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Digital ID Taskforce
Department of Finance
by email: digitalid@finance.gov.au

Digital ID Bill and Rules

Thank you for the opportunity to comment on the Digital ID Bill and Rules.

The Financial Rights Legal Centre (**Financial Rights**) and Mob Strong Debt Help (**Mob Strong**) strongly support the CHOICE submission dated 10 October 2023.

However we wish to raise a number of additional points for the government consider, especially with respect to the potential impact the Digital ID Bill and Rules will have on First Nations consumers.

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate Mob Strong Debt Help

Mob Strong is a free national Aboriginal and Torres Strait Islander-led legal advice and financial counselling service. The program specialises in financial counselling and legal advice about consumer loans (such as credit cards, pay day loans, car loans, rent to buy, and unregulated credit like buy now pay later), banking, debt recovery and insurance (including car, home, life and funeral insurance).

We assist individuals to navigate financial problems with a focus on skill building and connection with a person centred strength based approach. We also represent people in dispute with financial firms. Importantly we translate the experience of Aboriginal and Torres Strait Islander individuals into systemic advocacy to improve products, systems, and corporate and government services, to better meet community need.

A key part of the work we do representing clients is working through the difficulties they may have with identification. Financial institutions, Commonwealth services, telecommunications companies and energy providers require customers to provide identity documents to access

their services. However, some people cannot access traditional forms of documentation to prove their identity. This can be for:

- emergency reasons following natural disaster,
- personal circumstances such as those fleeing domestic violence,
- reasons of location such as living in a remote, regional and rural area or
- structural barriers, such as being incarcerated or not being provided with standard identification at birth.

But even when identification has been sourced and accepted, financial counsellors need to support community members to re-verify their identity when contacting a service or when things go wrong – such as when a bank account has been closed or is unable to be accessed. This involves going through similarly cumbersome processes gathering, printing, scanning documentation to fax and fill in paperwork, contact intermittent, under-resourced phone lines with long wait times.

This process gets more complex when the client's identification details do not marry up with the official documentation, such as name misspelling, change in gender, a change in name after marriage or sorry business, incorrect date of birth or no exact or updated residential address.

Supporting our clients through the complexities of obtaining and providing identification with financial services firms can be challenging.

Moves to further embed digital forms of identification into the functioning of our economy will have disproportionate impacts on our client base. While there is the potential for Digital ID to make things easier for many clients it is more likely to exacerbate extant barriers and difficulties.

This submission provides an overview of these challenges to provide the context for understanding how the Digital ID reforms will impact upon our First Nations clients, before commenting upon specific elements of the proposals.

First Nations digital exclusion

First Nations people face a digital exclusion. The Australian Digital Inclusion Index uses survey data to measure digital inclusion across three dimensions of Access, Affordability and Digital Ability. The most recent Australian Digital Inclusion Index released in July 2023, found that there was an overall Index Score of 73.4 for non-First Nations Australians but only 65.9 for First Nations Australians, reflecting a national gap of 7.5 points for First Nations people. This only increases when examining particular cohorts in regional, remote and very remote areas. First Nations people living in remote and very remote areas had particularly low levels of digital inclusion, respectively 24.4 and 25.3 points below the national non-First Nations average

East Arnhem Land, for example, where the Mob Strong team visited in April this year is 20.4 points below average. Here, mobile coverage is often patchy and unreliable, NBN is unavailable, there is limited digital infrastructure, and higher costs for internet access.

The Mob Strong team has experienced this issue first hand when working with clients. When in East Arnhem, a Mob Strong financial counsellor provided one on one assistance to a client. With an internet dongle and a laptop supplied by our service, we were unable to even get through the identification requirements with the Australian Tax Office (ATO) without the internet

connection timing out. This lack of stable access to the internet prevents remote and regional people from lodging tax returns, making repayment arrangements, accessing lost super or otherwise transacting with the ATO.

Closing the digital inclusion gap and improving access to digital services for First Nations people has been acknowledged by government and it a key part of the National Agreement on Closing the Gap. The National Agreement on Closing the Gap includes digital inclusion as part of the Access to Information target (Target 17) – by 2026, Aboriginal and Torres Strait Islander people have equal levels of digital inclusion.

