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Mr Peter Russo MP,
Chair,
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email:

lacsc@parliament.qld.gov.au

23rd February 2018

**RE: POLICE AND OTHER LEGISLATION (IDENTITY AND BIOMETRIC CAPABILITY) AMENDMENT BILL
2018**

Dear Mr Russo,

We welcome and appreciate the opportunity to make a submission in relation to the proposed bill:
the *Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018*.

Preliminary Consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education; and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Aboriginal and Torres Strait Islander deaths in custody).

Our submission is informed by over four and a half decades of practice in the law as it impacts Aboriginal and Torres Strait Islanders. We trust that our submission is of assistance.

OVERALL COMMENTS

Our comments are necessarily brief given the short timeframe in which to respond. Our concerns are twofold, the first being the potential for misuse of biometric data including function creep, and the

second concern revolves around the loss of oversight on the use of biometric data that will occur after the legislative changes are introduced.

Overseas, the use of biometric matching has been highly controversial. The risks of covert collection, undisclosed usage for secondary purposes, cross-linking across applications or programs, “function creep”, and institutional data breaches have all been identified as sources for concern. The protections in Australia against misuse of the data are relatively weak given the gaps in Australia’s privacy framework.

No Queensland driver has consented to the use of their photo or biometric data captured on that photo for any purpose other than identification for a drivers licence. For it to be used for other purposes, the law as it currently stands requires Queensland Police to obtain an access approval order to obtain Queensland driver licence digital images for purposes unrelated to traffic offences. Additionally, Parliament exercises oversight of the exceptional use of those images in the form of an annual report provided to the Parliament by the Department of Main Roads and Transport.

Under the proposed legislation, those protections are to be lost and in their place are only weak mechanisms to protect the misuse of the data. It is noted that the ACT Government reserved its position in relation to the Facial Verification System subject to the implementation of the service and did not support the Facial Identification Service as this service raised significant privacy and human rights concerns that were not satisfactorily addressed.¹

We understand that there may be a need to put something workable in place in time for the Commonwealth Games and this legislation is designed to create a legislative framework to facilitate Queensland’s participation in the Identity Matching Services used by other law enforcement agencies nationally and internationally.

We consider that there should be considerable debate and reflection on what biometric data can be used for and how effective oversight mechanisms can be implemented. To our knowledge that debate has not happened yet in Queensland. At a minimum the loss of oversight by the Queensland Parliament should be replaced with extensive auditing of the systems and a Parliamentary review of the use of Queensland data collected by the Department of Main Roads and Transport and supplied in accordance with the Intergovernmental Agreement on Identity Matching Services by the Queensland Government.

Concerns about distribution of biometric data and function creep

Biometric data has been described as ‘privacy invasive’ because it can be used to link the identity of individuals to information across a number of data sources which enables intrusive surveillance into citizens lives. In our submission the intrusive use of biometric data should be proportionate to the objectives of its use.

¹ <<https://www.ag.gov.au/About/CommitteesandCouncils/Law-Crime-and-Community-Safety-Council/Documents/5-November-2015-LCCSC-Communique.pdf>>.

The Bill authorises identity information collected under Queensland Transport legislation to be provided to the Department of Home Affairs to use or share with other entities and in turn the Department of Main Roads to collect and use data from the Department of Home Affairs and other entities. Although the introductory speech refers to the use of the data for terrorism and serious and organised crime investigations, the use of the terms elsewhere of “law enforcement, identity assurance, protective security, road safety and community safety” points to far broader use and in our submission an unjustifiable use. Use of the data to hope to identify someone attempting to commit a terrorist attack is one justifiable use, use of the data to hope to identify someone committing a nuisance in a public place is another.

The last concern arises from our experience of some recent questionable identifications made by police comparing CCTV footage to photographs of our clients to bring charges against them. In some recent examples, a client spent a considerable amount of time in remand on the basis of a faulty identification, an indigenous woman was charged on the basis of “identification” from the photograph of an indigenous man, and a number of people have been charged because they looked similar, but not very similar, to people captured on CCTV.

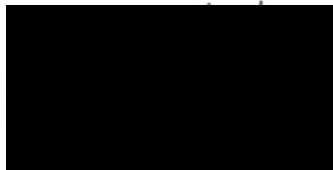
It is hoped that after the Commonwealth Games, some form of review should be made of the use of the Facial Verification System and the Facial Identification Service. The potential for misuse and unfairness that arises from a system that wrongly links individuals to photographs and activities of other people is considerable.

Concerns about oversight

Our concern is that there should be an oversight authority to identify, mitigate and manage the information misuse risks that arise from the use of this data. In our view without a strong and independent regulator there is insufficient protection of individual rights.

We thank you for your careful consideration of these submissions.

Yours faithfully,



Mr. Shane Duffy
Chief Executive Officer
ATSILS (Qld) Ltd.