

## Regulatory Impact Statement

### Regulations to support the Electronic Identity Verification Bill

#### Agency disclosure statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Internal Affairs (the Department).

This RIS supports the regulations being made under the Electronic Identity Verification Bill once enacted. The RIS focuses on issues for which regulations can be made. There is, therefore, no consideration as to the wider framework for the operation of the identity verification service (the Service), including whether matters are more appropriately established by an Act of Parliament rather than in regulations.

The identity verification service has already been operating, in a limited form, on a contractual basis. Cabinet and Ministers have previously made decisions about the operation of the Service. These existing frameworks influence the range of practical options for the regulations.

None of the options considered will impose additional costs on business, impair private property rights, restrict market competition, reduce the incentives on business to innovate and invest, or be likely to override fundamental common law principles. Indeed, the regulations will enable approved businesses to reduce costs of verifying their customers' identities, thereby enabling businesses to offer more services online and increase opportunities for investment and innovation.

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Paul James, Chair, Regulatory Impact Analysis Panel  
Department of Internal Affairs

26<sup>th</sup> / October / 2012

## Overview

The Electronic Identity Verification Bill (the EIV Bill) will, if enacted, regulate the Identity Verification Service (the Service). The Service is an all-of-government shared service that provides members of the public with the option of proving their identity to authorised agencies via the Internet. This reduces the costs, for both agencies and individuals, of individuals having to prove their identity to each agency. The Service also allows for more services to be available online, and to reduce investment costs for agencies in building such services.<sup>1</sup>

The EIV Bill provides for regulations to prescribe a number of important matters for the operation of the Service. The Service could not operate without some of these matters prescribed by regulations, and others are highly desirable. Not regulating is not a viable option in those cases. Other matters (such as fees for the use of the Service) do not require regulations at this point.

## Background

The EIV Bill provides appropriate legislative parameters for the Service, once it is fully operational. The Service provides individuals with the option of an easy and secure way to verify their identity via the Internet for transactions where it is necessary to have confidence in an individual's identity. The Service works in conjunction with the igovt logon service, which allows people to access multiple online services with a single 'logon' (i.e. username and password).

The EIV Bill sets out the key parameters for the operation of the Service. These include the following aspects:

- the Service is optional for an individual to join, and it remains optional to use the Service once an individual has joined;
- the Service operates by using an 'electronic identity credential' (a credential) to pass an individual's identity information to participating agencies. A credential is commonly referred to as an 'igovt ID'. A credential contains a person's name, date of birth, place of birth and sex. These pieces of information have been verified to a high-level of confidence, similar to that used for issuing a passport;
- the Service only verifies an individual's identity and shares his or her information with 'participating agencies', which can be either in the public or private sector. Participating agencies must be approved via the Order in Council process;
- the Service holds some information that is not shared with 'participating agencies'. This includes the photograph taken of an individual when he or she applies to join the Service (for biometric checks during issuance), and records of an individual's usage history (agencies with which the individual has interacted, but not the nature of the transaction); and
- the Department may enter into an agreement with another agency to support the delivery of the Service. New Zealand Post Limited was selected as the partner following a competitive commercial tendering process.

The EIV Bill regulates most substantive matters for the Service's operations. However, the EIV Bill provides for regulations to be made for some important elements of the Service. Regulating these matters is consistent with the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* (part 10.1.4).

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<sup>1</sup> For more information, refer to the Regulatory Impact Statement prepared for the Electronic Identity Verification Bill, available from the [Department of Internal Affairs' website](#).

## Status quo and problem definition

The EIV Bill provides a range of regulation-making powers to support the Service. Table 1 identifies what regulations may be made under the EIV Bill and provides a brief description of what the regulation covers. The Bill provides for some issues that can be set either administratively or by regulation. However, other aspects can only be set by regulation. Some matters, for which regulations are contemplated by the EIV Bill, may not need to be addressed at this stage.

**Table 1: Regulation-making powers under the EIV Bill**

#	Regulation-making power	Description
1	Declare agencies to be participating agencies.	These are the agencies that are authorised to use the Service.
2	Prescribe the period of duration of a credential.	A credential is what an individual uses to verify his or her identity. The duration period is akin to a passport's validity period.
3	Declare agencies authorised to provide identity information checks.	These are agencies that may provide additional checks for verifying an individual's identity when that individual joins the Service.
4	Prescribe the period for which information can be retained following the expiry, cancellation or revocation of a credential.	This period determines how long the Service may retain personal information once an individual stops using the Service.
5	Prescribe fees and determine when charges can be set by agreements.	These are the fees agencies and/or individuals pay to use the Service.
6	Declare government agencies to be law enforcement agencies.	These agencies have access to certain information for law enforcement purposes. In the absence of regulations, the EIV Bill provides that the New Zealand Police is the only law enforcement agency.
7	Prescribe information and documentation that must be included in applications.	This is what individuals must provide to obtain an credential.
8	Provide for any other matters necessary for the administration or for giving full effect to the EIV Bill.	This allows regulations to prescribe other matters, as far as permitted within the EIV Bill's scope.

