

## EXPLANATORY STATEMENT

### Issued by authority of the Minister for Finance

#### *Digital ID Act 2024*

#### *Digital ID (Phasing-in of Participation in the Australian Government Digital ID System) Determination 2024*

Section 60 of the *Digital ID Act 2024* (**Digital ID Act**) provides that the Minister may, by legislative instrument, determine the entities that may apply to the Digital ID Regulator for approval to participate in the Australian Government Digital ID System (**AGDIS**).

The purpose of the *Digital ID (Phasing-in of Participation in the Australian Government Digital ID System) Determination 2024* (**the Determination**) is to manage the expansion of the AGDIS to entities outside the Commonwealth.

Under subsection 60(1) of the Digital ID Act, the Minister may, by legislative instrument, determine the entities that may apply for approval to participate in the AGDIS. By managing expansion, the Minister can ensure the AGDIS continues to operate safely and securely as new kinds of entities begin to participate.

Subsection 60(2) of the Digital ID Act provides the Determination may specify entities in any way, including by reference to:

- whether the entities are relying parties or accredited entities
- kinds of relying parties
- kinds of accredited entities, or
- whether the entity belongs to the public or private sector.

Subsection 60(3) of the Digital ID Act provides that the Minister must not revoke a determination and may vary the determination only to specify additional kinds of entities that may apply for approval to participate in the AGDIS or correct an error, defect or irregularity in the determination. Not permitting the Minister to revoke a determination gives entities subject to a determination certainty regarding participation in the AGDIS, if approved.

An exposure draft Digital ID Bill was released for public consultation in 2023 which included draft clause 60 concerning phasing-in of participation in the AGDIS and was included in the Digital ID legislative framework consultation.

The Department of Finance (the Department) conducted targeted consultation on the Determination, and the Minister has considered consultation feedback from key stakeholders, including affected Commonwealth and State and Territory government departments.

The consultation satisfies section 17 of the *Legislation Act 2003*.

Details of the Determination are set out in **Attachment A**.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument relies on section 4 of the *Acts Interpretation Act 1901* as it is made in contemplation of commencement of subsection 60(1) of the Digital ID Act. The Instrument will commence at the same time as the Digital ID Act.

The Office of Impact Analysis (**OIA**) has been consulted in relation to the Determination and an Impact Analysis **is not required** as this instrument does not create any additional impact other than what has already been assessed in the Impact Analysis for the Digital ID Act. OIA reference number: OBPR23-04323.

A Statement of Compatibility with Human Rights is at **Attachment B**.

The Determination does not engage any human rights or freedoms.

**Details of the *Digital ID (Phasing-in of Participation in the Australian Government Digital ID System) Determination 2024***

**Part 1—Preliminary**

**Section 1 – Name**

1. This section provides that the name of this instrument is the *Digital ID (Phasing-in of Participation in the Australian Government Digital ID System) Determination 2024* (the Determination).

**Section 2 – Commencement**

2. This Determination commences at the same time as the Digital ID Act commences.

**Section 3 – Authority**

3. The Determination is made under subsection 60(1) of the Digital ID Act.
4. Section 60 of the Digital ID Act 2024 provides that the Minister may determine the entities that may apply to the Digital ID Regulator for approval to participate in the Australian Government Digital ID System (AGDIS).

**Section 4 – Definitions**

5. This section sets out the definitions of expressions in this Determination.
6. A number of expressions used in this Determination are defined in the Digital ID Act.
7. Paragraph 13(1)(b) of the *Legislation Act 2003* provides that, if enabling legislation confers on a person the power to make a legislative instrument, then, unless the contrary intention appears, expressions used in any instrument so made have the same meaning as in the enabling legislation as in force from time to time.

## **Part 2—State and Territory entities**

### **Section 5 – Departments, authorities and companies**

1. This section provides that an entity specified in column 1 of an item in the table may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of entity specified in column 2 of the item.

#### ***Item 1***

2. Column 1 of item 1 specifies a department or authority of a State that satisfies 2 criteria. The first criterion is that the department or authority of a State is an accredited entity, an applicant or a relying party. The second criterion is that the department or authority of a State is not an entity of a kind specified in column 1 of item 2.
3. The effect of column 2 of item 1 is that:
  - (a) an accredited entity which satisfies both criteria in column 1 of item 1 may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of accredited entity the entity is accredited as;
  - (b) an applicant which satisfies both criteria in column 1 of item 1 may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of entity the entity has applied to be accredited as;
  - (c) a relying party which satisfies both criteria in column 1 of item 1 may apply to the Digital ID Regulator for approval to participate in the AGDIS as a participating relying party.

