

**INQUIRY INTO ROAD TRANSPORT AMENDMENT  
(NATIONAL FACIAL BIOMETRIC MATCHING  
CAPABILITY) BILL 2018**

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# **New South Wales Legislative Council – Standing Committee on Law and Justice**

**Department of Home Affairs Submission**

**Inquiry into the Provisions of the Road Transport  
Amendment (National Facial Biometric Matching  
Capability) Bill 2018 (NSW)**

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# Introduction

1. The Department of Home Affairs (Home Affairs) welcomes the opportunity to provide this submission to the New South Wales Legislative Council Standing Committee on Law and Justice as part of the Committee's inquiry into the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018 (the NSW Bill).
2. The introduction of the NSW Bill is an important step in implementing the Intergovernmental Agreement on Identity Matching Services agreed between all states and territories and the Commonwealth at the Council of Australian Governments meeting in October 2017. It follows corresponding legislative amendments to implement this agreement which have been made in Queensland and Tasmania, and the introduction of the Identity-matching Services Bill 2018, which is currently before the Commonwealth Parliament.

## Overview of submission

3. This submission provides an overview of the current policy, legal and technical implementation activities that underpin the National Facial Biometric Matching Capability (NFBMC), including:
  - the Intergovernmental Agreement on Identity Matching Services (IGA) entered into by the Commonwealth and the States and Territories on 5 October 2017
  - the Identity-matching Services Bill 2018 (Cth) (the IMS Bill)
  - other State and Territory legislation to implement the IGA, and
  - privacy safeguards governing the identity-matching services.

## Background

4. Identity crime causes substantial harm to the economy and individuals each year. The *Identity Crime and Misuse in Australia Report 2017* (forthcoming) prepared by the Australian Institute of Criminology, indicates that identity crime impacts around 1 in 4 Australians throughout their lifetime, with an estimated annual cost of at least \$2 billion.
5. In addition to financial losses, the consequences experienced by victims of identity crime can include mental health impacts, wrongful arrest, and significant emotional distress when attempting to restore a compromised identity.
6. Identity crime is also a key enabler of terrorism and serious and organised crime. Australians previously convicted of terrorism related offences are known to have used fake identities to purchase items such as ammunition, chemicals that can be used to manufacture explosives, and mobile phones to communicate anonymously. An operation by the joint Australian Federal Police and New South Wales Police Identity Security Strike Team found that the fraudulent identities seized from just one criminal syndicate were linked to 29 high profile criminals linked to historic or ongoing illicit drug investigations, more than \$7 million in losses associated with fraud against individuals and financial institutions, and more than \$50 million in funds that were laundered offshore and were likely to be proceeds of crime.
7. Identity crime is aided by the growing sophistication of criminal syndicates and the technology now able to support them. While Government agencies can already verify biographic information on identity documents, such as driver licences and passports, by using the Document Verification Service (DVS), name-based checking tools such as the DVS cannot

detect when a fraudulent photo is used with otherwise legitimate details on identity documents, or assist in identifying an unknown person from a facial image.

8. Current image-based methods of identifying an unknown person can also be slow, difficult to audit, and often involve manual tasking between requesting agencies and data holding agencies, sometimes taking several days or longer to process. This impedes the ability of government agencies to identify a person of interest quickly. The identity-matching services will streamline these processes by providing authorised agencies with the means to rapidly share and match facial images drawn from existing databases in order to identify unknown persons, and detect people using multiple fraudulent identities.
9. The identity-matching services being implemented pursuant to the IGA will help to strengthen the integrity and security of Australia's identity infrastructure—the identity management systems of government agencies that issue Australia's core identity documents such as driver licences and passports. These systems play an important role in preventing identity crime, which is one of the most common and costly crimes in Australia.
10. The identity-matching services will also assist with a range of other national security, law enforcement and community safety activities, the provision of more secure and accessible government and private sector services to people using legitimate identification documents or whose documents are lost or damaged; and improving road safety through the detection and prosecution of traffic offences and deterring dangerous driving behaviour.
11. The identity-matching services will also benefit victims of natural disasters who are seeking access to support, including those who have lost their identity documents. By checking the person's photo against a passport or driver licence image, government agencies will be able to assist individuals to verify their identity in order to receive disaster relief payments, and assist them in replacing their lost or damaged government documents.