This regulatory impact statement assesses whether prescribing regulations is required for each of these powers and, if so, what the regulations should prescribe.

## Objectives of regulating

Some of the regulation-making powers must be used in order for the Service to operate. Other regulation-making powers may not be strictly necessary for the Service's operations although they may enhance it. In these circumstances, it is important to consider the advantages and disadvantages of regulating. Regulating:

1. ensures the scope of the Service is appropriately limited;
2. ensures the Service operates as intended by Parliament; and
3. provides a check on otherwise unregulated issues.

However, regulations may limit operational flexibility which may limit the ability of the Service to respond quickly to new issues and challenges. Regulations could also impact on individuals' rights.

## Options

Whether prescribing regulations is necessary, desirable or not required for the time being differs for each of the regulation-making powers.

### *1) Participating agencies*

The EIV Bill requires regulations to prescribe agencies to use the Service. Without regulations, no agency would be able to use the Service. These regulations are therefore necessary.

### *2) Duration of credentials*

The EIV Bill requires regulations to prescribe the duration of credentials. There is no provision in the EIV Bill to set the duration period administratively. These regulations are therefore necessary for the operation of the Service.

### *3) The agencies that can perform identity information checks*

The EIV Bill provides for a number of different mechanisms for an individual's identity to be verified when he or she applies for, or to renew, a credential. One of these processes is when the Service checks, with the individual's consent, whether the individual's identity information is the same as that held by an agency prescribed in regulations. These identity information checks will provide the Department with greater confidence in an individual's identity, may reduce the need for individuals to supply paper-based supporting documents and will therefore engender greater confidence in the Service. These regulations are desirable for the efficient operation of the Service.

### *4) Retention period for information following cancellation, expiry or revocation of credentials*

The EIV Bill provides that regulations may specify the period for which information relating to cancelled, revoked and expired credentials can be retained. If no regulations are made, then information privacy principle 9 (IPP9) in the Privacy Act 1993 applies – the information may only be kept for as long as it is required for the purposes for which the information may lawfully be used. Applying IPP9 would not necessarily provide certainty or proper scrutiny for individuals who use the Service about how long their information will be retained. The Privacy Commissioner would only become involved following a complaint, whereas the regulation-making power requires the Minister of Internal Affairs to consult with the Privacy Commissioner in the development of the regulations. However, the status quo has advantages, particularly in providing flexibility for the Service in light of changing fraud risks. While these regulations are not necessary, it is desirable to prescribe retention periods.

### *5) Fees*

The EIV Bill allows fees and charges to be set either by regulation or by (non-regulated) agreements between the Chief Executive of the Department and participating agencies. In addition, New Zealand Post Limited, which is delivering the Service in partnership with the Department, is empowered to set and collect charges from the private sector agencies that will use the Service.

Fees and charges may recover the Department's costs of the Service. The EIV Bill provides some examples of the types of costs that may be recovered:

- the costs of processing applications;
- the costs of issuing credentials; and
- the costs of providing, operating, and maintaining the Service, the Service database, or other processes in connection with the administration of the Service.

The Service will effectively be in a start-up phase once the EIV Bill is in force. The number of participating agencies offering online services will be limited and the number of individuals using the Service will also be limited. Encouraging rapid early uptake of the Service by both

agencies and individuals will drive the use of the Service for more online transactions. Regulated fees could discourage uptake of the Service by limiting flexibility. Prescribing fees in regulations is therefore neither necessary nor desirable.

#### 6) *Law enforcement agencies*

The EIV Bill provides that the New Zealand Police are a law enforcement agency, as well as any other government agency declared by regulations to be a law enforcement agency. There does not appear to be any agency that should be declared a law enforcement agency, in addition to the New Zealand Police, at this point in time. Regulations are not required.

#### 7) *Information and documentation*

The options relating to prescribing information and documentation are to either place the requirements in regulations, or to allow the Chief Executive to set them. The processes are currently set administratively and the Department has not encountered any significant problems or complaints with this approach. Regulations are not required nor desirable at this time.

#### 8) *Other matters*

No matters have been identified at this time as being suitable for regulation. Other matters can be determined administratively at this time.

### **Preferred option**

The preferred option is to prescribe through regulations:

- participating agencies;
- the duration of credentials;
- the agencies that can perform identity information checks; and
- the period for which the Service can retain information.

