

My comments on Digital ID bill.

I have read the Bill and the supporting material and have the following comments.

Thoughts

Section 10 includes the definition of “attribute”, and among the things that constitute an attribute are:

information or an opinion about the individual’s:

(i) racial or ethnic origin; or

(ii) political opinions; or

(iii) membership of a political association; or

(iv) religious beliefs or affiliations; or

(v) philosophical beliefs; or

(vi) sexual orientation or practices.

Later in section 41 the Bill states that an entity must not intentionally collect use or disclose these particular attributes, and that the civil penalty for doing so amounts to 300 penalty units.

This would appear to leave open a defence along the lines of “the disclosure of the person’s political opinions was unintentional”, regardless of the harm the disclosure might have had on the person

concerned. There should be tighter strictures around the disclosure of this information, intentional or not.

Voluntary use of Digital ID

Section 71 claims that the use of a Digital ID is voluntary. Subsection 1 says:

A participating relying party must not, as a condition of providing a service or access to a service, require an individual to create or use a digital ID.

But then subsection 3 describes an exception:

Subsection (1) does not apply if:

(a) a law of the Commonwealth, a State or a Territory requires verification of the individual's identity solely by means of a digital ID;

So THIS Act says it's voluntary, but the government might pass ANOTHER Act making it mandatory. To claim, as the minister has done, that the Digital ID will be voluntary is misleading and deceptive.

This section should remove the exemption described in subsection 3.

Authorised disclosures of personal information

Section 89 allows for the Minister (or a delegate as provided by section 154) to allow the disclosure of personal information which would otherwise be in breach of the Act if

1 e) both:

(i) the use or disclosure is, or is a kind of use or disclosure that is, certified in writing by the Minister to be in the public interest; and

(ii) the use or disclosure is made in accordance with any requirements prescribed by the Digital ID Rules; or

1 f) both:

(i) the entrusted person believes on reasonable grounds that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of a person; and

(ii) the use or disclosure is for the purposes of preventing or lessening that threat.

The insertion of these subjective elements into the Act gives far too much power to the Minister or an 'entrusted person', who may be an unelected senior bureaucrat, to lawfully disclose personal information. The grounds of 'public interest' and to 'prevent or lessen a serious and imminent threat to the life or health of a person' are open to abuse since they rely on one person's view of what constitutes a threat, the seriousness of that threat, and indeed what constitutes the health of a person. Does mental health qualify? Spiritual health? These subjective provisions should be removed from the Bill.

Overall comment

The Bill provides no redress for the person using the Digital ID in the event that an egregious error is made resulting in, for example, denial of services to which the person was entitled. A case of mistaken identity or identity fraud could ruin a person's life and the Bill as drafted does not provide protection for the 'consumer'.

The Bill appears to be founded to support a protected industry of identity fact-checkers who will charge fees to and from the government, cycling tax-payer funds into private pockets, while enjoying immunity from liability (section 79). The Bill is virtually silent on the ways a 'consumer' would interact with providers and the levels of service which they would be entitled to demand.

It is a Bill which establishes a power base accreting to the Finance Minister and the Department of Finance but which contains only vague promises of any benefit whatsoever for the end consumer.

The Bill should be withdrawn altogether.