## **The Intergovernmental Agreement on Identity Matching Services**

12. On 5 October 2017, the Commonwealth, States and Territories agreed to establish a National Facial Biometric Matching Capability (NFBMC) and signed an Intergovernmental Agreement on Identity Matching Services (IGA).
13. The NFBMC is designed to maximise the potential of facial biometrics to prevent fraud, support law enforcement, promote community safety and streamline service delivery, while maintaining robust privacy safeguards. It is supported by a combination of policy, legal and technical components that together facilitate the secure, automated and accountable exchange of identity information between those agencies with a lawful basis to do so.
14. The IGA is consistent with, and helps to implement the objectives of, the National Identity Security Strategy (NISS). The NISS was first established by the Intergovernmental Agreement to a National Identity Security Strategy, agreed by COAG in 2007. The overall objective of the NISS is for the Commonwealth, states and territories to work collaboratively to enhance national security, combat crime and increase service delivery opportunities through nationally consistent processes for enrolling, securing, verifying and authenticating identities and identity credentials.
15. Under the IGA, agencies in all jurisdictions will be able to use the new identity-matching services to access passport, visa, citizenship, and driver licence images while maintaining

robust privacy safeguards. Through the IGA the Commonwealth and all states and territories agreed to preserve or introduce legislation to support the collection, use and disclosure of facial images and related identity information between the parties, via a set of identity-matching services, for the following purposes:

- Preventing identity crime
- General law enforcement
- National security
- Protective security
- Community safety
- Road safety, and
- Identity verification.

16. The identity-matching services will be delivered via an interoperability hub that facilitates data-sharing between agencies on a query and response basis, without storing any personal information. Passport, visa and citizenship images will continue to be held by the Commonwealth agencies that issue these documents, and that already have facial recognition systems.
17. Driver licence images will be made available by the establishment of a National Driver Licence Facial Recognition Solution (NDLFRS), hosted by the Commonwealth on behalf of the states and territories in accordance with the IGA. The NDLFRS will consist of a federated database of identification information contained in government identification documents (initially driver licences) issued by state and territory authorities, and a facial recognition system for biometric comparison of facial images against facial images in the database.
18. The IGA also envisages the establishment of a number of identity-matching services, as described below.
19. The Face Verification Service (FVS) is a one-to-one, image-based verification service that can match a person's photo against an image on one of their government records (such as a driver licence photo) to help verify their identity. Often these transactions will occur with the relevant individual's consent.
20. The Face Identification Service (FIS) is a one-to-many, image-based identification service that can match a photo of an unknown person against multiple government records to help establish their identity. Access to the FIS will be limited to security, law enforcement and anti-corruption agencies.
21. The One Person One Licence Service (OPOLS) and the Facial Recognition Analysis Utility Service (FRAUS) are two further identity-matching services envisaged under the IGA. These services will be available to states and territories to assist them to uphold the integrity of their driver licence and other identification systems.

## **The Identity-matching Services Bill 2018**

22. On 7 February 2018 the Minister for Home Affairs introduced the Identity-matching Services Bill 2018 (the IMS Bill) in the Commonwealth Parliament. The IMS Bill is currently before the Parliament. Further information about the IMS Bill is available in the accompanying Explanatory Memorandum.

