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D18/58615

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

The Victorian Government is pleased to provide a submission for the review of the *Identity-matching Services Bill 2018* (IMS Bill). The Premier has asked that I provide our submission on his behalf.

Victoria has committed to this important Commonwealth initiative through the 2017 Intergovernmental Agreement on Identity Matching Services (IMS). We support the use of the IMS to prevent identity crime and to assist general law enforcement, national and protective security, community and road safety, and identity verification.

We suggest that the Committee may wish to consider the following three areas of focus as part of its review of the IMS Bill.

1) Governance of the IMS and provision of biometric capability

Victoria believes it is essential that both users of the IMS and citizens have confidence in the integrity of the biometric capability and services that will be made available to government through this technology. To that end, we believe the operation of the IMS should be supported by appropriate and reasonable transparency and oversight, enshrined in legislation.

The Office of the Victorian Information Commissioner (OVIC)¹ has already indicated that the proposal to replicate governance arrangements for the IMS on the existing Document Verification Service (DVS) framework is inadequate. The Victorian Government suggests that a powerful biometric capability such as the IMS requires more stringent checks and balances than currently proposed, especially in light of its use by law enforcement agencies and to ensure that privacy rights of citizens are adequately protected.

We particularly note that aside from an Annual Reporting cycle (cl.28), there are no provisions in the IMS Bill to support timely reporting, including misuse of data or access breaches by users of the IMS itself. Given that the IMS may be used for surveillance purposes to support law enforcement, we recommend that appropriate security checks and balances be enshrined in the legislation to provide appropriate transparency to give users

¹ Submission of OVIC provided to the Committee on 21 March 2018.

and the public confidence in the operation of the IMS. OVIC has raised similar concerns in points 6 and 7 of its Submission.

We consider the appointment of independent regulatory bodies in the UK, such as the Office of the Biometrics Commissioner, the Investigatory Powers Commissioner and the UK Surveillance Camera Commissioner, as marks of good governance that can ensure continual improvement in the quality of biometric services. Victoria recommends the Commonwealth consider similar constructs as well to support greater transparency in the oversight of the IMS.

2) Use of Face Matching Services (FMS) by private sector and local government authorities

As noted by OVIC, Victoria has concerns about the possible expansion of the IMS Bill to the private sector and local government authorities. The IMS Bill and the Intergovernmental Agreement on Identity Matching Services (IGA) appear to be inconsistent in how they deal with private sector access to identity-matching services.²

In particular:

- The IGA's conditions on private sector access to the DVS and Face Verification Service (FVS) are different to those listed in Clause 7(3) and (4) of the IMS Bill. Clause 5.5 of the IGA provides that the private sector "will not be given access" to FMS or the Identity Data Sharing Service - other than the DVS [5.1 - 5.2] and FVS [5.3 to 5.4]. By contrast, the IMS Bill does not contain such a restriction, allowing non-government entities to use all identity-matching services if they meet the restrictions in clause 7(3) and (4). We request the IMS Bill be revised to align with the terms of the IGA.
- Clause 7(3)(d)(ii) of the IMS Bill should also reference a non-government entity. After "the local government authority" please insert "or non-government entity". A non-government entity should also be bound by a law of a State or Territory, or have entered into a written agreement with the Department, and meet the requirements of clause 7(4).
- The IMS Bill refers to identity matching services being made available to local government authorities.³ As this goes beyond what was agreed in the IGA, and because the authority by which VicRoads is able to share information for the National Drivers Licence Facial Recognition Solution (NDLFRS) is tied to the IGA, we note that VicRoads may not be authorised to disclose information for the purpose of it being used in an identity matching service by a local government authority.

Victoria requests the Commonwealth revise the IMS Bill to align with the proposed IMS Bill and address these points.

We note that, if the scope of the NDLFRS is expanded as is proposed by the IMS Bill, Victoria would need to consider whether it wishes to participate in the expanded NDLFRS scope and if so, the legal basis on which it would rely to do so.

² Please refer to clause 7(3) of the IMS Bill and Part 5 of the IGA.

³ Clause 7 of the IMS Bill.

3) *Breadth of consent, use and disclosure of identification information*

The IMS Bill goes beyond the scope of the IGA in several respects. It provides for the Minister to prescribe⁴ new types of identification information⁵, new identity-matching services⁶ and an authority that may request the provision of Face Identification Services,⁷ thus providing significant scope for going beyond what was agreed in the IGA. It is possible that, because of this, a situation may arise where the Commonwealth is authorised to collect information as part of the IMS that Victoria is not authorised to disclose under its legislation or otherwise.

The definition of 'identification information' in clause 5(1)(h) of the IMS Bill encompasses other types of licence and photo identification cards held by states and territories, such as proof of age cards, firearms licences and marine licences. At this time, Victoria has no plans to provide other identification information data sets to the Commonwealth beyond driver's licence identification information, such as marine and junior firearms licence information which may be issued to persons as young as 12 years of age.

We note that while the IMS Bill provides a legal basis for the collection of 'identification information', significant policy issues may arise if citizens are not adequately informed about how information provided for provision of driver's licences may be re-used for other law enforcement purposes. This would include the retrieval of biometric details through one-to-many searches using the Facial Identification Service. Further consideration should be given to how such disclosure notifications could be implemented.

Of particular concern are the practicalities of how local government authorities or non-government entities may demonstrate compliance with conditions arising from clause 7 of the bill, especially sub-clause (3)(b) (that requires an individual to have given consent for the use and disclosure of their identification information) and who would administer the appropriate checks and balances in support of this.

Victoria further notes that clause 18 of the IMS Bill appears to give broad powers to the Commonwealth (Department of Home Affairs) to use and disclose identification information as set out in clause 17(2) of the bill. We recommend that consideration be given to whether this use and disclosure power should be limited, having regard to the IGA.

Victoria requests that the Commonwealth revise the IMS Bill to address these matters.

Thank you for the opportunity to provide a submission on this important piece of legislation and we will follow its progress with interest.

⁴ Clause 30 *ibid.*

⁵ Clause 5(1)(n) *ibid.*

⁶ Clause 7(1)(f) *ibid.*

⁷ Clause 8(2)(q) *ibid.*

Please direct any queries you may have regarding our submission to Mr Geoff Beggs, Acting Executive Director, Enterprise Solutions Branch, Department of Premier and Cabinet on

[REDACTED]

Yours sincerely

~~Gavin Jennings MLC~~
~~Special Minister of State~~