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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Identity-matching Services Bill 2019

No. , 2019

(Home Affairs)

A Bill for an Act about dealing with information for providing identity-matching services and for carrying on certain identity or community protection activities, and for related purposes

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1 **A Bill for an Act about dealing with information for**
2 **providing identity-matching services and for**
3 **carrying on certain identity or community**
4 **protection activities, and for related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**

7 **Division 1—Preliminary**

8 **1 Short title**

9 This Act is the *Identity-matching Services Act 2019*.

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.

6

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Simplified outline of this Act**

14 The Secretary of the Department may develop and operate:
15 (a) the interoperability hub, which relays electronic
16 communications between bodies and persons requesting
17 and providing identity-matching services; and
18 (b) the NDLFRS, which includes a database of
19 identification information from State and Territory
20 authorities and may be used to provide
21 identity-matching services.

22 The Department may collect identification information through the
23 interoperability hub or NDLFRS for any of the following purposes:
24 (a) providing or developing identity-matching services for
25 identity or community protection activities;
26 (b) developing, operating or maintaining the NDLFRS;

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(c) protecting the identities of persons who have legally assumed identities or are under witness protection.

The Department may use or disclose for any of those purposes information so collected (regardless of the purpose for which it was collected).

Generally, identity-matching services involve requests for electronic comparison of identification information about an individual to identify the individual, verify the individual's identity, check whether the individual has more than one State or Territory government identification document of a particular kind, or manage identification information about the individual in the NDLFRS.

Identity or community protection activities mostly relate to identity-related fraud, law enforcement, proceeds of crime, security and safety.

Persons who work for the Department, and contractors whose duties relate to the interoperability hub or the NDLFRS, may commit an offence for unauthorised disclosure or recording of certain information held in, generated using or relating to the interoperability hub or the NDLFRS.

The Minister must report to Parliament annually on the use of most of the identity-matching services.

1 **Division 2—Definitions**

2 **Subdivision A—General definitions**

3 **4 Definitions**

4 In this Act:

5 *Australian Border Force* has the same meaning as in the
6 *Australian Border Force Act 2015*.

7 *electronic communication* means a communication of information
8 in the form of data, text or images by means of guided
9 electromagnetic energy, unguided electromagnetic energy or both.

10 *entrusted person* has the meaning given by section 21.

11 *facial image* means a digital image of an individual's face
12 (whether or not including the shoulders).

13 *FIS* has the meaning given by section 8.

14 Note: FIS is short for Face Identification Service, a term used in the
15 intergovernmental agreement.

16 *FRAUS* has the meaning given by section 9.

17 Note: FRAUS is short for Facial Recognition Analysis Utility Service, a
18 term used in the intergovernmental agreement.

19 *FVS* has the meaning given by section 10.

20 Note: FVS is short for Face Verification Service, a term used in the
21 intergovernmental agreement.

22 *government identification document* means a document or other
23 thing that:

- 24 (a) contains identification information; and
25 (b) can be used to identify an individual or to pass an individual
26 off as someone else (whether living, dead, real or fictitious);
27 and
28 (c) is issued by or on behalf of an authority of the
29 Commonwealth or an authority of a State or Territory.

1 **identification information** has the meaning given by section 5.

2 **identity-matching service** has the meaning given by section 7.

3 **identity or community protection activity** has the meaning given
4 by section 6.

5 **IDSS** has the meaning given by section 11.

6 Note: IDSS is short for Identity Data Sharing Service, a term used in the
7 intergovernmental agreement.

8 **intergovernmental agreement** means the Intergovernmental
9 Agreement on Identity Matching Services made on 5 October 2017
10 by the Commonwealth, the States, the Australian Capital Territory
11 and the Northern Territory.

12 Note: The intergovernmental agreement could in 2019 be viewed on the
13 Council of Australian Governments website
14 (<https://www.coag.gov.au>).

15 **interoperability hub** has the meaning given by section 14.

16 **NDLFRS** has the meaning given by section 15.

17 Note: NDLFRS is short for National Driver Licence Facial Recognition
18 Solution, a term used in the intergovernmental agreement.

19 **non-government entity** means a body, or person, other than:

- 20 (a) the Commonwealth, a State or a Territory; and
21 (b) an authority of the Commonwealth or of a State or Territory.

22 **OPOLS** has the meaning given by section 12.

23 Note: OPOLS is short for One Person One Licence Service, a term used in
24 the intergovernmental agreement.

25 **personal information** has the meaning given by section 6 of the
26 *Privacy Act 1988*.

27 **protected information** has the meaning given by section 21.

28 **rules** means rules made under section 30.