23. The main purpose of the IMS Bill is to authorise Home Affairs to collect, use and disclose identification information in order to operate the technical systems that support the provision of identity-matching services.
24. The IMS Bill does a range of things, including:
- authorising Home Affairs to develop, operate and maintain the Interoperability Hub and the NDLFRS.
  - authorising Home Affairs to create and maintain facilities for the sharing of facial images and other identity information between government agencies, and in some cases, private organisations
  - setting out the identity-matching services to be implemented as part of the IGA (the FVS, FIS, OPOLS and FRAUS).
25. The IMS Bill does not authorise agencies to use identity-matching services. Agencies seeking access will need their own legal basis for collecting, using and disclosing relevant personal information. This can include a legal basis under relevant state and territory legislation, such as the NSW Bill (if enacted).

### **Parliamentary inquiries into the IMS Bill**

26. The IMS Bill has been the subject of a number of inquiries by the Commonwealth Parliament. These inquiries, and the material in response provided by Home Affairs, may be of assistance to the Committee in its consideration of the NSW Bill.
27. In March 2018, the IMS Bill was referred to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) for inquiry and review (the PJCIS inquiry).<sup>1</sup> The IMS Bill is currently before the PJCIS. Home Affairs provided the PJCIS with two main submissions to assist the PJCIS in its inquiry. These are its first submission (submission 12) and its supplementary submission (submission 12.1).
28. The PJCIS inquiry has held two public hearings, on 3 May 2018 and 17 August 2018. Home Affairs made appearances at both public hearings. The transcript of these hearings is available on the PJCIS inquiry website. Home Affairs has also provided answers to a number of questions on notice put by the PJCIS to the Department. The questions, and the Department's answers, are available publicly as submissions 12.2 and 12.3 to the PJCIS.
29. The IMS Bill has also been the subject of other inquiries by Commonwealth parliamentary committees. The Parliamentary Joint Committee on Human Rights (PJCHR) considered the IMS Bill in its *Human rights scrutiny report, Report number 3 of 2018* and *Report number 5 of 2018*.<sup>2</sup>
30. The Senate Standing Committee for the Scrutiny of Bills considered the IMS Bill in its *Scrutiny Digest 2 of 2018* and *Scrutiny Digest 5 of 2018*.<sup>3</sup> The response of the Minister to the Scrutiny of Bills Committee is available in the Minister's response to *Scrutiny Digest 5 of 2018*.

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<sup>1</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/IMSBill](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/IMSBill)

<sup>2</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports)

<sup>3</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Bills/Scrutiny\\_Digest](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest)

## Other state and territory legislation

31. A number of states have already preserved or implemented legislation to facilitate their participation in the IGA. On 16 March 2018 the *Police and Other Legislation (Identity and Biometric Capability) Amendment Act 2018* (Qld) was enacted in Queensland. The Queensland Act amended a range of Queensland legislation to strengthen the legal basis for the Queensland Government to share driver licence information for the purpose of participating in the IGA. The Queensland Parliament's Legal Affairs and Community Safety Committee conducted an inquiry into the corresponding Bill (the *Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018*).<sup>4</sup>
32. Tasmania, South Australia and Victoria have also already implemented or preserved legislation to facilitate their implementation of the IGA and participation in the face matching services. This legislation includes:
- Tasmania. The *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Amendment (Identity Matching Services) Regulations 2017* (Tas), which amended regulation 125 of the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas). These Regulations are made under the *Vehicle and Traffic Act 1999* (Tas).
  - Victoria. *Road Safety Act 1998* (Vic), in particular s90K(a)(vi), which authorises information sharing for the purpose of implementing an intergovernmental agreement.
  - South Australia. *Public Sector (Data Sharing) Act 2016*, in particular s13, which authorises data sharing in specified circumstances.
33. Other State and Territory legislation may also be relevant, including State and Territory privacy legislation, motor vehicle legislation and legislation governing particular agencies.