The digital inclusion gap is complex and involves overlapping issues of access, affordability and digital ability. If not addressed now, First Nations people are likely to fall further and further behind as the economy and government inexorably moves towards a digitally dependency – one that, in practice, will require digital access to basic interactions with corporations and government bodies.

This is where legislation and rules for Digital ID need to take into account those already on the wrong side of digital divide, to ensure that by embedding Digital ID into the way our economy works, the situation faced by First Nations people is not made worse.

It is important to recognise the key issues faced by First Nations communities with respect to their interaction with obtaining and using digital identification.

Key issues facing First Nations communities and identification

Aboriginal and Torres Strait Islander communities have had a fraught history with accessing and using identification documentation. Many Aboriginal and Torres Strait Islander people do not have conventional identification documents, such as a driver's licence or a birth certificate. For others there may be conflicting information on different documents, for example, the name they commonly use is different to that which appears on their birth certificate. Names may have been poorly recorded or spelt incorrectly on their birth certificate. Others still, use their traditional name, their English name and a commonly used nickname in different circumstances.

This has led many community members facing barriers to meeting standard requirements for identification, which can lead them to being excluded from accessing services – particularly essential financial services like banking but also government services provided by Services Australia and the ATO.

For example, bank lending processes requiring the production of mainstream identification documents are not readily available to many members of the community – this can marginalise Aboriginal and Torres Strait Islanders by making low documentation, high cost payday lending, buy now pay later and wage advance products more readily accessible and available. This exposes them to increased risk of financial harm.

As outlined above, for many in rural regional and remote locations, internet and mobile phone access is limited, poor quality, prone to congestion and unaffordable. Many access internet via community Wi-Fi services, pre-paid 4G mobile or broadband satellite services. This means accessing services at all can be almost impossible, since their nearest bank or Services Australia office may be a day away or only accessible by 4WD vehicles – a problem worsened by an

increase in bank branch closures.¹ Another consequence can be that First Nations people end up paying more to use ATMs since access to fee-free ATMs can be a challenge.

Culturally, Aboriginal and Torres Strait Islander people have a preference for face-to-face engagement and service delivery. There is an importance placed on relationships, and building trust and accountability that can only take place in person. Requiring use of digital means to engage with a service undermines trust and acceptance.

Digital literacy levels are low with a particular divide between young community members and Elders. There are few resources available to assist First Nations people to work their way through the complexities of identifying themselves for a commercial or government service. While banks and insurers have made some commitments to supporting First Nations people with identification issues under their Codes of Practice² and industry guidance³ these have yet to go far enough to proactively assist customers. In the meantime First Nations people are reliant on assistance from social services and financial counselling organisations to help them through this process, organisations that are rarely if ever explicitly funded to provide this much needed support.

Given the connectedness of families and the collectiveness of Aboriginal culture, sharing of digital devices and data is also common. The sharing of devices and data can also result in conflict and at times lead to forms of financial abuse.⁴ This can involve the use of digital technologies to access resources (like data and bank accounts) without the owner' - often Elders like parents or grandparents - knowledge or using bank details or debit cards to transfer money, leaving people without money for necessities. Linking identification to a device that is shared can therefore be problematic.

There are also significant language barriers, in both oral and written form, and where English is often not people's first language. The use of Aboriginal-English by First Nations consumers is often not detected by service providers, appropriate interpreter services not provided or made available resulting in significant barriers to understanding on both the side of the consumer and the financial service provider.

It is in this context that the Digital ID reform is occurring. Its implementation needs to take into account the particular social, economic and cultural contexts in its development to ensure that it does not make things worse.