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1 **5 Definition of *identification information***

- 2 (1) ***Identification information*** about an individual (whether living,
3 dead, real or fictitious) is any of the following:
4 (a) a name by which the individual is or has been known;
5 (b) a current or former address of the individual;
6 (c) the place or date the individual was born;
7 (d) the age of the individual (whether expressed by reference to a
8 range or not);
9 (e) the current or former sex, gender identity or intersex status of
10 the individual;
11 (f) information about whether the individual is alive or dead;
12 (g) any information that is:
13 (i) contained in a driver's licence (however described)
14 issued by or on behalf of an authority of a State or
15 Territory in a name of the individual; or
16 (ii) otherwise associated with the licence by the authority;
17 (h) any information that is:
18 (i) contained in any other licence (however described), or
19 any document issued to assist the individual to prove his
20 or her age or identity, that contains a photograph
21 purporting to be of the individual and is issued by or on
22 behalf of an authority of a State or Territory in a name
23 of the individual; or
24 (ii) otherwise associated with such a licence or document by
25 or on behalf of the authority;
26 (i) any information that is:
27 (i) contained in a document issued to the individual, as a
28 person who is not an Australian citizen, by the
29 Department administered by the Minister administering
30 the *Migration Act 1958* to assist the individual to prove
31 his or her identity; or
32 (ii) otherwise associated with such a document by that
33 Department;
34 (j) any information that is:
35 (i) contained in an Australian travel document (within the
36 meaning of the *Australian Passports Act 2005*), or a

- 1 foreign travel document (within the meaning of the
2 *Foreign Passports (Law Enforcement and Security) Act*
3 *2005*), issued in the name of the individual; or
- 4 (ii) otherwise associated with the Australian travel
5 document by the Minister administering the *Australian*
6 *Passports Act 2005* or the Department administered by
7 that Minister; or
- 8 (iii) otherwise associated with the Australian travel
9 document or foreign travel document by an authority of
10 the Commonwealth or of a State or Territory by which
11 the travel document may be inspected or seized under a
12 law of the Commonwealth or of a State or Territory;
- 13 (k) the individual's current or former citizenship;
- 14 (l) information about a visa the individual holds or held;
- 15 (m) a facial image of the individual, a biometric template derived
16 from such an image or a result of biometric comparison
17 involving such an image;
- 18 (n) any information that is prescribed by the rules and relates to
19 the individual.

20 *What is not identification information*

- 21 (2) Despite subsection (1) but subject to subsection (3), the following
22 is not identification information about an individual:
- 23 (a) information or an opinion about the individual's:
- 24 (i) racial or ethnic origin; or
- 25 (ii) political opinions; or
- 26 (iii) membership of a political association; or
- 27 (iv) religious beliefs or affiliations; or
- 28 (v) philosophical beliefs; or
- 29 (vi) membership of a professional or trade association; or
- 30 (vii) membership of a trade union; or
- 31 (viii) sexual orientation or practices; or
- 32 (ix) criminal record;
- 33 (b) health information (within the meaning of the *Privacy Act*
34 *1988*) about the individual;
- 35 (c) genetic information about the individual.

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- 1 (3) Subsection (2) does not prevent information described in any of
2 paragraphs (1)(a) to (n) (inclusive) from being identification
3 information if the information is not primarily of any of the kinds
4 described in that subsection, even if information of any of those
5 kinds can reasonably be inferred from the information.

6 Example 1: Even if an individual's racial or ethnic origin can reasonably be
7 inferred from his or her name or place of birth, this does not prevent
8 his or her name or place of birth from being identification information.

9 Example 2: Even if an individual's racial or ethnic origin or religious affiliations
10 can reasonably be inferred from a facial image of the individual, this
11 does not prevent the image from being identification information.

12 *Prescribing extra kinds of identification information*

- 13 (4) Before making rules prescribing information for the purposes of
14 paragraph (1)(n), the Minister must:

- 15 (a) be satisfied that the information:
16 (i) can be used (alone or in conjunction with other
17 information) to identify an individual; and
18 (ii) is reasonably necessary to provide one or more
19 identity-matching services; and
20 (iii) assists one or more identity or community protection
21 activities; and
22 (b) consult the Human Rights Commissioner and the Information
23 Commissioner.

24 **6 Definition of *identity or community protection activity***

25 *Identity or community protection activity*

- 26 (1) An ***identity or community protection activity*** is an activity covered
27 by subsection (2), (3), (4), (5), (6), (7) or (8).

28 Note: Annual reports on requests for an FIS need to identify the activity
29 described in one of those subsections for which the service was
30 requested (see section 28).

31 *Preventing and detecting identity fraud*

- 32 (2) This subsection covers preventing and detecting identity-related
33 fraud (including use of stolen or fraudulently obtained government
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1 identification documents or identification information from such
2 documents).

