

NATIONAL IDENTIFICATION SYSTEM

Introduction

3.1 The national identification system embodied in the Australia Card proposal is described by Professor G. de Q. Walker, Professor of Law at the University of Queensland, as two systems in one - a numbering system and an identity card system, either of which could exist without the other.¹ Many numbering systems already operate in Australia, both in the government sector (Medicare, taxation files) and the private sector (bank accounts, credit cards). Some of these numbering systems are associated with a card displaying the number and certain other information which may then be used as identification - for example, drivers' licences, security passes, credit cards. However, while numbers assigned to credit cards, Medicare Cards, etc. are unique to the holder, they are also unique to the organisation: they assist file identification and retrieval within the issuing organisation only. An Australia Card number would identify and link personal information held in many different government and private data banks.

3.2 Information on the identification systems operating in Hong Kong, France, Israel, Belgium, Canada, the USA and Sweden is provided in Attachment C to the Government Submission and Appendix C to the HIC Report. The material focuses on the operation and implementation of the systems rather than the desirability of introducing such a system in Australia. In fact, the the majority of the Committee believes that the experience overseas, particularly in the USA and Canada, supports its view

that a national identification system should not be introduced here. While the Committee outlines its concerns with the concept of a national identification system and, specifically, the Government proposal in the following pages, a detailed explanation of the philosophical concerns about a national identification system and the civil libertarian concerns arising from such a system is contained in the personal addendum to this Report by Senator Christopher Puplick. The view of a minority of the Committee - that civil libertarian concerns are protected and enhanced by the Australia Card proposal - is given in the dissenting report by Senator Aulich and Messrs Brown and Brumby.

Data Privacy in Australia

3.3 Before turning to an examination of the civil libertarian concerns arising from the Government proposal for an Australia Card, the Committee feels it worthwhile to note that privacy and data protection have been of concern in Australia for some time. The first major report to the Government addressing the issue was presented in 1973 by Professor W.L. Morison², but his concerns were preceded by Zelman Cowen's 1969 Boyer Lectures 'The Private Man'.³ The specific concerns are well-documented in many publications, including the Privacy Report of the Australian Law Reform Commission⁴, and throughout the Committee's transcript of evidence. Such concerns include abuse of personal information held by the private sector, including the very requirement that such intimate details be provided; gross invasion of privacy and comprehensive data linkage by powerful public bodies such as Royal Commissions; and the general, everyday use of data and data linkage techniques by the bureaucracy.

3.4 Although the introduction of a national identification system is perceived - accurately - as facilitating data linkage, sharing and comparison of personal information about individuals already takes place between Federal Government departments and between departments and the private sector on a regular basis.

3.5 Section 130(3) of the Health Insurance Act 1973 provides that any information acquired by an officer in the course of his duties, or in the exercise of his powers or functions, under this Act, may be divulged - either to a prescribed authority or person, or, if regarded as necessary in the public interest, to any specified person. The Australian Taxation Office (ATO) receives an annual microfiche summary of all unemployment benefits and age pension payments which it matches with income tax returns⁵, and the Department of Social Security can obtain information from the ATO under Section 16 of the Income Tax Assessment Act. Examples of private/public sector exchanges of personal information include the information provided to the ATO by banks and other financial institutions, and that provided to it by employers.

3.6 Pilot studies undertaken as part of the HIC's planning strategy show the extent to which computer matching is already possible even without a common numbering system. These studies used Medicare enrolment files (held by the HIC), the electoral roll (maintained by the Australian Electoral Commission), the citizenship file (controlled by the Department of Immigration and Ethnic Affairs), and files for pensions and unemployment and sickness benefits (held by the Department of Social Security) and scored a high rate of positive matches. Such studies not only breach the 1981 OECD Guidelines to Protect Privacy to which Australia is supposed to adhere⁶ and prospectively breach the Information Protection Principles embodied in the proposed privacy legislation (see Chapter 2), but also contrast starkly with the lack of success of the ATO in its matching activities (see Chapter 4).