¹ The 2023 statistics show a decline in bank branches in the year up to June 2023. Approximately 420 branches across Australia have closed, marking an 11% decrease, including 7% or 122 branches in regional and remote areas. APRA, [Authorised deposit-taking institutions' points of presence statistics](#), 18 October 2023

² Clause 35(c) [Banking Code of Practice](#), Clause 100. [General Insurance Code of Practice](#), Clause 6.14 [Life Insurance Code of Practice](#)

³ ABA [Industry Statement: Supporting Aboriginal and Torres Strait Islander peoples](#)

⁴ Rogers, J., Marshall, M., Osman, K., & Pham, T. (2023). Connecting in the Gulf: Digital Inclusion of Indigenous Families Living on Mornington Island Report. Brisbane: Queensland University of Technology, https://research.qut.edu.au/dmrc/wp-content/uploads/sites/5/2023/03/Connecting-in-the-Gulf-Final-Report_March2023-1.pdf

Digital ID proposals

Ensuring digital ID is truly voluntary

Requiring an individual to use a digital ID is prohibited under section 71. Ensuring that Digital ID remains voluntary is positive in theory. However in reality it will likely become the only real choice for many regional and remote Aboriginal and Torres Strait Islander people.

This is because of the difficult nature of accessing services as outlined above.

Under Section 71(2) if a “relying party” provides access to another service and the individual can access the other service without using a digital ID (Section 71 (2)) then this provides an exception to the voluntary nature of Digital ID. The example provided in the bill involves a bank requiring new customers to verify their identify, providing two options: attending the nearest branch or alternatively using the only system with Digital ID.

The issue here is that for many First Nations customers, especially those in rural, regional and/or remote areas – the alternative – while technically available, is wholly impractical. For many First Nations people, their nearest branch can be half a day away driving or further if reliant on intermittent public transport or potentially exploitatively expensive taxi services. For all intents and purposes the alternative does not exist and people are ultimately required to use Digital ID. The voluntary nature of Digital ID is therefore a mirage for these people.

We recommend that “relying parties” should only be able to rely on the subsection 71(2) exception if the “individual can *reasonably* access the other service” without creating or using a digital ID. The example provided should also be amended to recognise and acknowledge the difficulties faced by those in rural, regional and remote areas in accessing their “nearest branch” to make it clear that, this is likely not reasonable access to the other service.

We also note that subsection 71(3)(a) exempts Commonwealth, State and or Territory from the requirement if Digital ID is required. Accessing services such as MyGov or the ATO has been difficult for many of our clients or the other side of the digital divide.

We believe it is incumbent on Government to ensure that there are alternative – non-digital ways to access basic government services particularly for the digitally excluded including First Nations people.

If Subsection 71(3) is to remain, it must be backed with significant resources to close the digital gap in line with the initial report of the First Nations Digital Inclusion Advisory Group.⁵ This includes delivering targeted or tailored measures to improve access to connectivity across a wide range of communities, ensuring access is affordable and fit for purpose, and that First Nations people are aware of connectivity options and have digital skills to access the internet safely. Resources need to also be specifically provided to support First Nations consumers to appropriately engage with the Digital ID system.

⁵ First Nations Digital Inclusion Advisory Group, [Initial Report](#), October 2023

Further we would also seek support for an accountable third party authorisation system with an audit trail to support people in regional, rural and remote communities to access, and safely use their Digital IDs. This would involve resourcing organisations to handle identification on behalf of people faced with significant barriers to engage with businesses and services, to allow them to use the identification in their client's interest. The system would then maintain a record of this use to prevent or identify abuse where it occurs, but ensure greater access to vital financial and government services.

Ensuring alternative proofing requirements are available for First Nations people

Identity proofing levels and verification need to consider the needs of First Nations people and the historical barriers in place.

We support the inclusion of Subdivision 5 of the Digital ID Accreditation Rules which outlines requirements for alternative proofing processes and references.

We however note that alternative proofing is only allowed if the ISP is authorised to do so by an accreditation condition.

This is likely to be hurdle that many providers are generally unlikely to take, thereby potentially limiting and reducing the number of ISPs who can provide alternative proofing for those don't have standard forms of identification.

We recommend that all providers including Government Digital ID services be required to establish alternative proofing services that are safe, flexible and in secure in line with similar processes outlined in the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) guidance.⁶

We also note that alternative proofing is limited⁷ to exceptional cases - meaning that an individual:

- (a) does not possess the credentials and
- (b) is unable to obtain the credentials in a reasonable timeframe considering the circumstances as to why the individual is unable to obtain the credentials.

While this is appropriately broad, we are keen to ensure that it captures the full range of experiences of those people who may not possess standard forms of identification.

