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AUSTRALIA CARD BILL 1986

Date introduced: 22 October 1986
House: House of Representatives
Presented by: Hon. Neal Blewett, M.P., Minister
for Health

DIGEST OF BILL

Purpose

To introduce an identity card for use in certain transactions.

Background

The Governments proposal to introduce a national identity card was released at the 'Taxation Summit' held in July 1985. In the booklet issued at that time the major benefits to be gained from the proposal were given as the reduction of tax and social security fraud and the detection of illegal immigrants. The card was estimated to result in an additional \$800 million in tax revenue per year once established as well as savings in the social security area.

On 13 November 1985, the House of Representatives resolved to establish a Joint Select Committee with the Senate to report on the proposal. The Senate concurred on 29 November 1985. The Committee comprised three Senators and five members of the House of whom four were members of the A.L.P., two Liberals, and one member each from the National Party and the Democrats. Their report was delivered in May 1986 and contains a number of estimates of the costs and benefits of the proposal based on various assumptions. For example, in the Government submission to the Committee, it was estimated that the card would raise an additional \$750 million in tax revenue annually. However, in evidence before the Committee, a representative of the Australian Taxation Office estimated that if the assumed level of avoidance were reviewed to more realistic levels, the amount of additional revenue that could be raised may be twice the submitted level[1]. Similarly, the Department of

Social Security found great difficulty in estimating the effect of the card and was unable to put a value on the possible savings[2].

While agreeing that there is a need to prevent tax avoidance and social security fraud, the Committee differed on how this could best be achieved. The majority (comprised of all opposition members and one A.L.P. member) rejected the need for a card and recommended that a system based on existing tax file numbers be introduced[3]. A minority report was presented which criticised the tax file proposal and supported the card.

The Government proceeded with its proposal and this legislation was presented. The Bill was defeated in the Senate on 10 December 1986.

Also refer to the Digest of the Privacy Bill 1986 (no. 86/162).

Outline

The Bill comprises 189 clauses divided into nine Parts. Part II deals with the issue of the card and its duration; the Australia Card Register will be created by Part III; Part IV contains provisions relating to the production of the card and certificates of identity; access to information is dealt with in Part V; Part IV will create a national register of births, deaths and marriages while Part VII will create the Data Protection Agency and the Data Protection Advisory Committee. Part VIII contains a number of offences.

Main Provisions

Clause 3 contains the objects of the Bill, which include to facilitate the administration and enforcement of laws relating to taxation, social security, hospital and medical benefits and immigration and to prevent the obtaining of benefits that are excessive or not due.

The Health Insurance Commission will administer the Bill and will, for the purposes of the Bill, be known as the Authority (clause 6).

There will be no obligation to carry the card at all times (clause 8).

Australian citizens and certain people granted entry under the Migration Act 1958 and the Immigration Act 1980 of Norfolk Island will be eligible to be issued with the card (clause 10).

A card is not to be issued to a minor under 16 unless that person is living independently or is eligible to a social security pension or benefit. A representative may apply for a card for such a person if that person agrees, the applicant has a power of attorney or is in a class declared to be able to make applications. In addition, representative applications may be made on behalf of people who lack the necessary mental or physical capacity, by a trustee or guardian (clause 11).

Clause 12 will require a person to provide a sample signature unless the issuing authority is satisfied that the person is suffering from a disability or illness that would make it unreasonable to require the specimen; and to comply with reasonable requirements to enable an issuing agency to take a photograph, though the photograph may be dispensed with if the making of the photograph may reasonably be expected to cause an unreasonable amount of stress to the person or a member of their family.

The Authority will be given power to obtain information to enable it to decide whether to issue a card or for any other function it is to perform under the Bill, from the Commissioner of Taxation, the Health Insurance Commission or Departments that deal with defence or administer the Social Security Act 1947, the Veterans' Entitlement Act 1986, the Student Assistance Act 1973, the Australian Citizenship Act 1948 or the Migration Act 1958 to the extent that the information was acquired to administer that Act (clause 14).