Civil Libertarian Concerns Arising from the Government Proposal

3.7 A major cause of concern about the Government's proposal is a possible intrusion on privacy and civil liberties, including the fundamental change in the relationship between the individual and government in Australia. Professor Walker claims that, with the advent of a national numbering system, the way is open for the ascendancy of the idea that the citizen is accountable to the government, rather than vice versa.⁷ The free and lawful person recognised by the common law attains legal personality simply by attaining adulthood, and is able to do anything which is not proscribed by law. The de facto effect of compulsorily requiring adult citizens to register with the state is to introduce an additional element which is essential for their legal personality.⁸

3.8 This concern at the fundamental change in Australian society which would be engendered by the introduction of a national identification system was echoed by several distinguished witnesses, including Mr Frank Costigan QC, the former Royal Commissioner⁹; His Grace the Right Reverend Michael Challen, Bishop of the Anglican Diocese of Perth and Chairman of its Social Responsibilities Commission¹⁰; and His Honour Mr Justice Michael Kirby, President of the NSW Court of Appeal and former Chairman of the Australian Law Reform Commission.¹¹

3.9 Mr Costigan particularly spoke at length on the balance to be struck between the protection of the civil liberties of the individual as opposed to the protection of society as a whole:

... there is no doubt that the introduction of an Australia Card of the kind contemplated by the submissions that I have read is a significant intrusion into individual

privacy. I have no doubt at all about that. You can only justify such an intrusion if, on balance, the evil that you are attempting to correct and the cost of doing it are justified. I have always taken the view, and I have articulated it on a number of occasions, that there is a necessary balance to be struck between the proper non-infringement of civil liberties on the one hand and abuses which may be taking place in the community on the other, and where you strike the balance changes from time to time, decade to decade. When you are looking at the introduction of a card you have to consider that as being a very significant intrusion - I think a very great intrusion - because I have no doubt at all that it would grow and the access to it would be increased over a period. Quite apart from the financial cost of setting it up and so on, you have to form a view as to whether the benefits that are attracted to the community from the presence of the card outweigh the very real disadvantages that flow to attacks on individual privacy. That is a judgment that you have to make. I have formed a judgment about it, and I am very strongly opposed to the introduction of an Australia Card. I think the benefits that might flow from it are to some extent illusory, certainly speculative, and can be achieved by other means.¹²

3.10 Privacy is a vulnerable value in the face of demands for administrative efficiency and attractive estimates of revenue gains. In any given case, the interests of an individual or a relatively small group are set against the interests of society. Where privacy-invasive measures are proposed, civil liberties groups urge that these first be socially justified and embarked on only where appropriate less invasive alternatives have demonstrably failed.

3.11 The privacy and civil liberties issues which have arisen in relation to the Australia Card proposal should be considered in the broader context of concerns already existing in both the public and private sector discussed above. Specific

privacy and civil liberties issues brought to the attention of the Committee by concerned groups and individuals are summarised below. While all are important, the crucial issues are:

- (a) that the Card will become an internal passport;
- (b) the dossier capability of the system;
- (c) the question of logging all accesses to the register;
and
- (d) the use of the identification number for computer matching/data linkage.

(a) Card will become a compulsory internal passport

3.12 Under the Government proposal, the consequences of non-registration for an Australia Card are serious - prevention from receiving benefits, assistance to find a job, opening a bank account, etc. - yet disadvantaged groups within the community (for example, the homeless young) are least likely to be able to comply with registration requirements. The NSW Privacy Committee has listed more than fifty offences, sanctions and other disabilities proposed for the enforcement of the Australia Card system¹³ and concluded that:

... the real effect of the proposed national identification system will be to deny important rights to Australian citizens - not because of criminal conduct or intent, but simply on the basis of non-registration.¹⁴

3.13 Increasing reliance on the Card as a means of identity would also cause it to become necessary in a wide range of circumstances unrelated to its original purpose, eg. cashing a cheque or applying for a credit card. Consequently, those unable or unwilling to present the Card may be treated disadvantageously.

3.14 Although the Government proposal states that it would be an offence for anyone to demand the Card in circumstances other than those specified in the legislation, the Australian Federal Police and the Department of the Special Minister of State advised the Committee that regulations against people or organisations using the Card for non-prescribed purposes would be unenforceable. This point is illustrated by reference to the US experience where legislation enacted to limit compulsory divulgence of the social security number has had little impact on its use.¹⁵

3.15 The Privacy Committee claims that, despite the legislative restrictions on use of the Card proposed in the Government submission, the progressive use of an Australia Card is considered desirable by its proponents. The opinion polls carried out by ANOP show that, of those in favour of a card, a large proportion wish to use it as an identifier in a variety of situations. Frequent use of the Card will reduce the risk of it being lost, stolen or misplaced unnoticed, and will facilitate cross-checking on the register for changes in personal circumstances.

