

Human Rights Law Centre.

Legal and Constitutional Affairs Committee
Parliament of Australia

3 October 2023

Dear Chair,

Submission: Identify Verification Services Bill

The Human Rights Law Centre is pleased to make a submission to the Legal and Constitutional Affairs Committee's inquiry into the Identify Verification Services Bill 2023 and the Identity Verification Services (Consequential Amendments) Bill 2023 (**collectively, the IVS Bills**). Regrettably the short window for consultation means our submission is brief.

In preparing our submission, we were provided with a draft of the submission prepared by the Human Technology Institute (**HTI**) at the University of Technology Sydney. We endorse HTI's recommendations. We add the following by way of additional comments.

Australians have a right to privacy. This human right is enshrined in international human rights instruments to which Australia is a signatory, including the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*. At present, Australians lack robust protection for this right – as the Albanese Government has recent recognised through its response to the review of the *Privacy Act 1988* (Cth). Accordingly, the establishment of regulatory schemes which impact the right to privacy – such as identity-verification – must be carefully designed and subject to robust safeguard and oversight mechanisms, particularly in the absence of wider frameworks to protect the right to privacy, and other human rights, such as a federal human rights charter.

The Morrison Government sought to provide federal legislative authority for several identity-verification services through the Identity-Matching Services Bill 2019 (**IMS Bill**). The Parliamentary Joint Committee on Intelligence and Security recommended that the Bill not proceed without substantial redrafting. Despite the IMS Bill not ultimately proceeding, the federal, state and territory governments have proceeded to establish and use several identity-verification systems, such as the Document Verification Services (**DVS**) and Face Verification Service (**FVS**). The scale of use has been significant. As the Explanatory Memorandum observes:

In 2022, the DVS was used over 140 million times by approximately 2700 government and industry sector organisations, and there were approximately 2.6 million FVS transactions in the 2022-23 financial year.

There is no evident federal legislative basis for the DVS or FVS. It is therefore entirely unclear how these schemes are being lawfully operated. The IVS Bills appear designed to fill this lacuna of authority for schemes which are already operational without apparent legislative grounding (although we note that the IVS Bills do not seek to apply retrospectively). This is no doubt why such a limited period has been provided for consultation in relation to proposed laws which have significant implications for the privacy of all Australians. This may explain, but it does not excuse. It is extraordinary that the Australian Government is, it seems, presently using identity-verification services on a mass scale without a lawful basis. And it is all the more extraordinary that the Australian Government would seek to rush through such important legislation, with minimal opportunity for parliamentary scrutiny, in these circumstances.

We acknowledge that the IVS Bills represent a substantial improvement on the IMS Bill. However, for the reasons set out in HTI's submission, the Human Rights Law Centre supports the inclusion of stronger privacy protections within the IVS Bills. Optimally, the IVS Bills should only be enacted *after* comprehensive reform to the *Privacy Act* takes place and Australia's privacy protections are brought up to scratch. Less optimally, but still preferably to what is currently proposed, the IVS Bills should be amended to include stronger protections – either equivalent to what is presently included in the exposure draft Digital ID Bill 2023, or through rule-making powers granted to the Minister, with a sunset clause if such rules are not made within a specified period.

We also query the lack of evidence to justify the IVS Bills' unprecedented legislating for 1:many surveillance in this context. While we recognise that the IVS Bills restrict 1:many surveillance to relatively limited circumstances, it nonetheless represents a substantial expansion of a surveillance technique with sweeping privacy implications. It is not clear from the IVS Bills, nor the explanatory material, while 1:many surveillance is necessary or proportionate.

In any event, the Albanese Government should move swiftly to progress reform to the *Privacy Act* and enact a dedicated law to regulate the use of facial recognition technology. We commend to the Committee HTI's *Facial Recognition Technology: Towards a Model Law* report, to which the Human Rights Law Centre contributed.

We thank the Committee for considering our submission.

Kind regards,

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