



New South Wales

Identity Protection and Recovery Bill 2025

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are—

- (a) to enable the Secretary to exercise functions to support individuals and organisations in protecting, recovering and remediating personal information in relation to a compromise of personal information, and
- (b) to provide exemptions to privacy and other laws required for the exercise of the functions.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 outlines the objects of the proposed Act.

Clause 4 empowers proposed Schedule 4 to define certain words and expressions used in the proposed Act.

Clause 5 defines *compromised* in relation to personal information for the proposed Act.

Clause 6 defines *identity document* for the proposed Act.

Clause 7 defines *personal data compromise* for the proposed Act.

Clause 8 provides that the proposed Act binds the Crown.

Part 2 Identity protection and recovery functions

Clause 9 enables the Secretary to exercise functions relating to the protection and recovery of personal identity information, defined as the *identity protection functions*.

Clause 10 specifies the Secretary's functions relating to the protection and recovery of personal information, defined as the *identity protection and recovery functions*, in relation to the compromise of personal information.

Clause 11 specifies the Secretary's functions relating to the control and management of risk in relation to the fraudulent use of personal information, defined as the *identity fraud control functions*.

Clause 12 specifies the circumstances in which the Secretary is permitted to exercise the identity protection functions.

Clause 13 enables the Secretary to exercise identity protection functions for the purpose of coordinating with officers and authorities within Australia that have similar functions in relation to the compromise of personal data. The clause also specifies the Secretary must act consistently with guidance and advice given by certain officers and authorities in relation to prescribed notifiable data breaches required to be notified by law.

Clause 14 enables the Secretary to enter into contracts and other agreements in connection with the exercise of an identity protection function and permits regulations to be made about the content and form of the contracts or agreements.

Clause 15 enables the Secretary to exercise identity protection functions for people located or residing in other jurisdictions and for a department or agency of the Commonwealth or another State or Territory.

Clause 16 enables the Secretary to impose fees in the circumstances specified and permits regulations to be made about fees.

Clause 17 enables the Secretary to delegate the exercise of the Secretary's functions.

Part 3 Identity fraud control

Clause 18 requires the Secretary to keep a register for compromised identity documents, defined as the *compromised ID register*, in a way prescribed by the regulations.

Clause 19 specifies the information, including identity documents, that the Secretary may record on the compromised ID register.

Clause 20 requires the Secretary to remove records from the compromised ID register about an individual if requested by the individual in the circumstances specified and permits an issuer of an identity document or a member of the NSW Police Force to request records to be removed from the compromised ID register in the circumstances specified.

Clause 21 permits the Secretary to only disclose information on the compromised ID register in the circumstances specified.

Clause 22 specifies when the Secretary must disclose to an individual that the individual's identity document has been recorded on the compromised ID register and permits the Secretary to disclose the information to the individual at any time.

Clause 23 specifies when the Secretary must disclose to an issuer of an identity document that the identity document has been recorded on the compromised ID register and, in relation to the disclosure, permits the Secretary to disclose information and make recommendations to the issuer.

Clause 24 defines *relevant purpose* for the proposed part, Division 3.

Clause 25 provides for the circumstances in which a person may apply to and be approved by the Secretary for eligibility to request the disclosure of certain information about whether an identity

document is on the compromised ID register or about the life status of an individual. A person approved under this clause is a fraud check user.

Clause 26 provides for the circumstances in which a fraud check user may apply to the Secretary for a disclosure of information about whether an identity document is recorded on the compromised ID register. The clause also specifies the circumstances in which the Secretary must not disclose information to a fraud check user and permits regulations to be made to determine the kind of information that must be disclosed.

Clause 27 limits the purposes for which the Secretary may determine or use information about whether an individual is alive or dead. A purpose permitted by the proposed section is defined as a *relevant purpose*.

Clause 28 specifies the circumstances in which a fraud check user can apply to the Secretary for a disclosure about whether an individual is alive or dead. The clause specifies the circumstances in which the Secretary is permitted to make the disclosure and permits regulations to determine the kind of information to be disclosed.

Part 4 Exemptions from privacy and other laws

Clause 29 defines *public sector agency* for the proposed part.

Clause 30 provides that 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* and the *Health Records and Information Privacy Act 2002*.

Clause 31 permits the Secretary, partner authorities, public sector agencies and other persons to collect, hold, use and disclose information for the identity protection functions of the Secretary in the circumstances specified.

Clause 32 provides that proposed Part 4, Division 2 does not apply to a person if the person engages in unlawful conduct, or breaches a specified provision of an agreement to which the Secretary is party, when collecting, holding, using or disclosing personal information for the exercise of an identity protection function.

Clause 33 provides an exclusion from liability for prohibited disclosures of information when the disclosure is for the exercise of an identity protection function between specified parties. The exclusion of liability does not apply if the liability arises in relation to the person contravening a provision of the proposed Act or breaching a contract or agreement relating to the exercise of an identity protection function to which the Secretary is a party.

Part 5 Identity Protection and Recovery Fund

Clause 34 establishes a fund in the Special Deposits Account called the Identity Protection and Recovery Fund (the *Fund*).

Clause 35 provides what money must be paid into the Fund.

Clause 36 provides what money may be paid out of the Fund.

Part 6 Miscellaneous

Clause 37 excludes certain persons from liability for anything done in good faith for the purpose of exercising a function under the proposed Act.

Clause 38 enables the Governor to make regulations in relation to the proposed Act. However, the Minister must consult with the Privacy Commissioner before recommending the making of regulations to the Governor for regulations made under specified provisions of the proposed Act.

Schedule 1 Identity documents

Schedule 1 lists documents that are identity documents.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Government Information (Public Access) Act 2009 No 52

Schedule 3 inserts a clause into the *Government Information (Public Access) Act 2009*, Schedule 1. The proposed clause specifies there is a conclusive presumption overriding the public interest against disclosure of information contained in a document prepared for advising on or the assessment of a personal data compromise under the proposed Act if the information could worsen a person's cyber security or lead to further personal data compromises.

Schedule 4 Dictionary

Schedule 4 sets out the defined terms of the proposed Act.