' biometric data, prohibition of the use of consumer data for certain profiling, enforcement and marketing purposes and empowering individuals to request an accredited identity service provider to deactivate their digital identity are all valuable consumer protections now included in the Bill.

In addition, the strengthened protections on restricted attributes, which prevent relying parties from obtaining sensitive information on individuals such as health information, TFNs, Medicare numbers and driver's licence numbers unless expressly authorised, are also welcome.

The fact that the legislation harnesses Australia's existing privacy regulator, the Information Commissioner, to regulate the privacy aspects of both the Digital Identity system and the TDIF accreditation scheme, will reduce the burden on the Oversight Authority. However, ACCAN reiterates the need for additional resources to enable the Information Commissioner to take on these additional duties.

Administration of charges for the Digital Identity system

ACCAN recognises the need for the Digital Identity system to be financially sustainable long-term and, for this reason, the Bill authorises imposing charges to use the system. We note that charging rules have not been released as part of the exposure draft package, but we are reassured by public statements from the Digital Transformation Agency that there is no intention at this stage for consumers to be charged to participate in the system.

ACCAN has no objections to a charging framework which imposes charging arrangements between providers and services and does not impose charges on users for access to the digital identity system. In the interests of equity, charges to consumers should continue to be avoided long-term to enable those on low incomes to affordably access the system.

User testing

We welcome the fact that user testing has been included in the legislation, but stress that the breadth of users who are tested must cover a wide range of groups including those from non-English speaking backgrounds and those with disabilities to ensure the system is accessible for all.

Sincerely

Wayne Hawkins
Director of Inclusion
ACCAN