



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Secretary@privacy.org.au

<http://www.privacy.org.au/About/Contacts.html>

22 August 2011

Mr Alistair Coe MLA
Shadow Minister for Transport Services

Dear Alistair

Re: Road Transport (Safety And Traffic Management) Amendment Bill 2011

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

The APF expresses the gravest concerns about the ACT Government's proposal to collect images of the registration data of all vehicles that pass control points.

The previous Minister gave what we understood to be an undertaking that the design would not include the capacity for mass surveillance of road traffic. But the Explanatory Statement makes clear that the Government intends the Assembly to authorise monitoring that is readily extensible.

We submit to you that it is essential that the Assembly:

- reject the Bill
- prior to its re-submission:
 - require the conduct of a Privacy Impact Assessment (PIA) which must consider the risks and the mitigating measures, and include consultation with all interested parties
 - require the Bill's amendment in order to:
 - **remove the mass surveillance element, by requiring immediate, automated deletion of images except where they have been detected in real time as having breached the law.** For speeding and red lights, that means immediate deletion. For point-to-point schemes, that means deletion immediately after the time it becomes apparent that no infringement has been detected
 - create a criminal offence for the collection, use and disclosure of data, by any party, including the Police, for any reason other than those authorised by the Bill

Naturally we would be happy to provide further information on the matter.

Yours sincerely

Roger Clarke
Chair, for the Board of the Australian Privacy Foundation
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Australian Privacy Foundation
The A.C.T. Government's Point to Point Legislation

Third Submission – 22 August 2011

Background

The APF has made a succession of Policy Statements and submissions in relation to the general topic of Automated Number Plate Recognition (ANPR) and the specific topic of the ACT Government's proposal to introduce point-to-point speed cameras.

The APF's general statements are here:

<http://www.privacy.org.au/Papers/ANPR-Qld-080118.pdf> (January 2008)

<http://www.privacy.org.au/Papers/ANPR-0803.html> (March 2008)

<http://www.privacy.org.au/Papers/QT-Transcript-080314-APF.pdf> (March 2008)

See also an article by the APF's Chair:

The Covert Implementation of Mass Vehicle Surveillance in Australia

<http://www.rogerclarke.com/DV/ANPR-Surv.html> (March 2009)

The APF's specific comments are here:

<http://www.privacy.org.au/Papers/ACT-Pt-to-Pt-101021.pdf> (21 October 2010)

<http://www.privacy.org.au/Papers/ACT-Pt-to-Pt-110717.pdf> (17 July 2011)

The previous Minister's response to one of our submissions is here:

<http://www.privacy.org.au/Papers/ACT-PttoPt-Reply-101111.pdf> (11 November 2010)

The then Minister's reply included the statements that "Immediate processing of the alert is proposed, similar to the 'Blacklist-in-Camera' approach described in the APF's Policy Statement" and **"the use of point to point cameras for 'mass surveillance' ... is not the Government's intention"**.

The Process

The ACT Government has breached its undertakings in relation to open government and community consultation, in that it has avoided public scrutiny of this initiative.

There is a clear obligation on the Government to conduct a Privacy Impact Assessment (PIA) in relation to all projects that have significant privacy implications, and as part of the PIA, to consult with affected individuals and with their representative and advocacy organisations. The previous Minister acknowledged the need for a PIA. Yet there is no evidence of any PIA being performed, and privacy advocacy organisations have not been engaged with.

It may be that the Government considers that discussions with the Privacy Commissioner are an adequate substitute for a PIA and community consultation. That is not the case, for the following reasons:

- for the last 6 years, the Privacy Commissioner has abandoned its role as a protector of privacy, and acted as a protector of the interests of government agencies and corporations
- the Privacy Commissioner chooses to limit the scope of his work to the Privacy Act, and to the narrowest possible interpretation of its provisions. A PIA considers privacy needs and public expectations, and is not confined to compliance with narrow interpretations of existing laws
- even within the limited scope that the Privacy Commissioner chooses to restrict himself to, his work is often seriously inadequate. In this case, the comments he provided to the ACT Government omitted the crucial area of data collection, and he backed down from his initial Recommendations and came to an accommodation with the Government

- for these various reasons, the Privacy Commissioner has no credibility with the public, and discussions by the Government with him have no more standing than discussions with any other government agency. Such discussions are in no sense a substitute for a PIA

We also note that the APF's specific request to the Minister dated 17 July remains unacknowledged and unanswered as at 19 August. Given that the Bill is already before the Assembly and the Government is understood to be seeking its passage during the week of 22 August, it is apparent that the Government is working very hard to avoid public scrutiny prior to enactment.

The Proposal

The collection and use of the registration data of vehicles that are in breach of road traffic rules is not at issue. The collection and use of the registration data of 'vehicles of interest' is of much greater concern, and needs to be subjected to careful controls. However, **the collection of any registration data that is not justified by reasonable grounds for suspicion of a criminal or traffic offence represents mass surveillance.**

Specifically, the Explanatory Statement at:

http://www.legislation.act.gov.au/es/db_42034/current/pdf/db_42034.pdf

says the following:

" ... Images are temporarily held within the camera system's electronic storage and (if not **accessed for another lawful purpose** in that time) are automatically deleted after 30 days" (emphasis added).

This makes clear that, contrary to the previous Minister's undertakings, the Government is explicitly enabling the use of the data for purposes other than the detection and prosecution of offences related to road traffic..

The Bill seeks the Assembly's authorisation of the arbitrary gathering of data about people's movements on public roads. This would be the first occasion on which any Australian Parliament has sanctioned such a gross intrusion into freedoms.

The literature is full of warnings about the creation of a surveillance society more efficient than that of East Germany in the 1980s. The Assembly is in dire danger of sleep-walking the population of Canberra into just that scenario. By doing so, the Assembly would provide the extremist elements within the national security community with the beachhead that they have been seeking, and make it much easier for the resistance in other jurisdictions to be overcome.

It is essential that data be collected only where it is justified by the existence of evidence of a breach of traffic laws. Collection in any other circumstances is a gross invasion of privacy by the State, and an invitation to abuse.

Conclusions

We submit that it is essential that the Assembly:

- reject the Bill
- prior to its re-submission:
 - require the conduct of a Privacy Impact Assessment (PIA) which must consider the risks and the mitigating measures, and include consultation with all interested parties
 - require the Bill's amendment in order to:
 - **remove the mass surveillance element, by requiring immediate, automated deletion of images except where they have been detected in real time as having breached the law.** For speeding and red lights, that means immediate deletion. For point-to-point schemes, that means deletion immediately after the time it becomes apparent that no infringement has been detected
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Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by a Patron (Sir Zelman Cowen), and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>