Clause 17 deals with the form of the card. The card is to contain the card-holders name, date the card will expire, a distinctive number, the number of times the card has been issued or renewed, the name of any prescribed representative, the age of minors and, where the card-holder is a minor who did not apply for the card themselves, their sex. The information may be recorded by electronic means and contain security devices.

The duration of a card will be for three to seven years where the card is issued within five years of the commencement of clause 18 or for five to six years if issued

after that time. A representative card issued on behalf of a minor will expire when the minor reaches 18 years or a card is issued to that person (clause 18).

The Authority will be given power to cancel a card if it was issued under a false identity, was issued to a person who was not eligible or has since ceased to be eligible or if the person has failed to comply with clause 12 (clause 19).

The Authority will be able to replace lost or defaced cards (clause 20) and renew cards (clause 22).

An Australia Card Register will be established by clause 23 and will contain the information listed in clause 25, which includes the matters listed in Schedule 1 (e.g., name, date of birth, sex, current address, citizenship status and each address since the first application for the card or two years, whichever is the shorter), information relating to the issue of the card and any dealings between the Authority and the person.

A card-holder may request that incorrect information on the register be changed and where the information is found to be incorrect it is to be changed within 21 days of the request (clause 26). In addition, the Authority will be given power to correct inaccurate information (clause 28).

The Secretary of a Department that is entitled to have access to the Register will be able to enter into an agreement with the Authority under which the Secretary is to notify the Authority of any changes in the information contained in Schedule 1 (clause 29).

Part IV, clauses 32 to 54, deals with the production of the card.

Clause 36 deals with certificates of identity. Where production of the card is required, the requirement will be taken to have been fulfilled where a certificate signed by a prescribed person (i.e., an Australian citizen included in a prescribed class) specifying the card-holder's card number and stating that the card has been produced to the prescribed person; that they are not, to the best of the prescribed persons knowledge, related; that it is not, in the prescribed persons opinion, reasonably practicable for the card-holder to attend to produce the card; and any other matter required by regulation.

For visitors (i.e., those who have been in Australia for less than six weeks in the preceding 12 months) their passport will take the place of a card (clause 37). Similarly, for non-residents, a signed notice setting out the name and residential address of the person and stating that they are a non-resident will replace the card. It will be an offence for the statement to contain knowingly false information (clause 38).

Clause 40 deals with accounts with financial institutions. Prior to the second relevant day (i.e., a day prescribed by regulation that is later than the first relevant day and later than 30 June 1990) but after the first relevant day (i.e., a day prescribed by regulation that is not earlier than 1 March 1989), a financial institution is not to accept a deposit, open an account, give effect to an assignment, withdrawal, deposit or pay interest relating to an account opened after the first relevant day without, at the time of the transaction or earlier, having recorded the persons card number. After the second relevant day, the same requirements will apply to all transactions. Where interest is paid and the institution is required to notify the payment to the Commissioner under a tax law, the Commissioner is to be notified of the card number of the person receiving the interest. A breach of these provisions may result in a \$20 000 fine.

A prescribed borrower (i.e., the Commonwealth, a State, the Northern Territory or a corporation) is not, from the first relevant day, to borrow money from a person or to repay money or interest on funds lent to the prescribed borrower on or after the first relevant day to a lender without recording their card number. From the second relevant day, the prohibitions will apply to funds lent or borrowed before the first relevant day. The same tax notification requirements as will apply to financial institutions will also apply to prescribed borrowers. Solicitors will also be required to record card numbers when investing, accepting or lending money or paying interest. A \$20 000 penalty will apply for a breach of the recording provisions (clause 41).

Similar provisions, including those relating to the first and second relevant days, the provision of information to the Commissioner of Taxation and penalties, will apply to income from certain trusts (clause 42).

Primary produce marketing authorities and produce agents will be required to record the card number of people where, after the first relevant day, payment is made on the sale of primary produce. The marketing authorities and produce agents will also be required to comply with similar provisions relating to reporting to the Commissioner of Taxation. In addition, real estate agents are not, on or after the first relevant day, to make payments representing rent to people for whom they are acting without recording their card number. Again, similar tax reporting and penalty provisions will apply (clause 43).

