



Australian Government

Australian Government response to the
Senate Economics Legislation Committee report:

Digital ID Bill 2023 and the Digital ID (Transitional and
Consequential Provisions) Bill 2023

JULY 2024

Recommendations

Recommendation 1:

2.145 The committee recommends that the bills be passed.

Response:

The Australian Government **notes** this recommendation.

The Digital ID Bill was amended and passed by the Senate on 27 March 2024, and passed by the House of Representatives on 16 May 2024.

Dissenting Report: Coalition Senators

Recommendation 1:

The Bill be amended to remove the phasing-in provisions, allowing for private sector involvement in the AGDIS from commencement. The Bill should not be progressed without simultaneous involvement of the private sector.

Response:

The Australian Government **agrees in part** to this recommendation.

The Digital ID Bill (the Bill) was amended to place a maximum timeframe of 2 years after commencement on the expansion of the AGDIS to include private sector participants (subclause 61(d)).

Recommendation 2:

That the Bill only be considered once the reforms of the Privacy Act are introduced to the Parliament, to ensure that privacy, data protections and compliance requirements are consistent and coordinated across various related legislation.

Response:

The Australian Government **disagrees** with this recommendation.

The Bill was passed before reforms to the *Privacy Act 1988* have been introduced to the Parliament. It is important to provide the protections contained in the Bill.

Recommendation 3:

That the Bill be amended to include further guarantees for consumers and businesses to ensure the AGDIS is fully voluntary.

Response:

The Australian Government **agrees** with this recommendation.

The Bill was amended to strengthen the requirement that creating or using a digital ID within the AGDIS is voluntary.

Dissenting Report: One Nation Senators

Recommendation 1:

The Treasury Laws Amendment (Consumer Data Right) Bill 2022 be passed by the Senate prior to resumption of the second reading debate on the Digital ID Bill 2023.

Response:

The Australian Government **disagrees** with this recommendation.

The Bill will implement robust privacy and security measures to protect the Australian public transacting online. It is important to have these protections in place in a timely manner.

Recommendation 2:

The Privacy rules relating to the operation of the Digital ID Bill 2023 be circulated to Senators prior to the resumption of the second reading debate.

Response:

The Australian Government **disagrees** with this recommendation.

All major privacy obligations are in the Digital ID Bill 2024 (see Chapter 3). The rules will be subject to the usual tabling and disallowance regime under the *Legislation Act 2003* and be subject to scrutiny by the Senate Standing Committee for the Scrutiny of Delegated Legislation.

Recommendation 3:

The bill be amended to raise the consent from express to active consent on each occasion, or once for a repetitious action, such as credit card transaction provided provision is made for withdrawing that consent. This recommendation relates to every instance of the phrase “express consent”.

Response:

The Australian Government **disagrees** with this recommendation.

The Bill requires ‘express consent’ and this will require an active element.

Recommendation 4:

The Digital ID Bill 2023 be reviewed by the Office of Parliamentary Council to identify provisions that may require an explicit limitations clause and report prior to the resumption of the second reading debate.

Response:

The Australian Government **disagrees** with this recommendation.

The Bill was drafted by the Office of the Parliamentary Counsel and has appropriate limitations and protections.

Recommendation 5:

The design of a digital ID must allow for offline use.

Response:

The Australian Government **notes** this recommendation.

Offline use of a digital ID would depend on the specific implementation by service providers and the technology used.

Recommendation 6:

The provision for alternative identification should include explicitly providing for Australia Post to provide physical identification services through Australia Post outlets, with suitable cost recovery from the accredited service, not the individual.

Response:

The Australian Government **disagrees** with this recommendation.

The Bill does not require specific types of service providers but provides trust and assurance for services that choose to be accredited.

Recommendation 7:

Amend the bill to remove the provision for the rules to allow the location of data outside Australian jurisdiction.

Response:

The Australian Government **disagrees** with this recommendation.

It is appropriate to be able to make rules about data storage outside Australia, including limiting storage outside Australia.

Recommendation 8:

1.30 Amend the bill to require that law enforcement must have a reasonable suspicion a crime is being committed by an individual before accessing their digital ID data.

Response:

The Australian Government **disagrees** with this recommendation.

The Bill only allows for the disclosure of personal information to law enforcement agencies in limited circumstances, such as: under warrant; with the express consent of the individual for the purpose of verifying the individual's ID or investigating or prosecuting an offence; or

when an enforcement body has commenced proceedings against a person for an offence or breach of law imposing a penalty. A 'reasonable suspicion' threshold is unnecessary given the aforementioned restrictions and appropriate thresholds within existing legislative frameworks (i.e. search warrant schemes) currently in place.

Recommendation 9:

Details of the redress scheme must be incorporated into the primary legislation.

Response:

The Australian Government **agrees in part** with this recommendation.

The Bill was amended to ensure the Digital ID Rules prescribe a redress framework for digital ID fraud and cyber security incidents within the AGDIS, within 12 months of the Act commencing.

Recommendation 10:

The bill not be passed in the current form.

Response:

The Australian Government **notes** this recommendation.

The necessary amendments to the Bill were made to address many of the concerns raised in this report and through feedback from consultation.