3 *Law enforcement activities*

- 4 (3) This subsection covers the following activities:
5 (a) preventing, detecting, investigating or prosecuting an offence
6 against a law of the Commonwealth, a State or a Territory;
7 (b) starting, conducting, or deciding whether to start or continue,
8 proceedings under the *Proceeds of Crime Act 2002* or a
9 corresponding law within the meaning of that Act.

10 *National security activities*

- 11 (4) This subsection covers conducting an investigation, or gathering
12 intelligence, relevant to Australia's national security (within the
13 meaning of the *National Security Information (Criminal and Civil*
14 *Proceedings) Act 2004*).

15 *Protective security activities*

- 16 (5) This subsection covers promoting the security of an asset, facility,
17 or person, associated with government, including by:
18 (a) checking the security or criminal background of a person
19 with access to such an asset or facility; or
20 (b) protecting a person described in paragraph 17(2)(d) or (e)
21 (about persons with legally assumed identities or under
22 witness protection) or someone else associated with such a
23 person.

24 *Community safety activities*

- 25 (6) This subsection covers promoting community safety, including by
26 identifying:
27 (a) an individual who has suffered, or is reasonably believed to
28 be at risk of suffering, physical harm, including an individual
29 who:
30 (i) has been reported as missing; or
31 (ii) has died or is reasonably believed to have died; or

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- 1 (iii) is affected, or is reasonably believed to have been
2 affected, by disaster; or
3 (b) an individual who is reasonably believed to be involved with
4 a significant risk to public health or safety.

5 *Road safety activities*

- 6 (7) This subsection covers promoting road safety, including by
7 promoting the integrity of driver licensing systems.

8 *Verifying identity*

- 9 (8) This subsection covers verifying the identity of an individual.

10 **Subdivision B—Definitions relating to identity-matching**
11 **services**

12 **7 Definition of *identity-matching service***

- 13 (1) An *identity-matching service* is any of the following:
14 (a) an FIS (see section 8);
15 (b) an FRAUS (see section 9);
16 (c) an FVS (see section 10);
17 (d) an IDSS (see section 11);
18 (e) an OPOLS (see section 12);
19 (f) a service prescribed by the rules that:
20 (i) involves the collection, use and disclosure of
21 identification information; and
22 (ii) involves the interoperability hub or the NDLFRS.
- 23 (2) The Minister may only make rules for the purposes of
24 paragraph (1)(f) prescribing a service that involves a request, from
25 a local government authority or non-government entity, relating to
26 an individual if:
27 (a) the purpose of the service is to verify the individual's
28 identity; and
29 (b) the conditions in subsection (3) are met in relation to the
30 local government authority or non-government entity.

1 *Conditions on local government authority or non-government*
2 *entity requesting identity-matching service*

- 3 (3) The conditions are that:
- 4 (a) verification of the individual's identity is reasonably
5 necessary for one or more of the functions or activities of the
6 local government authority or non-government entity; and
- 7 (b) the individual has given consent for the local government
8 authority or non-government entity to use and disclose, for
9 the purpose of verifying the individual's identity, the
10 identification information about the individual that is
11 included in the request; and
- 12 (c) the local government authority or non-government entity
13 either:
- 14 (i) carries on activities in Australia from premises in
15 Australia; or
- 16 (ii) resides in Australia; and
- 17 (d) either:
- 18 (i) the *Privacy Act 1988* applies (with or without
19 modifications prescribed by regulations under that Act)
20 to the local government authority or non-government
21 entity as an organisation (within the meaning of that
22 Act); or
- 23 (ii) the local government authority is bound by a law of a
24 State or Territory, or has entered into a written
25 agreement with the Department, that meets the
26 requirements of subsection (4).
- 27 (4) For the purposes of subparagraph (3)(d)(ii), the law or agreement
28 must provide for the following:
- 29 (a) protection of personal information comparable to that
30 provided by the Australian Privacy Principles;
- 31 (b) monitoring of compliance with the law or agreement;
- 32 (c) a means for an individual to seek recourse if his or her
33 personal information is dealt with in a way contrary to the
34 law or agreement.

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1 *Consulting before prescribing extra services*

- 2 (5) Before making rules for the purposes of paragraph (1)(f), the
3 Minister must consult the Human Rights Commissioner and the
4 Information Commissioner about the proposed rules.

5 **8 Definition of *FIS***

- 6 (1) A service is an *FIS* if:
7 (a) the service involves electronically comparing:
8 (i) a facial image of an individual, and other identification
9 information (if any) about the individual, that is
10 included in a request for the provision of the service
11 made by an authority described in subsection (2); and
12 (ii) identification information about one or more individuals
13 that is contained in one or more government
14 identification documents of one or more kinds specified
15 in the request; and
16 (b) the comparison is for the purpose of identifying the
17 individual, or determining whether the individual has
18 multiple identities, in the course of an identity or community
19 protection activity covered by any of subsections 6(2) to (6)
20 (inclusive); and
21 (c) the request and the outcome of the comparison are
22 communicated by electronic communications relayed through
23 the interoperability hub.