A financial institution is not to remit money overseas after the first relevant day unless they record the card number of the person to whom the funds are to be sent. Similar tax notification and penalty provisions will apply (clause 44).

A person is not, after the first relevant day, to be a party to a transfer of an interest in land unless the person has completed a declaration stating the person's name, card number and any other prescribed matter and the declaration has been delivered to the relevant Registrar of Land Titles. The penalty for a breach of these provisions will be a \$5000 fine. Where a tax law requires a Registrar to notify the Commissioner of Taxation of the transaction or transfer, the Registrar is also to give the person's card number (clause 45).

Financial institutions are not, after the first relevant day, to make available or allow access to safety deposit boxes or similar services without recording the card number of the person concerned. The financial institutions will be required, within two months of the first relevant day, to furnish particulars relating to the safety deposit boxes to the Commissioner of Taxation (clause 46).

On or after the first relevant day a share dealer is not to buy shares on behalf of another without recording their card number. In addition, an instrument of transfer of registration of shares in a public company is not to be submitted unless it contains the transferee's card number and the transfer is not to be registered unless the transferee's card is produced and its number recorded. Similar tax notification and penalty provisions will apply (clause 47).

Similarly, a broker is not to deal in future contracts on behalf of another after the first relevant day unless the person's card number is recorded. Similar tax notification and penalty provisions will apply (clause 48).

Where, on or after the first relevant day, a person commences employment or is paid, the employer is to record the person's card number. Similar tax notification and penalty provisions will apply (clause 49).

People applying for Medicare benefits on or after the first relevant day will be required to produce their card and the number is to be recorded before payment is made. Where, before the first relevant day, a card is issued to a person, the Health Commission may refuse to pay the claim unless the person's card number is contained on the claim (clause 52).

Clause 54 deals with social security benefits. They will not be payable on or after the first relevant day unless the person produces their card and its number is recorded. Where an application for a card is pending and, apart from this Bill the applicant would have been eligible to receive a benefit, the benefit shall be payable.

Part V of the Bill (clauses 55 to 68) deals with access to information.

A card-holder will be able to request access to information in the Register that relates to that person. The Authority will be required to give access to the information within 21 days of a request (clause 56).

Where a card-holder has made a request to access information, the Authority may refuse a further request made within 12 months where there has not been notification of a change in the Register, unless the applicant pays the prescribed fee (clause 58).

Access to the Register for officials is defined as access to the information reasonably necessary to achieve the purpose for which access is allowed (clause 59).

Access for the performance of their functions will be allowed to the Commissioner of Taxation (clause 60), the Secretary of the Department which is responsible for social security (clause 61), the General Manager of the Health Insurance Commission (clause 62), the chief executive of the Authority and the President of the proposed Data Protection Agency (the Agency) (clause 64).

Clause 66 will allow 'authorised persons' to have access to the Register. 'Authorised persons' will be those nominated by one of the people who are allowed access. Before access will be allowed, the instrument seeking approval will have to be forwarded to the Authority and the Authority's recommendation and the instrument will have to be forwarded to the Agency. The Agency will be responsible for approving or rejecting the instrument (clause 65).

Part VI (clauses 69 to 84) will establish a National Births, Deaths and Marriage Register.

Clause 69 contains the objects of the Part, which include to facilitate the execution of this Bill and certain other laws, the provision of an updated census of the population and to enable a uniform register to be kept.

The Authority will be given power to establish and keep the Register (clause 71).

Clause 72 will give the Minister power to delegate the Authority's power to maintain the Register.

The Authority is to have access to Territory registers and the Minister will be able to make arrangements with the States for the Authority to have access to State registers in order to compile the National Register (clause 73).

Access to the Register for the purposes of their duties will be allowed to the Chief Executive of the Authority (clause 76), the Secretary of the Department responsible for passports (clause 78), the Australian Statistician (clause 79) and the Secretary of the Department responsible for administering the National Health Act 1953 for the purpose of conducting epidemiological studies (clause 80). Authorised persons may be granted access (clause 82) after requirements similar to those contained in clause 65.

