



Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
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By email: pjcis@aph.gov.au

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Attention: Chair, Mr Andrew Hastie MP

Dear Chair and Committee Members

Thank you for providing Civil Liberties Australia (CLA) with the opportunity to contribute to the review of the *Identity-matching Services Bill 2018* and the *Australian Passports Amendment (Identity-matching Services) Bill 2018*.

CLA is a national organisation headquartered in Australia's capital city, Canberra. We stand for people's rights, and go in to bat for civil liberties. We are non-party political and independent of other organisations, and funded by members and donations. We do not receive funding from government.

CLA monitors police and security forces, and the actions and inaction of politicians and bureaucrats as well as reviewing proposed legislation to make it better. We aim to keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'. We do not see ourselves as merely a protest group; we work with and seek to be involved in the development of government policy and legislation at an early stage, to ensure civil liberties are properly considered and that bad policies are stopped early on...before they gain enough momentum to become Bills. In our experience, once Bills come to a Parliamentary Committee there is little chance that a Government will change course significantly.

I fear that this is the case here. We credit the government for formalising in law a number of ID-collection programs that have been running and expanding for several years (usually with little to no visibility to, or oversight by, Parliament or the public) but these Bills, the intergovernmental-agreement and laws passed in recent years shift Australia to a post-privacy age and into a new era of total surveillance.

In our view, this post-privacy era has emerged with no public discussion and consensus. The policies that underpin this era have been devised and pursued by police, intelligence services and a new breed of para-policing and military forces (such as the Australian Border Force). Those at the centre of this new regime have been aggressive in calling for the winding back of civil liberties and of privacy, in particular the sub-components of privacy: anonymity and obscurity (the ability to go about your business without having to identify yourself or being identified). These individuals have likewise been dismissive of any suggestions that agencies have enough powers already.

Such aggressive stances are evident in the Explanatory Memorandum to the *Identity-matching Services Bill 2018* which declare (as if declaring made it true):

“These agencies keep all Australians safe from harm, but they are only effective if they have the tools necessary to effectively enforce the law and detect and prevent threats to the Australian community. Safety and security are key elements of a free and democratic society, and limited impositions on personal privacy are reasonable to achieve this.”

We ask – again – when was our ‘free and democratic society’ given a chance to engage in meaningful debate over what measures are reasonable in the name of safety and security?

While Parliament is one mechanism, it can claim no special mandate for these changes given they were not taken to the last election. Moreover, the review of this Bill is being undertaken by a Committee whose composition is not representative of the Parliament (only the major parties are included), let alone the wider community.

Yet as we have seen (in accurate commentary on how internal systems operate), decisions by this Committee will pre-empt debate within the wider party structures and caucuses – ensuring that any agreement reached here will be the effective end of the Parliamentary debate. Compare this to the democratic debate that occurred over the Australia Card, including a full parliamentary debate and double-dissolution election.

The government approaches consent – and demonstrates its lack of respect for it – by approaching the issue in a paternalistic way. Individuals who have had their photos taken for passports or driver’s licences do so to access a given service or right, e.g. to drive or travel abroad. They consent for a given purpose and accept that this information will be used for a specific purpose – e.g. road safety, border security.

This consent is not a general permission to the state to do whatever it wants with the data. Yet these Bills now usurp the limited consent given previously and allow the use of data for an endlessly expanding list of surveillance and monitoring activities. To override a person’s consent in the name of ‘safety and security’ is not respecting Australian adults: it is treating them as you would a child and so is the very definition of paternalism. This forms the basis for our objections to these Bills and the policy they represent.

I would strongly encourage the Committee to consider where the passage of these Bills will progressively leave Australia and Australians. As we have seen in years preceding these Bills, identity-matching services and programs always suffer from scope-creep and extend into new domains.

While the services described do not yet relate to real-time identification and surveillance of public groups (or individuals in public spaces), such programs are likely to be permissible under these laws. Indeed, it is only a matter of time before the combination of cloud-services, mobile, high-definition video capture (including smartphones) and ‘Big Data’ analytics will make such real-time surveillance possible, cheap and enticing. When that happens, we can again expect to hear similar claims that our police and spy agencies “are only effective if they have the tools necessary to effectively enforce the law and detect and prevent threats to the Australian community”.

Likewise, it is only a matter of time before obscuring one's face in public becomes a crime – one need only consider the angry backlash from security services and police over the way Australians have adopted personal encryption on their smart phones.

Notwithstanding our fundamental concerns with the direction these Bills take Australia, we recommend that the Committee consider the following changes as a priority:

- Request new Privacy Impact Assessment (PIAs) for all the named services in the *Identity-matching Services Bill 2018* (e.g. FVS, FIS, OPOLS, IDSS) prior to the commencement of the Bill. This step is necessary because the passage of this legislation – with its authorisation for wider sharing of data – represents a material change to the original scope of activities and privacy impacts that would have been considered in the PIA.
- Request that all previous PIAs for these services be published online so they can be considered by the community and audited by privacy experts and organisations such as the Australian Privacy Foundation.
- Clarify with the relevant departments any plans to roll out photo ID as an element of future Medicare cards and any plans to incorporate Commonwealth health databases (e.g. Pharmaceutical Benefits Scheme and Medical Benefit Scheme records, MyHealth Records, notifiable disease databases) and privately held health databases (e.g. pharmacy records supporting Project Stop) into the identity-matching services. Such a possibility is suggested through the repeated references to risks to 'public health' in the Explanatory Memorandum. Such plans should be resisted strongly.
- Amend the *Identity-matching Services Bill 2018* to ensure that the Minister can only approve a State or Territory agency as a requesting agency if the State or Territory privacy laws meet the same or higher standards as the Commonwealth *Privacy Act*, including with regards to mandatory reporting of data breaches.
- Amend the *Identity-matching Services Bill 2018* to provide the Minister with the power to immediately suspend an agency's status as a requesting agency if the Minister reasonable suspects that an agency has breached any provision under the legislation.
- Amend the *Identity-matching Services Bill 2018* to require a greater level of reporting from ASIO on its use of the identity-matching services, either
 - ★ In a range form (e.g. 0-15 requests; 15-50 requests; 50-100 requests; 100-500 requests; more than 500 requests per year), or
 - ★ In a report prepared for the Parliamentary Joint Committee on Intelligence and Security.
- Amend the law to ensure that special consideration is given to the impact of identity-matching services on children and young people, who may not have been given the same opportunities to consent to the use and disclosure of their data for identity-matching services.
- Amend the *Australian Passports Amendment (Identity-matching Services) Bill 2018* to ensure that individuals always have the right to request a human make a decision that affects their legal rights and obligations. See, for example, the EU General Data Protection Regulation (2018) Art. 22.

Thank you for considering our submission. We hope that the Committee gives due consideration to the rights and interests of Australians, rights which sometimes mean that police and security agencies must be told 'no'.

Yours sincerely

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President
Civil Liberties Australia