Other matters will not be regulated at this stage.

#### 1) *Participating agencies*

The regulation-making power allows participating agencies to be declared individually or by class of agency. In order to determine which agencies should be participating agencies, four criteria have been developed which are consistent with the principles and policy intentions of the EIV Bill. Agencies should meet these criteria to become participating agencies:

- a *Necessity* – the agency must have a legitimate need to use the Service;
- b *Trust* – the agency must be trustworthy, can demonstrate compliance with relevant legislation and be stable;
- c *Alternative service delivery* – The agency must provide alternative means for customers to verify their identities (when required to do so) so far as is practicable in the circumstances; and
- d *Usability* – the agency must be technically and practically able to use the Service.

Given Cabinet's and Ministers' previous decisions requiring departments and Crown agents to use the Service, it would be appropriate that they be listed as classes of agencies. It is also appropriate to extend this to the wider public sector (including the public service, Crown entities and local government) as they are eligible to use a related service (the igovt logon service). Specifically, Cabinet has already issued a direction to government departments, and relevant Ministers have issued whole of government directions to Crown agents under the Crown Entities Act 2004, to use the Service. Furthermore, clause 3(2)(b) of the Bill provides that one of the Service's purpose is to be a whole of government shared service.

One other class of agencies has been assessed as meeting the objectives of regulating. Registered banks are subject to anti-money laundering reforms (*necessity*), require regulator-approval to enter into the market (*trust*), there are few (if any) online-only providers

(*alternative service delivery*) and agencies within those classes tend to be of significant size to ensure they can provide online services (*usability*). No other class has yet been assessed as being able to meet these requirements at this point in time.

Agencies will, in the future, be considered on a case-by-case or class-by-class basis. The objectives listed above will be used as a basis for decision making.

## 2) *Duration of credentials*

The EIV Bill provides that regulations may prescribe the period for which credentials are effective, i.e. their validity period. The EIV Bill allows for a different validity period to be established for children under 14 years of age.

A shorter duration period is advantageous to prevent identity fraud as this would result in more regular checking of individuals' identities. It would also be advantageous because of the rate of technological change for biometric technology, such as the facial recognition software that the Service will use. However, a longer duration period would be more convenient for individuals, as they would have longer periods between renewing their credentials. This would also be more convenient to agencies, as it may mean that fewer individuals would stop using the Service as a result of the expiry of their credentials.

The International Civil Aviation Organisation recommends a five-year validity period for biometric passports.<sup>2</sup> A number of the reasons for that recommendation also apply to credentials. In particular, biometric technology (such as the facial recognition software used to support the issuing of credentials) is rapidly changing; the performance of biometrics decreases over time; and the turnover of applicants on a more regular basis allows rechecking of their identity details against updated and new databases. Aligning the validity period for credentials with that applying to New Zealand passports also potentially enables individuals to apply to renew both their passports and their credentials at the same time.

To ensure that individuals renew their credentials at a time that is convenient to them, the regulations should provide that they can apply before they expire. However, this must be balanced against the need to ensure applicants have their identity details regularly checked. Therefore, when credentials are renewed early, the duration period should run from the date of the current credential's expiry with a maximum additional period.

The balanced position is to align the credential's validity period with that of a New Zealand passport – five years. The 'additional duration' for renewed credentials should be limited to three additional months.

## 3) *The agencies that can perform identity information checks*

Many government and non-government agencies collect identity information to process applications, and many also issue documentation which contains these details, for various purposes. However, some agencies have legal limitations on their ability to disclose that information (such as the tax secrecy provisions). The following agencies have databases and processes that are suitable for the identity information checks for the Service, and which are therefore appropriate to be prescribed through regulations:

- Hospitality New Zealand (18+ Cards);

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<sup>2</sup> International Civil Aviation Organisation Technical Advisory Group on Machine Readable Travel Documents – New Technologies Working Group, *Biometrics Deployment of Machine Readable Travel Documents: Deployment and Specification of Globally Interoperable Biometric Standards for Machine Assisted Identity Confirmation using Machine Readable Travel Documents*, version 2.0, 21 May 2004, available at: <http://scgwww.epfl.ch/courses/notes/12-Biometrics%20deployment%20of%20Machine%20Readable%20Travel%20Documents%202004.pdf>

- the New Zealand Police (firearm licence); and
- the New Zealand Transport Agency (driver licence).

4) *Retention period for information following cancellation, expiry or revocation of credentials*  
 Different time periods can be chosen for various circumstances. Each different ground by which a credential may be cancelled, revoked, or expired may have a different suitable time period. Further, different periods may be prescribed for different types of information, such as photographs, the individual's identity information or the record of usage history. Table 2 sets out the preferred options for different circumstances.