Part VII (clauses 85 to 162) will establish the Data Protection Agency and the Data Protection Advisory Committee.

The Data Protection Agency (the Agency) will be established by clause 87.

The Agency's functions are listed in clause 88 and include to review decisions made by the Authority under this Bill; to review the actions of the Authority to see if they unduly infringe on a person's privacy and, if they do, to direct the Authority how to perform those functions; to investigate the actions of eligible bodies (Departments, the Commission, or others entitled to require that a card be produced) to see if they are against the Bill or any guidelines issued by the Agency; to supervise the keeping of the National Register of Births, Deaths and Marriages and to issue guidelines concerning the keeping of the Register and the Authority's actions.

Clause 89 will give the Agency power to do all things necessary for the performance of its functions.

The Agency is to have regard to the protection of important human rights and Australia's international obligations (clause 90).

The Agency is to consist of a President and two Commissioners (clause 91).

The Data Protection Advisory Committee (the Committee) will be established by clause 104 and will consist of a Convener and between six and 12 other members.

The Committee's functions will be to advise on certain decisions of the Agency (though not those relating to its review of the Authority's or an eligible bodies functions), to recommend material for inclusion in the Agency's guidelines and to promote community education on the protection of individual privacy (clause 105).

People are to be notified of certain decisions made under the Bill (clause 113) and will be able to request that the Authority reconsider the decision. The Authority will be required to assist in the making of an application and to reconsider its decision (clause 115).

The Agency will generally be required to investigate complaints that the Authority has exercised its power in such a way as to unduly infringe a person's privacy (clause 137) or that an eligible body has breached the Bill or the guidelines (clause 138) though the Agency may refuse to investigate complaints made after 12 months of the complainant becoming aware of the situation, frivolous or vexatious complaints and complaints in which the complainant lacks a sufficient interest (clause 139). In addition, the

Agency will be able to refer appropriate complaints to the Human Rights and Equal Opportunity Commission, the Merit Protection Agency or the Ombudsman (clause 140).

Investigations will be in private and conducted as the Agency sees fit (clause 144).

Clause 145 will give the Agency power to obtain information and documents while clause 146 will give power to examine witnesses.

The Agency will be immune from action in relation to acts done in good faith (clause 153).

It will be an offence, with maximum penalty of a \$2000 fine and/or 12 months imprisonment, to refuse, without reasonable excuse, to attend before the Agency, be sworn or affirmed, furnish information or answer a question, produce documents, hinder the Agency in the carrying out of its functions or to make a knowingly false or misleading statement. It will be a defence to refuse to answer a question or furnish information on the ground that it may be self-incriminating (clause 154).

The Attorney-General will be able to issue a certificate stating that the production of a document or giving certain evidence will be contrary to the national interest on the grounds of defence, prejudice to international relations or relations between the Commonwealth and a State, that it may disclose Cabinet deliberations or decisions, that it may prejudice an investigation or a fair trial or that disclosure would endanger life or safety (clause 160).

The Agency will be required to lodge an Annual Report (clause 162).

Part VII (clauses 163 to 172) deals with offences which include:

- . intentionally defacing or altering a card (clause 163);
- . possessing false cards (clause 164);
- . producing a card with intent to deceive (clause 165);

- . making false statements to obtain a card (clause 166);
- . requiring the production of a card except as authorised by this Bill (clause 167);
- . obtaining unauthorised access to the Register (clause 168);
- . a breach of secrecy by a staff member of the Authority or Agency (clause 169); and
- . misuse of information (clause 170).

In addition it will be an offence to use the term Australia Card or a prescribed symbol in trade or business or for a promotion (clause 181).

For further information, if required, contact the Law and Government Group.

2 February 1987

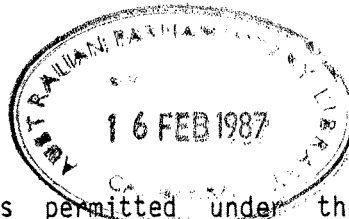
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References

1. Report of the Joint Select Committee on an Australia Card, May 1986, p.27.
2. *ibid*, p.31.
3. *ibid*, pp.147-151.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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