

Deputy Privacy Commissioner's Submission to the Economic Development, Science and Innovation Committee on the Digital Identity Services Trust Framework Bill

Executive summary

1. I am pleased to provide a submission on the Digital Identity Services Trust Framework Bill (the Bill). My office has been extensively consulted by the Department of Internal Affairs (DIA) during the development of this Bill.
2. The Bill intends to establish:
 - a legal framework for the provision of secure and trusted digital identity services for individuals and organisations (the trust framework) and
 - governance and accreditation functions that are transparent and incorporate te ao Māori approaches to identity.
3. The Privacy Act 2020 (the Privacy Act) is New Zealand's main privacy law. It governs the collection, use, storage and disclosure of personal information and provides a mandate for my Office to consider wider developments or actions that affect personal privacy. While the application of the Privacy Act does not extend to the judicial functions of a court or tribunal, one of my functions under the Privacy Act is to examine legislation before Parliament and to consider any matters affecting individuals' privacy.
4. I support the Bill's intent to create a trust framework for the provision of user-authorised digital identity services in New Zealand. I consider that the proposed trust framework will help give individuals greater and more efficient control over their personal information, including how it is shared and used by digital service providers. My comments relate to clauses 11(2), 16 and 19 and Part 5 of the Bill.

Relationship between the Bill and the Privacy Act

5. Clause 16 of the Bill explicitly provides that nothing in the Act overrides the Privacy Act. This clause is cross-referenced in clause 11(2) to emphasise that none of the requirements a trust framework provider must meet when providing accredited digital identity services override the Privacy Act. Clause 19(1)(3) provides that the trust framework rules relating to personal information must be consistent with the Privacy Act.
6. I am pleased the Bill has been drafted to ensure that the Privacy Act still applies to the trust framework, including the trust framework rules and regulations. It is important the Bill explicitly provides that nothing in the trust framework overrides the jurisdiction of the Privacy Act, including the development of the trust framework privacy rules which will set out the minimum requirements of providers for "maintaining privacy and confidentiality of the information of individuals or organisations" under the trust framework.

7. I recommend a minor amendment (underlined below) is made to clause 19(b)(ii) so that the differing concepts of privacy and confidentiality are made clear in the Bill; privacy relates to information about the individual, while confidentiality relates to information about organisations.

Privacy and confidentiality

- (ii) maintaining the privacy and confidentiality of the information of individuals or organisations respectively
8. I am satisfied the Bill contains sufficient safeguards to ensure that the protections of the Privacy Act will continue to apply to the digital identity ecosystem.

Establishment of trust framework authority

9. Part 5 of the Bill sets out the provisions necessary to establish the trust framework authority (the Authority). The Authority is a body within the responsible department (nominated by the Minister) and is accountable to the responsible department's chief executive. The Authority must act independently in respect of its enforcement functions under Part 6 of the Bill. The members of the Authority are appointed by the chief executive and may include public service employees and individuals from outside the public service.
10. Some digital identity services providers have expressed concern that DIA is at risk of becoming both a provider and regulator of services under the trust framework.¹ I have considered these concerns, including the potential for a conflict of interest, and the impacts they may have on personal privacy. However, as clause 16 of the Bill explicitly provides that the Privacy Act still applies to the trust framework, I am satisfied that any potential risk to personal privacy would be mitigated by the independent oversight of the Privacy Commissioner and the safeguards afforded by the Privacy Act.

Conclusion

11. I trust my comments are of use to the Committee in its consideration of the Bill.

¹ <https://www.rnz.co.nz/national/programmes/ninetoon/audio/2018816178/digital-identity-service-providers-concerns-over-realme-and-new-legislation>

12. I do not wish to speak to this submission but am happy to appear before the Committee if that would be of assistance.

Liz MacPherson



Deputy Privacy Commissioner

2 December 2021