24 Note: *FIS* is short for Face Identification Service, a term used in the
25 intergovernmental agreement.

- 26 (2) For the purposes of subparagraph (1)(a)(i), any of the following
27 may request the provision of the service:
28 (a) the Australian Border Force, so far as it is investigating, or
29 involved in prosecuting, an offence against:
30 (i) Part XIII of the *Customs Act 1901*; or
31 (ii) the *Crimes Act 1914*; or
32 (iii) the *Criminal Code*; or
33 (iv) the *Environment Protection and Biodiversity*
34 *Conservation Act 1999*;

- 1 (b) the Australian Commission for Law Enforcement Integrity;
2 (c) the Australian Crime Commission;
3 (d) the Australian Federal Police;
4 (e) the Australian Security Intelligence Organisation;
5 (f) a Department administered by a Minister administering any
6 of the following Acts:
7 (i) the *Australian Citizenship Act 2007*;
8 (ii) the *Australian Passports Act 2005*;
9 (iii) the *Foreign Passports (Law Enforcement and Security)*
10 *Act 2005*;
11 (iv) the *Migration Act 1958*;
12 so far as that Department is investigating, or involved in
13 prosecuting, an offence against any of those Acts;
14 (g) a police force of a State or Territory;
15 (h) the Independent Commission Against Corruption established
16 by the *Independent Commission Against Corruption Act 1988*
17 (NSW);
18 (i) the Law Enforcement Conduct Commission established by
19 the *Law Enforcement Conduct Commission Act 2016* (NSW);
20 (j) the New South Wales Crime Commission established by the
21 *Crime Commission Act 2012* (NSW);
22 (k) the Independent Broad-based Anti-corruption Commission
23 established by the *Independent Broad-based Anti-corruption*
24 *Commission Act 2011* (Vic.);
25 (l) the Crime and Corruption Commission established by the
26 *Crime and Corruption Act 2001* (Qld);
27 (m) the Corruption and Crime Commission established by the
28 *Corruption, Crime and Misconduct Act 2003* (WA);
29 (n) the Independent Commissioner Against Corruption appointed
30 under the *Independent Commissioner Against Corruption Act*
31 *2012* (SA) or a member of the staff of that Commissioner;
32 (o) the Integrity Commission established by the *Integrity*
33 *Commission Act 2009* (Tas.);
34 (p) the Independent Commissioner Against Corruption appointed
35 under the *Independent Commissioner Against Corruption Act*
36 *2017* (NT) or a member of the staff of that Commissioner;
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- 1 (q) an authority prescribed by the rules.
- 2 (3) Before the Minister makes rules prescribing an authority for the
3 purposes of paragraph (2)(q) the Minister must be satisfied that the
4 authority has one or more of the functions that used to be functions
5 of an authority described in any of paragraphs (2)(g) to (p)
6 (inclusive).

7 **9 Definition of *FRAUS***

8 A service is an *FRAUS* if:

- 9 (a) the service involves electronically comparing:
- 10 (i) a facial image of an individual that is included in a
11 request for the provision of the service made by an
12 authority of a State or Territory that has supplied
13 identification information (directly or through an agent)
14 to a database in the NDLFERS; and
- 15 (ii) identification information about the individual that is
16 included in a database in the NDLFERS and was supplied
17 by the authority (directly or through an agent); and
- 18 (b) the comparison is for the purpose of assessing the accuracy
19 or quality of identification information held by the authority;
20 and
- 21 (c) the request and the outcome of the comparison are
22 communicated by electronic communications made directly
23 to and from the NDLFERS or relayed through the
24 interoperability hub.

25 Note: *FRAUS* is short for Facial Recognition Analysis Utility Service, a
26 term used in the intergovernmental agreement.

27 **10 Definition of *FVS***

- 28 (1) A service is an *FVS* if:
- 29 (a) the service involves electronically comparing:
- 30 (i) identification information about an individual that is
31 included in a request for the provision of the service
32 made by a body or person described in subsection (2);
33 and

- 1 (ii) identification information about the individual that is
2 contained in a government identification document of a
3 kind specified in the request; and
4 (b) a facial image of the individual is included in the request or
5 in a response to the request (or both), unless the response is
6 that the identity of the individual cannot be verified from the
7 identification information included in the request; and
8 (c) the comparison is for the purpose of verifying the identity of
9 the individual; and
10 (d) the request and the outcome of the comparison are
11 communicated by electronic communications relayed through
12 the interoperability hub.

