

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

The NSW Council for Civil Liberties (NSWCCL) makes this brief submission to the Committee in regard to the Identity Verification Services Bill 2023 and Identity Verification Services (Consequential Amendments) Bill (Bills). NSWCCL is aware that the time for lodging submissions has lapsed (being due 2nd October 2023). The NSWCCL requests that the Committee considers accepting this late submission to the Inquiry.

The Bills arose from the original COAG decisions in October 2017 in relation to national security and in which National, State and territorial leaders agreed to establish a National Facial Biometric Matching Capability (2018 Bills). The 2018 Bills (resubmitted in 2019 after lapsing) were rejected by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) as explained in its first recommendation:

“The Committee recommends that the Identity-matching Services Bill 2019 be re-drafted taking into account the following principles:

- the regime should be built around privacy, transparency and subject to robust safeguards,
- the regime should be subject to Parliamentary oversight and reasonable, proportionate and transparent functionality,
- the regime should be one that requires annual reporting on the use of the identity-matching services, and
- the primary legislation should specifically require that there is a Participation Agreement that sets out the obligations of all parties participating in the identity-matching services in detail.”

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Identity-Matching2019/Report/section?id=committees%2freportjnt%2f024343%2f28188

NSWCCL objects to the passage of the Bills for the following reasons:

1. Insufficient time has been given to consider the content and impact of the Bills. They were introduced to Parliament on 13 October 2023 and submissions were due to the Committee for consideration on 2 October 2023. It is very difficult for stakeholders, many of which, like the NSWCCL, are manned by volunteers, to

provide reasonable feedback in such a short timeframe. The Bills deal with matter that is detailed and technical. For the sake of transparency, further time should be provided for submissions to be made by the public and other stakeholders. NSWCCCL believes that the legislation affects the civil and human rights of Australian to such a significant extent as to warrant this.

2. For the sake of submitting something relevant to the Committee, we attach a copy of a joint submission made in 2018 to the PJCIS by the NSWCCCL, Liberty Victoria, Queensland Council for Civil Liberties, South Australian Council for Civil Liberties and the Australian Council for Civil Liberties.
3. NSWCCCL believes that many of the concerns raised in that original 2018 submission are still relevant. In a non-exhaustive list of examples:
 - a. Privacy principles will be set out in participation agreements. Privacy principles should not be set out in subordinate documents or delegated legislation, but in the primary legislation.
 - b. The Bills should not rely solely on privacy law, which laws are still being reviewed and are likely to be inadequate for the significant amount of biometric and other sensitive information being dealt with in the proposed legislation. The explanatory note states that “privacy law and/or the Australian Privacy Principles will apply to **almost** all entities”.
 - c. It has become abundantly clear, over the last few years, that standard consent and notice requirements are totally inadequate for obtaining meaningful consent of participant citizens. Without offering alternative easy methods of verification there is no consent.

Thank you, in anticipation, for considering this brief submission. We look forward to being able to make more detailed and considered comments on the Bills.



Michelle Falstein
Assistant Secretary

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