3.16 The Privacy Committee also claims that consultations with the business community have been recommended to discuss possible trade-offs - such as permissible uses by business - to offset business compliance costs associated with the introduction of a card. Already the private sector will be able to:

- (i) request (as opposed to demand) the Card number from clients; and
- (ii) record and use the number as an identifier.

(b) Dossier capability

3.17 One of the major fears about the proposed national identification system is that it is a necessary first step towards the creation of a national dossier system. Housekeeping data - particularly audit trail information (which indicates when and by whom a change of data was made and where the source documents for the change are located)¹⁶ and the user agency update flags (which indicate those approved agencies wishing to be informed of any change in data on a particular record) - together with the information required to establish and validate identity and eligibility form the kernel of the register's dossier capability.

3.18 With this information, the register is capable of identifying agencies with which a person deals or has dealt and of locating precisely where documents relating to an individual may be found. An individual's dossier need not consist of one discrete file because information concerning any person can be retrieved easily by a computer from the sources indicated in the register.

(c) Access to register

3.19 Once the proposed system was operative, it is likely there would be increased demands for access - from Federal, State and private agencies. Quarantining the use of the system would be difficult, if not impossible. Already, the number of Federal agencies nominated for access has risen from eight (in the second IDC report of August 1985) to thirteen (in the Government submission of February 1986). These thirteen agencies between them employ more than 75 000 full time staff.

3.20 Although access to the register is to be limited to authorised officers only¹⁷, computer terminals are generally operated by junior staff so this authority will be widespread, although it is possible for access to be restricted to those contents of a data base relevant to an agency's particular functions. The Privacy Committee also expressed concern at the information available to counter staff at those offices where people would be able to check their records (ie. Medicare counter staff). Any Government staff with access to confidential material should undergo security checks.

(i) Logging

3.21 Of principal concern is the real likelihood of unauthorised access to the register. To allay this concern, the Privacy Committee recommends that all accesses to any national computerised register be logged.

3.22 Logging is seen by the Privacy Committee as the only effective means of ensuring the security of the register and thus is an essential element of privacy protection. Logging provides a record of what file was accessed and by whom, thereby deterring unlawful access and enabling subjects to know how and to what extent their record is being used and whether it is being used properly. This point was also made in the Privacy Report of the Australian Law Reform Commission.

3.23 Although the Government submission states that all accesses will be logged¹⁸, the HIC planning report makes a distinction between 'logging' and 'monitoring'. All accesses are to be 'monitored', however only anomalous attempts to access the system will be logged.¹⁹

3.24 As a matter of principle, record subjects have a right to know of all cases of access to their records (this is done automatically in Sweden²⁰). Logging is a significant security

device to guard against abusive access to personal records. The largest private sector data bank, the Credit Reference Association, logs each enquiry on its system and makes available to record subjects a copy of their record on request. As registration for the Australia Card will be compulsory under the proposal, and access to the register widespread, logging is a vital security and privacy feature. To emphasise this point, the Privacy Committee refers to cases where officers of the Department of Social Security have been accused of supplying confidential personal information to debt collectors and private inquiry agents. As the information net spreads, scope for this abuse will increase. This Committee therefore believes that any national computerised register should require all accesses to be logged and the record to be readily available for scrutiny by the record subject.

(c) Uses

3.25 Concern has been expressed at the proposed and possible uses of the register, including:

- (a) location of individuals;
- (b) as a basis for research; and
- (c) computer matching/data linkage.

(i) Location

3.26 The Government submission states that, under certain circumstances, access to the register will be permitted to ascertain the current whereabouts of a person²¹ while the HIC Report indicates that approved user agencies will be able to be informed of any change in data on a particular record.²² A simple extension of the register's locator function would be the

use of the register to determine who shares the same address - information of possible value to the ATO and benefit paying agencies.

3.27 The Committee considers that the proposed location use of the register is neither necessary nor desirable. In evidence to the Committee, the Australian Federal Police agreed that sufficient resources are available to allow it to establish the physical location of people with whom it wishes to get in contact.²³ In addition, the introduction of direct crediting of benefits to accounts and the fact that each agency with whom a person deals would have an address for that person anyway, leads the Committee to conclude that there is no need to include address on the register at all.

3.28 The inclusion of address on the register also represents a significant threat to privacy, health and safety: all historical data and documents used to establish identity, including previous names and addresses, would be able to be linked with current addresses. Recent decisions of Parliament have moved to reduce location information about individuals on the public record for these very reasons²⁴ and the Committee concurs with this resolution.