13 Note: FVS is short for Face Verification Service, a term used in the
14 intergovernmental agreement.

- 15 (2) For the purposes of subparagraph (1)(a)(i), the request for the
16 provision of the service may be made by any of the following that
17 may legally collect, use and disclose identification information that
18 either is included in the request or might reasonably be expected to
19 be disclosed in response to the request:
20 (a) an authority of the Commonwealth;
21 (b) an authority of a State or Territory other than a local
22 government authority;
23 (c) a local government authority that meets the conditions in
24 subsection 7(3);
25 (d) a non-government entity that meets the conditions in
26 subsection 7(3).

27 **11 Definition of *IDSS***

- 28 (1) An *IDSS* is a service (except one mentioned in subsection (2)) that
29 involves a disclosure that:
30 (a) is of identification information about an individual; and
31 (b) is for the purpose of an identity or community protection
32 activity; and
33 (c) is by one authority of the Commonwealth or of a State or a
34 Territory to another authority of the Commonwealth or of a
35 State or a Territory; and

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1 (d) is by means of electronic communication relayed through the
2 interoperability hub.

3 Note: IDSS is short for Identity Data Sharing Service, a term used in the
4 intergovernmental agreement.

5 (2) None of the following services is an IDSS:

- 6 (a) an FIS;
7 (b) an FRAUS;
8 (c) an FVS;
9 (d) an OPOLS.

10 **12 Definition of *OPOLS***

11 A service is an *OPOLS* if:

- 12 (a) the service involves electronically comparing:
13 (i) a facial image of an individual, and any other
14 identification information about the individual, that is
15 included in a request for the provision of the service
16 made by an authority of a State or Territory; and
17 (ii) identification information in a database in the NDLFRS;
18 and
19 (b) the authority issues government identification documents of a
20 particular kind and has supplied identification information
21 (directly or through one or more agents) to a database in the
22 NDLFRS; and
23 (c) the comparison is for the purpose of determining whether the
24 individual holds multiple government identification
25 documents that are of that kind and have been issued by or on
26 behalf of one or more authorities of one or more States or
27 Territories; and
28 (d) the request and the outcome of the comparison are
29 communicated by electronic communications made directly
30 to and from the NDLFRS or relayed through the
31 interoperability hub.

32 Note: OPOLS is short for One Person One Licence Service, a term used in
33 the intergovernmental agreement.

1 **Part 2—Developing and operating interoperability**
 2 **hub and NDLFRS**
 3

4 **13 Simplified outline of this Part**

5 The Secretary of the Department may develop, operate and
 6 maintain the interoperability hub and the NDLFRS.

7 **14 Interoperability hub**

8 The Secretary of the Department may develop, operate and
 9 maintain a facility (the *interoperability hub*) for relaying electronic
 10 communications between bodies and persons for the purposes of
 11 requesting and providing identity-matching services.

12 **15 NDLFRS**

13 The Secretary of the Department may develop, operate and
 14 maintain a system (the *NDLFRS*) consisting of:

- 15 (a) a database of identification information that:
 16 (i) is also contained in government identification
 17 documents issued by or on behalf of an authority of a
 18 State or Territory; and
 19 (ii) is supplied by the authority or its agent to the
 20 Department by electronic communication for inclusion
 21 in the database; and
 22 (b) a system for biometric comparison of facial images with
 23 facial images that are in the database described in
 24 paragraph (a).

25 Note: NDLFRS is short for National Driver Licence Facial Recognition
 26 Solution, a term used in the intergovernmental agreement.

1 **Part 3—Authorising collection, use and disclosure**
2 **of identification information**

3 **Division 1—Simplified outline**

4 **16 Simplified outline of this Part**

5 The Department may collect identification information by means
6 of the interoperability hub or NDLFRS for any of the following
7 purposes:

- 8 (a) providing or developing identity-matching services for
9 identity and community protection activities;
10 (b) developing, operating or maintaining the NDLFRS;
11 (c) protecting the identities of persons who have legally
12 assumed identities or are under witness protection.

13 The Department may use or disclose for any of those purposes:

- 14 (a) information so collected (regardless of the purpose for
15 which it was collected); and
16 (b) identification information generated by the NDLFRS.

17 For the purposes of State and Territory laws that limit disclosure of
18 identification information by an authority of a State or Territory
19 but have an exception for disclosure authorised by a
20 Commonwealth law, this Part authorises such disclosure to the
21 Department for inclusion of the information in the NDLFRS.

1 **Division 2—Collection, use and disclosure of identification**
2 **information by the Department**

3 **17 Collection of identification information by the Department**

4 (1) The Department may collect identification information (whether or
5 not it is sensitive information as defined in the *Privacy Act 1988*)
6 about an individual from someone other than the individual, if the
7 collection:

- 8 (a) is by means of an electronic communication to the
9 interoperability hub or the NDLFERS; and
10 (b) is for a purpose described in subsection (2).

