THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PDL:JBml230625

23 June 2025

The Hon. Jihad Dib, MP
GPO Box 5341
SYDNEY NSW 2001

By email: office@dib.minister.nsw.gov.au

Dear Minister Dib,

IDENTITY PROTECTION AND RECOVERY BILL 2025 (NSW)

Thank you for the opportunity to provide feedback on an earlier version of the then-named Personal Information (Identity Protection and Recovery) Bill 2025 (NSW) in January 2025, as part of a targeted consultation. We note with thanks your acknowledgement of the Law Society's contribution in your Second Reading Speech on 6 May 2025.

We write regarding Part 4 of the final Bill, now introduced to Parliament as the Identity Protection and Recovery Bill 2025 (**Bill**). We remain concerned about the blanket exemption from privacy laws provided in the Bill. Under Clause 30 of the Bill, proposed Part 4, Division 2, which deals with the collection, holding, use and disclosure of personal information, applies despite any Act or law, including the *Privacy and Personal Information Protection Act 1998* (NSW) (**PPIPA**) and the *Health Records and Information Privacy Act 2002* (NSW) (**HRIPA**).

Fundamentally, from a rule of law perspective, laws should not be lightly overridden. If exemption is required, the exemption should be clear about the extent of exemption and should be limited to narrow and necessary circumstances. This is particularly the case as Part 2 Division 3 of the PPIPA sets out specific exemptions available to public sector agencies which provide the appropriate framework for considering when privacy protections should not apply. In our view, there is no justification for excluding the operation of the PPIPA in its entirety.

The protections offered by the PPIPA and the HRIPA are necessary for safeguarding individual privacy. The Information Protection Principles (**IPPs**) under the PPIPA align with the Commonwealth Australian Privacy Principles (**APPs**) under the *Privacy Act 1988*. It is difficult to reconcile a blanket exemption from the protection of personal information with achieving the Bill's object of supporting individuals in protecting and remediating their personal information when compromised.

We suggest the Government consider a more nuanced approach that does not sacrifice individual privacy interests for the sake of expediency. At a minimum, the IPPs should not be excluded without exception. If exemption from certain provisions of privacy laws is unavoidable for the ID Support's (**IDS)** functions, we suggest the Government provides sufficient justification for why exemption of that provision is required in that limited circumstance. If partial exemptions are identified to be necessary, we suggest that Privacy Impact

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Assessments be conducted, or the NSW Privacy Commissioner consulted, to ensure that these partial exemptions are necessary and proportionate in the circumstances and will be monitored appropriately.

Part 4 – Exemption from privacy and other laws

The PPIPA includes protections which ought to be applicable to information collected under the Bill. For example, s 12[1] contains useful provisions concerning retention and security of data, reflecting IPP 5, which presumably should be applicable to information collected under the Bill.

In our view, the extent to which privacy laws are proposed to be excluded under clause 30 is unclear, and may be greater than expected. If a public sector agency may disclose personal information to the Secretary for the purpose of exercising an IDS provider function, does the exclusion under clause 30 also exclude the public sector agency from compliance with the PPIPA which would otherwise apply to that agency? We query how personal information can be protected under the Bill without this clarification, and why there is no requirement for a public sector agency to first notify the affected individuals that their personal information may be disclosed to the Secretary for the purpose of IDS functions. Our query also extends to private entities regulated under the Commonwealth APPs.

Clause 33 grants exclusion of liability for disclosures otherwise prohibited, and removes important privacy protections provided by the IPPs, specifically IPP 11:

> *Only disclose personal information with a person's consent or if the person was told at the time that it would be disclosed, if disclosure is directly related to the purpose for which the information was collected and there is no reason to believe the person would object, or the person has been made aware that information of that kind is usually disclosed, or if disclosure is necessary to prevent a serious and imminent threat to any person's health or safety.*

We suggest that the Bill should be drafted consistently with the scheme set up in the PPIPA and incorporate the IPPs, where appropriate, as these are necessary safeguards for protecting personal information against misuse, and clarify the extent of the exemption from privacy laws.

[1] Section 12 of the PPIPA provides as follows:

12 Retention and security of personal information

A public sector agency that holds personal information must ensure—

(a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and

(b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and

(c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and

(d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.

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If you have any queries about the items above, or would like further information, please contact Mimi Lee, Policy Lawyer, on 02 9926 0174 or mimi.lee@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

Jennifer Ball
President