## Privacy safeguards in the NFBMC

34. The identity-matching services provided through the NFBMC have been informed by a 'Privacy by Design' approach, with a range of privacy safeguards built-in through the Bill, as well as the policy and administrative arrangements that will support the services. All jurisdictions have been involved in developing these and will be expected to implement the policy and administrative measures in their use of the system.
35. The IMS Bill has a range of privacy, accountability and transparency measures to ensure appropriate safeguards exist in relation to the use of identification information in the delivery of identity-matching services via the interoperability hub and the NDLFRS.
36. The IMS Bill contains a range of privacy protections, including:
- Restricting the kinds of identification information that can be collected, used or disclosed
  - Defining and limiting the scope of the identity-matching services that can be provided by Home Affairs

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<sup>4</sup> <http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/past-inquiries/POLABILL2018>



- Limiting the purposes for which Home Affairs may collect, use or disclose identification information to prescribed identity and community protection activities (such as law enforcement and national security)
  - Establishing an offence for unauthorised recording and disclosure of information by entrusted persons in connection with the interoperability hub and NDLFRS
  - Requiring the Minister to submit a report to Parliament on the use of the services each year
  - Mandating a statutory review of the Bill to be started within five years of commencement.
37. The FIS is subject to particular privacy safeguards in the IMS Bill, including:
- Limiting its use to a specific list of Commonwealth, State and Territory national security, law enforcement and anti-corruption agencies
  - Providing that it can only be used for the purposes of preventing and detecting identity fraud, law enforcement, national security, protective security and community safety.
38. In addition to the privacy, transparency and accountability safeguards in the IMS Bill, the IGA and other supporting agreements and policies will provide further privacy protections.
39. Under the IGA, Home Affairs will not have the ability to access driver licence or other identity information provided by states and territories to the NDLFRS, other than through data sharing arrangements agreed with the relevant state or territory (IGA, para 6.16(e)).
40. Commonwealth, state and territory agencies will also enter into a common Participation Agreement to provide a legally binding framework within which they will share identity information via the identity-matching services (IGA, para 7.2). The Participation Agreement will provide the framework within which agencies will negotiate details of data sharing arrangements, so that these arrangements meet minimum privacy and security safeguards in order to support information sharing across jurisdictions. The Commonwealth, states and territories will also enter into an agreement for the Commonwealth to host state and territory identification information in the NDLFRS (the Hosting Agreement) (IGA, para 7.5). The Participation Agreement and the Hosting Agreement are currently the subject of negotiation between the Commonwealth and the states and territories.
41. Together with the IGA, these agreements include additional privacy protections that participating agencies need to comply with before obtaining access to the services. These include:
- providing a statement of the legislative authority or basis on which an agency may obtain identity information through the face-matching services,
  - conducting a privacy impact assessment which includes consideration of the entity's use of the identity-matching services
  - entering into arrangements for the sharing of identity information with each data-holding agency it wishes to receive information from
  - providing appropriate training to personnel involved in the use of face-matching services, and
  - conducting annual compliance audits in relation to the use of face-matching services.
42. **In addition to the privacy safeguards specific to the NFBMC**, Home Affairs will remain subject to the *Privacy Act 1988* (Privacy Act) and the Australian Privacy Principles in relation to personal information that it collects, uses or discloses in its provision of the identity-matching services. This includes being subject to the Notifiable Data Breaches scheme under Part IIIC of the Privacy Act, as administered by the Office of the Australian Information Commissioner.

## Concluding remarks

43. Home Affairs welcomes the introduction of the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018 (NSW), which will assist New South Wales to participate in the identity-matching services to be implemented in the IGA.
44. Home Affairs supports the need for robust privacy, transparency and accountability safeguards in relation to the provision and use of the face-matching services. The legislative framework IMS Bill contains a range of these safeguards, which are supported by a further layer of protections under the IGA and the administrative and policy arrangements that support the operation of the services; all of which operates in the context of agencies existing oversight arrangements. Together, this legislative and administrative framework will ensure that participating agencies can access the tools they need to support their identification and identity verification activities whilst protecting the security and privacy of the information shared through the services.