#### ***Item 2***

4. Column 1 of item 2 specifies an entity that satisfies 2 criteria. The first criterion is that the entity is a Corporations Act company owned by a State or another Corporations Act company that is owned by a State. The second criterion is that the entity is an accredited entity, an applicant or a relying party.
5. The effect of column 2 of item 2 is that:
  - (a) an accredited entity which satisfies both criteria in column 1 of item 2 may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of accredited entity the entity is accredited as;
  - (b) an applicant which satisfies both criteria in column 1 of item 2 may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of entity the entity has applied to be accredited as;

- (c) a relying party which satisfies both criteria in column 1 of item 2 may apply to the Digital ID Regulator for approval to participate in the AGDIS as a participating relying party.

### ***Item 3***

- 6. Column 1 of item 3 specifies a department or authority of a Territory that satisfies 2 criteria. The first criterion is that the department or authority of a Territory is an accredited entity, an applicant or a relying party. The second criterion is that the department or authority of a Territory is not an entity of a kind specified in column 1 of item 4.
- 7. The effect of column 2 of item 3 is that:
  - (a) an accredited entity which satisfies both criteria in column 1 of item 3 may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of accredited entity the entity is accredited as;
  - (b) an applicant which satisfies both criteria in column 1 of item 3 may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of entity the entity has applied to be accredited as;
  - (c) a relying party which satisfies both criteria in column 1 of item 3 may apply to the Digital ID Regulator for approval to participate in the AGDIS as a participating relying party.

### ***Item 4***

- 8. Column 1 of item 4 specifies an entity that satisfies 2 criteria. The first criterion is that the entity is a Corporations Act company owned by a Territory or another Corporations Act company that is owned by a Territory. The second criterion is that the entity is an accredited entity, an applicant or a relying party.
- 9. The effect of column 2 of item 4 is that:
  - (a) an accredited entity which satisfies both criteria in column 1 of item 4 may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of accredited entity the entity is accredited as;
  - (b) an entity that has applied for accreditation which satisfies both criteria in column 1 of item 4 may apply to the Digital ID Regulator for approval to participate in the AGDIS as the kind of entity the entity has applied to be accredited as;
  - (c) a relying party which satisfies both criteria in column 1 of item 4 may apply to the Digital ID Regulator for approval to participate in the AGDIS as a participating relying party.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

### **Digital ID (Phasing-in of Participation in the Australian Government Digital ID System) Determination 2024**

This *Digital ID (Phasing-in of Participation in the Australian Government Digital ID System) Determination 2024* (the Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Instrument**

The purpose of the *Digital ID Act 2024* (Digital ID Act) is to:

- legislate and strengthen a voluntary accreditation scheme for digital ID service providers that wish to demonstrate compliance with best practice privacy, security, proofing and authentication standards;
- legislate and enable expansion of the Australian Government Digital ID System (AGDIS) for use by the Commonwealth, State and Territory governments and eventually private sector organisations;
- embed strong privacy and consumer safeguards, in addition to the *Privacy Act 1988* to ensure users are protected; and
- strengthen governance arrangements for the accreditation scheme and the AGDIS, including by establishing the Australian Competition and Consumer Commission as the Digital ID Regulator, and expanding the role of the Information Commissioner to regulate privacy protections for digital IDs.

The Digital ID Act also empowers the Minister to make legislative instruments necessary for the implementation and administration of the legislative framework. Other legislative instruments include the *Digital ID (Accreditation) Rules 2024*, *Digital ID Rules 2024*, *Digital ID (Accreditation) Data Standards 2024*, and the *Digital ID (AGDIS) Data Standards 2024*.

The Determination permits certain State and Territory government entities to apply to the Digital ID Regulator to participate in the AGDIS from when the Digital ID Act commences.

The purpose of the Determination is to enable the Minister to manage the expansion of the AGDIS to entities outside the Commonwealth.

## **Human rights implications**

The Determination does not engage any rights or freedoms.

The Determination does not engage any human rights beyond those engaged by the operation of the Digital ID Act, as it permits applications that would otherwise be enabled after 2 years under section 61 of the Digital ID Act. Furthermore, to the extent that human rights are engaged by the operation of the Digital ID Act, the Statement of Compatibility with Human Rights in the Explanatory Memorandum to the Digital ID Bill 2024 addressed and covers the relevant human rights considerations.

## **Conclusion**

The Determination is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Katy Gallagher, Minister for Finance**