11 Note: One effect of this section is that such collection of identification
12 information is authorised for the purposes of provisions of Australian
13 Privacy Principle 3 such as paragraph 3.4(a) (about sensitive
14 information) and subparagraph 3.6(a)(ii) (about personal information).

15 (2) The purposes for which identification information may be collected
16 under subsection (1) (or used or disclosed under section 18) are as
17 follows:

- 18 (a) providing an identity-matching service for the purpose of an
19 identity or community protection activity;
20 (b) developing identity-matching services, or facilities for
21 providing those services, for the purpose of an identity or
22 community protection activity;
23 (c) developing, operating or maintaining the NDLFERS;
24 (d) protecting:
25 (i) an assumed identity acquired under Part IAC of the
26 *Crimes Act 1914* or a corresponding assumed identity
27 law within the meaning of that Part; or
28 (ii) the real identity of a person who has acquired an
29 assumed identity as described in subparagraph (i);
30 (e) protecting an identity (whether real or not) of a person to
31 whom any of the following subparagraphs applies:
32 (i) a witness identity protection certificate has been given
33 for the person under Part IACA of the *Crimes Act 1914*;

Part 3 Authorising collection, use and disclosure of identification information

Division 2 Collection, use and disclosure of identification information by the Department

Section 18

- 1 (ii) a corresponding witness identity protection certificate
2 has been given for the person under a corresponding
3 witness identity protection law within the meaning of
4 that Part;
- 5 (iii) the person is a participant as defined in the *Witness*
6 *Protection Act 1994*;
- 7 (iv) the person is or was on a witness protection program
8 conducted by a State or Territory in which a
9 complementary witness protection law (as defined in the
10 *Witness Protection Act 1994*) is in force;
- 11 (v) the person is involved in administering such a program
12 under such a law and the person has acquired an identity
13 under that law.

14 **18 Use and disclosure of identification information by the**
15 **Department**

16 The Department may, for any purpose described in
17 subsection 17(2), use or disclose identification information:

- 18 (a) collected by means of an electronic communication to the
19 interoperability hub or the NDLFRS; or
20 (b) held in, or generated using, the NDLFRS.

21 Note 1: One effect of this section is that such use or disclosure of
22 identification information is authorised for the purposes of provisions
23 of Australian Privacy Principle 6 such as paragraph 6.2(b) (use or
24 disclosure of personal information authorised by law).

25 Note 2: Although this section authorises the Department to disclose
26 identification information, it does not authorise the recipient of the
27 disclosure to collect the identification information disclosed. That
28 collection must comply with all applicable laws.

1 **Division 3—Disclosure of identification information by**
2 **State and Territory authorities to the Department**

3 **19 Disclosure of identification information for inclusion in database**
4 **in NDLFRS**

- 5 (1) This section applies if a law of a State or Territory:
- 6 (a) limits disclosure of some or all identification information by
7 an authority of a State or Territory or by a body or person
8 acting on behalf of such an authority; and
- 9 (b) exempts from the limitation a disclosure authorised by a law
10 of the Commonwealth.
- 11 (2) For the purposes of the exemption, the authority, body or person
12 may disclose to the Department by electronic communication
13 identification information about an individual for inclusion in the
14 database mentioned in paragraph 15(a) (about the NDLFRS).

1 **Part 4—Protection of information**

2 **Division 1—Simplified outline**

3 **20 Simplified outline of this Part**

4 Current and former entrusted persons may commit an offence if
5 they disclose or record certain information connected with the
6 interoperability hub or the NDLFRS.

7 Basically, entrusted persons are the following:

- 8 (a) persons who work for the Department;
9 (b) contractors (and their officers and employees) engaged
10 to provide services to the Department in connection with
11 the interoperability hub or the NDLFRS.

12 There are exceptions for disclosure or recording authorised by a
13 law of the Commonwealth or of a State or Territory. The
14 exceptions include disclosure or recording:

- 15 (a) for the purpose of this Act; or
16 (b) in exercising powers, or performing duties, relating to
17 the interoperability hub or NDLFRS; or
18 (c) for lessening or preventing a serious and imminent
19 threat to human life or health; or
20 (d) relating to a corruption issue; or
21 (e) with the consent of the person to whom the information
22 disclosed or recorded relates.

23 Also, entrusted persons cannot be required to disclose certain
24 information connected with the interoperability hub or the
25 NDLFRS to a court or tribunal, except for the purposes of this Act
26 or the *Law Enforcement Integrity Commissioner Act 2006*.

1 **Division 2—Limits on recording and disclosure**

2 **21 Limits on recording and disclosure by entrusted persons**

3 *Offence*

- 4 (1) A person commits an offence if:
- 5 (a) the person is, or has been, an entrusted person; and
 - 6 (b) the person has obtained protected information in his or her
7 capacity as an entrusted person; and
 - 8 (c) the person:
 - 9 (i) makes a record of the information; or
 - 10 (ii) discloses the information to another person.