As detailed above, Aboriginal and Torres Strait Islander people have faced historical and structural barriers in possessing and using standard forms of identification. Of significance here are those people who may have credentials but there may be conflicting information on different documents such as those with identification that lists the name they commonly use but is different to that which appears on their birth certificate.

⁶ AUSTRAC, [Assisting customers who don't have standard forms of identification](#)

⁷ under Rule 5.35(2)

It is not clear whether limb (b) of the exceptional cases standard captures this situation adequately. If it does then it should be spelt out and made explicit. If not then it needs to be amended to ensure it does.

What is critically important for any alternative proofing process to work for those who need it is that the process remains flexible enough to allow those facing structural barriers access to the Digital ID system, if they choose to engage with it.⁸ The AUSTRAC Guidance is an example of an appropriately flexible approach. We note that many of AUSTRAC's suggested alternative forms of proofing have largely been incorporated into the rules including:

- referee statements;⁹
- community IDs or indigenous organisation membership cards;¹⁰
- government correspondence, including from state and territory correctional service agencies where it involves persons in prison or recently released from prison¹¹
- a customer's self-attestation (statement) of their identity¹²

But there may be other sources that can be used to independently verify an individual's identity. In line with the approach taken in the AUSTRAC guidance, the rules for alternative proofing in the Digital ID regime should provide appropriate flexibility by having Rule 5.35(3) be an unlimited list of examples.

We also note that the rules foresee the potential for an accredited party to:

⁸ This is not limited to First Nations people. The AUSTRAC guidance provides an unlimited list of examples including:

- people and businesses affected by natural disasters such as floods or bushfires
- people affected by family and domestic violence
- people experiencing periods of homelessness
- people who are or have recently been in prison
- refugees, asylum seekers and recent migrants to Australia (including people from culturally and linguistically diverse backgrounds)
- intersex, transgender and gender diverse people
- people living in remote areas
- people who have difficulty providing identification due to health or ageing-related reasons.

⁹ Rule 5.35(3)(b)

¹⁰ Rule 5.35(3)(c)

¹¹ potentially implied by Rule 5.35(3)(d)

¹² Implied implied by Rule 5.35(3)(e)

“provid[e] support for individuals to obtain evidence which, without limitation, may include assisting an individual to register their birth.”¹³

The availability of this support should not be voluntary but be mandatory given the complexities involved. The support should be provided free of charge, include access to language support (including interpreters where appropriate) and be conducted in an ethical, fair and efficient manner.

Charging of fees

Section 142 of the Bill allows accredited entities to charge fees in to the Australian Government Digital ID System. Section 142(2) also enables the Digital ID Rules to make provisions regarding the charging of fees, but we note the current draft does not do so.

We agree with CHOICE that

Charging a fee for creating or using a Digital ID may disincentivise adoption of Digital ID or be prohibitive for people who can't afford the charges, undermining the benefits of the system and putting excluded consumers at greater risk of data-based harms. Further, allowing an accredited entity to charge for Digital ID use in a private service while the same ID may be used for free in AGDIS may result in confusion.

In addition, a further concern is to ensure that unscrupulous for-profit identification providers do not inappropriately target First Nations peoples to charge them for a service that can be accessed and provided for free.

It is likely that free services will be more difficult to access for those First Nations people generally digitally excluded, making a service for a fee a potentially saleable option for some companies. While some may have good intentions, there has been an unfortunate sordid history of businesses inappropriately targeting First Nations communities for exploitation - from the misuse of book-up system in regional, rural and remote areas, to the inappropriate promotion of high cost consumer lease and pay day loans to Aboriginal and Torres strait Islander communities and the sale of funeral plans by ACBF/Youpla.

The Bill and/or rules need to ensure that such business models are unable to emerge. The easiest way would be for the Federal Government to:

- prohibit the charging consumers a fee to obtain and access their Digital ID,
- prohibiting relying parties from passing on fees onto consumers; or
- in the event a prohibition is not accepted, that accreditation and its oversight involves rules that prevent accredited parties from developing unfair, exploitative or abusive business models, in addition to the fit and proper person test.

¹³ Rule 5.35(3)(g)

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



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