(ii) Research

3.29 It is a fundamental principle of privacy that information about a record subject should not be used or disclosed for a purpose other than that for which it was collected without the record subject's consent. The Privacy Committee claims that the proposed use of the register for epidemiological studies would effectively remove any opportunity for patients to exercise control over the use and disclosure of their medical information.

3.30 This Committee considers that the use of and access to centralised, data-linked personal information for research purposes, as proposed by the Government²⁵, is a multi-faceted issue with many sensitive aspects which should be separated from the current proposal. Should this use of personal information be considered desirable by the present or a future Government, the Committee recommends that the proposal first be formally referred to the Australian Law Reform Commission for report, be made the subject of wide community debate, and require legislation before implementation.

(iii) Computer matching/data linkage

3.31 Data linkage is the essential basis for the revenue gains anticipated from the introduction of the Australia Card.²⁶ In addition, the identification number for every individual will facilitate data linkage between government agencies for other purposes. Mr Roger Clarke describes computer matching as 'a powerful, error-prone, dangerous and dubiously legal mechanism'.²⁷

3.32 The Privacy Committee identifies four major criticisms of computer matching, arguing that these represent a fundamental departure from information privacy principles:

- (i) the technique effectively is a warrantless 'search and seizure';
- (ii) it effectively reverses the onus of proof;
- (iii) it allows the construction of profiles and, from these, the construction of computer-based hypotheses of criminal behaviour which place whole categories of persons under suspicion; and
- (iv) it violates fundamental privacy principles from the OECD Guidelines to which Australia is party.

3.33 The Privacy Committee claims the technique of matching unrelated computer tapes is intentionally designed as a general search and is not based on any pre-existing evidence to direct suspicion of wrong-doing to any individual or group. It suggests that escalating cost pressures will increase the temptation to rely on automated assessments via computer matches with possible adverse consequences. Examples from the US are given at pp 54-56 of its submission. Of course, whether such consequences as the automatic termination of benefits following a data match could occur in Australia would rely on the procedures and programs adopted by the benefit-paying agencies and the policy of the government of the day.

3.34 A sophisticated example of the basic technique is the system developed by the Costigan Royal Commission, explained in Volume 2 of its Final Report.²⁸ Systematic interrogation of a wide variety of sources, including public records, government records, private sector records (solicitors', TAB, accountants', unions', employers' records, etc), credit card vouchers, address books, diaries and oral evidence and the cross-matching of this data enabled the establishment of comprehensive profiles and the targeting of criminals.

3.35 The technique of computer matching offends central tenets of privacy protection as set out in the OECD Guidelines to which Australia adheres. The important principles from the Guidelines with particular relevance for computer matching are the 'purpose specification principle', which restricts use of data to purposes specified at time of collection, and the 'use limitation principle' which prohibits the disclosure or use of personal data for purposes other than those specified unless with the consent of the data subject or by authority of law. The OECD Guidelines are reproduced at Appendix 6. The identification system embodied in the Australia Card proposal put forward by

the Government is obviously meant for general use and cross-checking between all files; however, as noted above, this activity already occurs and is authorised under existing legislation.²⁹

(e) Display of information on Card

3.36 The major objections put to the Committee about the proposed Card itself concern the display of name, citizenship status, sex and date of birth, and a photograph.

3.37 Although the issue of a Card for each legitimate identity of an individual but bearing the same number is possible, the Government submission and HIC report argue strongly against issuing more than one Card for security reasons.³⁰ The Committee believes, however, that if the Australia Card proposal were to proceed, a Card should be issued for each legitimate identity of an individual, thus protecting the traditional common law right of the individual to choose the name by which he or she will be known. The Committee recognises that an individual may have valid professional, commercial or personal grounds for wishing to operate alternate identities, and considers that this right should not be restricted unless fraudulent intent is proven.

3.38 As the distinction between citizen and permanent resident has no legal or social relevance in Australia, the Committee considers that recording and displaying on an Australia Card an individual's citizenship status - as proposed in the HIC Report³¹ - is neither necessary nor desirable. A visitor to Australia could have his or her Card so marked, although the validity dates displayed on the Card would show the holder as having only temporary entitlements.

3.39 Sex and date of birth need not be displayed on the Card to ensure identification of the holder: government agencies concerned with issuing benefits, passports or registering the unemployed would have access to this information via the central register while, for private sector use, age is difficult to gauge from appearance and sex would generally be indicated by name. The Committee believes that there is no need to display sex and date of birth on the Card, regardless of whether or not a photograph is included.