11 Note: The fault element for the physical elements in paragraphs (a) and (b)
12 is recklessness: see section 5.6 of the *Criminal Code*.

13 Penalty: Imprisonment for 2 years.

14 *Exceptions*

- 15 (2) Each of the following is an exception to the prohibition in
16 subsection (1):
- 17 (a) the conduct is authorised by a law of the Commonwealth or
18 of a State or Territory;
 - 19 (b) the conduct is in compliance with a requirement under a law
20 of the Commonwealth or of a State or Territory.

21 Note: A defendant bears an evidential burden in relation to the matter in
22 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

23 *Restriction on capacity of courts etc. to require disclosure of*
24 *protected information or production of documents*

- 25 (3) Except where it is necessary to do so for the purposes of giving
26 effect to this Act or the *Law Enforcement Integrity Commissioner*
27 *Act 2006*, or a legislative instrument under this Act or that Act, an
28 entrusted person is not to be required to disclose protected
29 information, or produce a document containing protected
30 information, to:

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- 1 (a) a court; or
2 (b) a tribunal, authority or person that has the power to require
3 the answering of questions or the production of documents.

4 *Definitions of entrusted person and protected information*

- 5 (4) In this Act:

6 *entrusted person* means:

- 7 (a) the Secretary of the Department; or
8 (b) an APS employee in the Department; or
9 (c) a person who is:
10 (i) an employee of an Agency (within the meaning of the
11 *Public Service Act 1999*); or
12 (ii) an officer or employee of a State or Territory; or
13 (iii) an officer or employee of an authority of the
14 Commonwealth or of an authority of a State or
15 Territory; or
16 (iv) an officer or employee of the government of a foreign
17 country, an officer or employee of an authority of a
18 foreign country or an officer or employee of a public
19 international organisation (within the meaning of
20 section 70.1 of the *Criminal Code*);
21 and whose services are made available to the Department; or
22 (d) a contractor engaged to provide services to the Department in
23 connection with the interoperability hub or the NDLFRS
24 (whether the contractor is engaged directly by the
25 Commonwealth or as a subcontractor); or
26 (e) an officer or employee of such a contractor whose duties
27 relate wholly or partly to the interoperability hub or the
28 NDLFRS.

29 *protected information* means any of the following:

- 30 (a) identification information that was obtained by a person, in
31 the person's capacity as an entrusted person, from:
32 (i) an electronic communication to or from either the
33 interoperability hub or the NDLFRS; or
34 (ii) the NDLFRS;

- 1 (b) information about either of the following:
2 (i) the making, content or addressing of an electronic
3 communication made to or from either the
4 interoperability hub or the NDLFRS;
5 (ii) identification information relating to a particular
6 individual held in, or generated using, the NDLFRS;
7 that was obtained by a person, in the person's capacity as an
8 entrusted person;
9 (c) information that enables access to the interoperability hub or
10 the NDLFRS and was obtained by a person, in the person's
11 capacity as an entrusted person.

1 **Division 3—Authorised recording and disclosure by**
2 **entrusted persons**

3 **22 Exercising powers, or performing functions or duties, as an**
4 **entrusted person**

5 An entrusted person may make a record of or disclose protected
6 information if the record is made, or the information is disclosed:

- 7 (a) for the purposes of this Act; or
8 (b) in the course of exercising powers, or performing functions
9 or duties, relating wholly or partly to the interoperability hub
10 or the NDLFRS.

11 **23 Disclosure to lessen or prevent threat to life or health**

- 12 (1) An entrusted person may disclose protected information if:
13 (a) the entrusted person reasonably believes that the disclosure is
14 necessary to lessen or prevent a serious and imminent threat
15 to the life or health of an individual; and
16 (b) the disclosure is for the purpose of lessening or preventing
17 that threat.
- 18 (2) An entrusted person may make a record of protected information
19 for the purpose of disclosing the protected information under
20 subsection (1).

21 **24 Disclosure relating to corruption issue**

- 22 (1) An entrusted person may disclose protected information to the
23 Integrity Commissioner:
24 (a) for the purpose of referring an allegation, or information, that
25 raises a corruption issue (within the meaning of the *Law*
26 *Enforcement Integrity Commissioner Act 2006*); or
27 (b) for the purpose of notifying a corruption issue under that Act;
28 or
29 (c) for the purpose of an investigation of a corruption issue under
30 that Act.

- 1 (2) An entrusted person may make a record of protected information
2 for the purpose of disclosing the protected information under
3 subsection (1).
- 4 (3) This section does not limit the effect of subsection 21(2) or (3) in
5 connection with the *Law Enforcement Integrity Commissioner Act*
6 2006.