**Table 2: Retention period for personal information**

Circumstance	Retention period	Justification
Credential cancelled on application by individual.	11 years	This is twice the five-year validity period plus one year, giving the Department sufficient time to catch identity fraud though changing technology.
Expired credential.	11 years	
Credential cancelled due to death of person.	11 years	
Credential relating to the original identity of a person in the witness protection programme that has been cancelled as a new credential has been issued in the new identity.	11 years	
Credential that was issued to an undercover Police or New Zealand Security Intelligence Service (NZSIS) employee and is no longer needed.	1 month	This information should be deleted as quickly as possible. These processes should be completed no later than one month after the Police or NZSIS no longer require that identity.
Credential revoked by either the Chief Executive of the Department or a court (on the basis of false or fraudulent representation, or error).	Not specified in regulations	Information about an individual whose credential has been revoked on the basis of false or fraudulent representation could be used to prevent that individual from successfully applying for a credential in the future. Therefore, that information should be retained for as long as it will be useful for that purpose. Credentials revoked on the basis of error should be subject to a retention period that is determined on the basis of the nature of the error. As the regulation-making power does not allow for distinguishing between these grounds, not specifying the period in regulations will provide sufficient flexibility for revoked credentials.

## Consultation

The EIV Bill was subject to extensive consultation with government agencies, and public and private sector consultation, as outlined in the Regulatory Impact Statement on the EIV Bill.<sup>3</sup>

The regulations have been subject to consultation with other government agencies: the Financial Markets Authority, the Ministry of Business, Innovation and Employment, the

<sup>3</sup> The EIV Bill's Regulatory Impact Assessment is available from the [Department of Internal Affairs' website](#).

Ministry of Justice, the Ministry of Social Development, the New Zealand Police, the New Zealand Security Intelligence Service, the New Zealand Transport Agency, the Office of the Privacy Commissioner, the Reserve Bank of New Zealand, the State Services Commission and the Treasury. The Department of the Prime Minister and Cabinet and the Parliamentary Counsel Office were informed. New Zealand Post Limited was consulted because of New Zealand Post Limited's partnering role to support the Service's operation.

## **Conclusions and recommendations**

The Service could not operate without certain regulations – there is no viable non-regulatory option. Other regulations are highly desirable to ensure the Service works as effectively as possible, and to provide certainty and transparency for agencies and individuals using the Service.

## **Implementation**

### *When regulations will come into force*

The regulations will come into effect with the commencement of the EIV Bill, if enacted. The EIV Bill contains transitional provisions (for example relating to the duration of credentials that were issued prior to the EIV Bill's enactment).

### *Mitigation of risks*

There are few implementation risks.

One of the main implementation risks is with declaring classes of agencies as participating agencies. Once a class is declared, there will be an expectation that every agency within the that class will be able to use the Service, even if the Department believes a certain agency is not an appropriate user (e.g. if it has been the subject of numerous substantiated complaints to the Privacy Commissioner, and has not resolved its systemic problems satisfactorily). While the classes of agencies selected are generally trustworthy, this risk cannot be mitigated at the outset. However, the EIV Bill provides that the Chief Executive of the Department of Internal Affairs can suspend a participating agency if, among other things, the Chief Executive is satisfied that suspension is necessary to protect the security or integrity of the Service. Participating agencies can also be removed from the regulations, including when the Chief Executive has suspended the agency.

One of the risks with five-year validity period for credentials is that individuals may not have their identity verified regularly enough. However, the EIV Bill provides for ongoing information matching, and also provides that individuals can have their credentials suspended or revoked. This should be sufficient to mitigate the risks associated with identity fraud occurring in the time between the issuance of a credential and when an individual renews it.

## **Monitoring, evaluation and review**

The legislative framework, including regulations that are made once the EIV Bill is enacted, will be subject to regular review by officials.

The Department will evaluate requests by agencies to be declared as participating agencies, and will make recommendations to the Minister of Internal Affairs and Cabinet to seek approval, by Order in Council, for the inclusion of appropriate agencies. The criteria above will be used as the basis for making such a decision.

Participating agencies can, under the EIV Bill, be required to report on their use of the Service to the Chief Executive of the Department. This will help inform the Chief Executive to

advise the Minister of Internal Affairs and Cabinet if any agency should be removed as a participating agency by way of Order in Council.

The EIV Bill also provides that the Privacy Commissioner may request reports from the Chief Executive of the Department on the operation of the Service or any aspect of the Service. These reports will enable the Privacy Commissioner to proactively monitor the Service, rather than relying on complaints when problems arise.