3.40 The Committee believes that the less information displayed on the actual Card, the greater the integrity of the overall system. Whatever information is displayed on the Card becomes worthless as a security check; anyone coming into possession of a lost or stolen Card with such personal information displayed would immediately know those key identifying factors about the legitimate holder and could pass the Card to an accomplice with matching characteristics. Thus the less information is displayed on the Card, the greater the risk that someone attempting to use it for fraudulent purposes would not match key characteristics of the legitimate holder.

3.41 If a Card is to indicate that the holder is a minor, it is clearly directed at law-enforcement applications such as curbing under-age drinking. This sets a precedent for application to other areas of law-enforcement, particularly as it seems unreasonable to allow publicans to demand/request production of the Card but deny police the same privilege. While the Committee believes that any extension of the proposed uses of the Australia Card is undesirable, it sees no reason why any card could not be produced voluntarily as proof of age. The Committee therefore agrees that, if the proposal were to proceed, a Card held by a minor should be able to be distinguished as such.

3.42 Objections to the display of a photograph on the proposed Australia Card are made for practical and cultural reasons, although the Committee believes most problems in relation to matching photograph with appearance could be overcome by proper motivation and training in recognition of basic facial features such as nose, mouth, and jawline. The Committee notes that there is likely to be cultural or religious reluctance to have photographs taken by some groups, eg. Moslem women, some Aboriginal groups. The Committee supports the need for sensitivity and discretion in this area.

3.43 Advice from the Department of Foreign Affairs (DFA) is that all Australian passports - including those of Moslem women - require a photograph showing full facial features. This is part of the international format for passports. Of course, DFA can refuse to issue a passport if this rule is not complied with - it has no figures on the number of people who may have decided against travelling because of the rule. Compliance with the rule after initial reluctance is considered by DFA to be due to the perception of a passport as desirable, as a benefit.

3.44 The resistance to a photo by some Aboriginal groups may be overcome by special arrangements - such as destruction of the Card and any other photos upon the death of the holder. Evidence from the Department of Aboriginal Affairs indicated there were no insuperable problems, but that the assistance of Aboriginal facilitators, education and some special arrangements would be necessary.

Endnotes

1. Evidence, p. 3363.
2. Morison, W.L. Report on the Law of Privacy (February 1973) PP. 85/73.
3. Cowen, Z. The Private Man (ABC, Sydney, 1969).
4. Australian Law Reform Commission Privacy, Report No. 22 (AGPS, 1983).
5. House of Representatives Standing Committee on Expenditure, Subcommittee reviewing efficiency audits of the Australian Taxation Office. Transcripts of evidence of public hearings held on 12, 13 and 18 March 1986 (hereafter 'REC transcript'), p. 245.
6. OECD Guidelines to Protect Privacy in Transborder Data Flows (Paris, 1981) adhered to by Australia on 11 December 1984.
7. Evidence, p. 3378.
8. Evidence, p. 708.
9. Evidence, pp. 1231-2.
10. Evidence, pp. 3032-3.
11. Submission No 97, Part II, pp. 12-14.
12. Evidence, pp. 1203-4.
13. Submission No 13, pp. 109-112.
14. *ibid.*, p. 16.
15. Personal Privacy in an Information Society The Report of the Privacy Protection Study Commission (US Government Printing Office, Washington DC July 1977).
16. HIC Final Planning Report (February 1986) [hereafter 'FPR'], paragraph J6.3, p. 119.
17. Government submission to the Joint Select Committee on an Australia Card Towards Fairness and Equity (February 1986), [hereafter 'TFE'], paragraph 13.2.1(d).
18. TFE, paragraph 14.3.8.
19. FPR, paragraph R5.2.1.
20. Evidence, p. 3271.

21. TFE, para. 14.3.7.
22. FPR, para. J6.4.1(e).
23. Evidence, p. 2759.
24. Commonwealth Electoral Legislation Amendment Act 1983, Section 30.
25. TFE, Section 5.13, pp. 75-76.
26. TFE, paragraph 15.1.2.
27. Submission No. 8b, p. 14.
28. Royal Commission on the Activities of the Federated Ship Painters and Dockers' Union Final Report Vol 2 (1984).
29. TFE, paragraph 3.4 et seq.
30. FPR, paragraph J2.2, p. 112 and Appendix G.8.1 p. 87.
31. FPR, paragraphs J3.3 and K6.5.