7 **25 Disclosure with consent**

- 8 An entrusted person may make a record of or disclose protected
9 information that relates to the affairs of a person if:
10 (a) the person has consented to the recording or disclosure; and
11 (b) the recording or disclosure is in accordance with that consent.

1 **Part 5—Miscellaneous**

2

3 **26 Simplified outline of this Part**

4

The Secretary of the Department may delegate his or her powers and functions under this Act.

5

6

Annual reports must be prepared and tabled in Parliament about things done in connection with certain identity-matching services.

7

8

A review of the operation of this Act and the provision of identity-matching services must be started within 5 years. A report of the review must be tabled in Parliament.

9

10

11

The Minister may make rules for the purposes of this Act.

12 **27 Delegation of Secretary's powers and functions under this Act**

13

- (1) The Secretary of the Department may, in writing, delegate all or any of his or her functions or powers under this Act to an SES employee or acting SES employee in the Department.

14

15

16

Note 1: *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

17

18

Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

19

20

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary of the Department.

21

22

23 **28 Annual reporting**

24

- (1) The Secretary of the Department must give the Minister a report including the following information for each financial year:

25

26

- (a) statistics relating to all requests in the financial year, from authorities of the Commonwealth (except the Australian

27

- 1 Security Intelligence Organisation) or of a State or Territory,
2 for an FIS, FVS or OPOLS, broken down by:
- 3 (i) requesting authority (identified by name); and
 - 4 (ii) service requested; and
 - 5 (iii) requests in response to which information contained in a
6 government identification document, or confirmation of
7 an individual's identity, was provided; and
 - 8 (iv) requests in response to which neither information
9 contained in a government identification document nor
10 confirmation of an individual's identity was provided;
11 and
 - 12 (v) in the case of requests for an FIS—the kind of identity
13 or community protection activity (identified by
14 reference to a specific subsection of section 6) for
15 whose purpose the service was requested;
- 16 (b) statistics relating to all requests in the financial year from
17 non-government entities for an FVS, including:
- 18 (i) the total number of those requests; and
 - 19 (ii) the total number of non-government entities that made
20 those requests; and
 - 21 (iii) the number of those requests in response to which
22 information contained in a government identification
23 document, or confirmation of an individual's identity,
24 was provided; and
 - 25 (iv) the number of those requests in response to which
26 neither information contained in a government
27 identification document nor confirmation of an
28 individual's identity was provided;
- 29 (c) the following material relating to each authority of the
30 Commonwealth (except the Australian Security Intelligence
31 Organisation), and each authority of a State or Territory
32 (including a local government authority), that used an IDSS
33 to disclose or collect identification information in the
34 financial year:
- 35 (i) the name of the authority;
 - 36 (ii) a brief description of the nature of the information;

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- 1 (iii) an indication whether the authority collected or
2 disclosed the information;
3 (d) any other information that:
4 (i) relates to the financial year and either an
5 identity-matching service or the administration of this
6 Act; and
7 (ii) is required by the Minister.

- 8 (2) The report must not unreasonably disclose personal information
9 about an individual.

10 *Timing of annual report*

- 11 (3) The Secretary of the Department must give the Minister the report
12 as soon as practicable after the end of the financial year and in any
13 case within 6 months after the end of the financial year.

14 *Tabling of annual report*

- 15 (4) The Minister must cause a copy of the report to be tabled in each
16 House of the Parliament within 15 sitting days of that House after
17 the Minister receives the report.

18 **29 Review of operation of this Act and provision of**
19 **identity-matching services**

- 20 (1) The Minister must cause a review of the operation of this Act and
21 the provision of identity-matching services to be started within 5
22 years of the commencement of this section.
23 (2) The Minister must cause a report of the review to be prepared and
24 given to the Minister.
25 (3) The Minister must cause a copy of the report to be tabled in each
26 House of the Parliament within 15 sitting days of that House after
27 the Minister receives the report.

28 **30 Rules**

- 29 (1) The Minister may, by legislative instrument, make rules
30 prescribing matters:

- 1 (a) required or permitted by this Act to be prescribed by the
2 rules; or
3 (b) necessary or convenient to be prescribed for carrying out or
4 giving effect to this Act.
- 5 (2) To avoid doubt, the rules may not do the following:
6 (a) create an offence or civil penalty;
7 (b) provide powers of:
8 (i) arrest or detention; or
9 (ii) entry, search or seizure;
10 (c) impose a tax;
11 (d) set an amount to be appropriated from the Consolidated
12 Revenue Fund under an appropriation in this Act;
13 (e) directly amend the text of this Act.
- 14 (3) Despite subsection 44(1) of the *Legislation Act 2003*, section 42
15 (disallowance) of that Act applies to the rules.
- 16 (4) Despite subsection 54(1) of the *Legislation Act 2003*, Part 4 of
17 Chapter 3 (sunsetting) of that Act applies to the rules.