



**Australian
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26 March 2008

Mr Simon Corbell
A.C.T. Minister for Corrective Services
G.P.O. Box 1020
Canberra ACT 2601

Dear Minister

Re: RFID in the New ACT Prison

I refer to my letter of 5 July 2007, and thank you for your reply of 27 August 2007. I regret the unavoidable delays in sending this follow-up letter.

The comments in your letter in no way satisfy the Foundation. I attach notes in response to the specific matters. Of particular concern is the implication in the letter that the Human Rights Commission has been consulted, and supports the measure. According to the Commission, this misrepresents the position, because no formal advice has been provided.

The ACT'S very weak Human Rights Act fails to ensure that the Commission is consulted on matters that affect human rights. In addition, the s.37 Compatibility Statement that you signed is meaningless, because it contains no information but merely an unfounded assertion.

Further, your Government is subject to the Privacy Act (Cth), and the Privacy Commissioner has made very clear that an obligation exists to undertake a Privacy Impact Assessment (PIA) where a proposed measure has significant privacy impacts. A PIA involves the publication of information, and consultation with at least relevant organisations and preferably the public generally.

The APF reiterates its serious concern about the proposed use of RFID in the new facility, in relation to prisoners, to staff and to visitors, and about the lack of public information and consultation.

The proposed electronic surveillance is unprecedented in Australia, and has enormous potential for damage to respect for privacy and human rights. It is in direct conflict with the purported aim of the institution to rehabilitate offenders and thereby contribute to public safety.

The APF requests that you either withdraw the proposal, or submit it to a formal PIA process involving the Human Rights Commission and relevant public interest organisations.

Yours sincerely

Roger Clarke
Chair, Australian Privacy Foundation
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Attachment – Response to Mr Paget's Letter

1. RFID Use Elsewhere in Australia

The claim is made that there are precedents for RFID use by correctional institutions in Australia, but no details are provided.

The APF is not aware of any human rights and privacy impact assessments having been conducted on any such uses. To the extent that RFID may be used in other correctional institutions in Australia, they too would be matters of grave concern.

2. RFID Use in Other Countries

The statements about acceptability in other countries are vague, and no references are provided.

The APF does not accept any of Mr Paget's assertions on that aspect. In any case, the interpretation of human rights is a matter for each society to determine, and not for foreign countries to dictate.

3. The Purposes of Deployment

The information about the purposes of deployment of the technology are welcome. But many of the points made are not relevant to the concerns raised, and others are vague, and how the scheme would achieve them is not explained. The justification for measures like this needs to be tested in a public consultative process, not merely asserted.

4. Separation of Cohorts

The APF expresses particular concern about the suggestion that cohorts are to be kept apart without internal building structures. The notion of prisons as training camps for criminals is aided and abetted by a design that fails to keep 'career criminals' away from fine-defaulters. Internal fencing may be "visually harsh", but it is far less psychologically and socially harsh than the imposition of unrelenting electronic surveillance on everyone in the facility.

5. Publication

Mr Paget's assertions about publication of information are not supported by any document references or URLs. This approach is not facilitative of public assessment and discussion.

6. Consultation

Civil Liberties Australia has informed APF that their interactions with Mr Paget have been far from satisfactory.

All interactions have had to be instigated by CLA, information that was requested was not provided, an invitation to participate in the AMC was not carried through, and no meaningful interactions have ever occurred.

In short, Mr Paget's letter does not dispel any of the APF's stated concerns, that:

1. Human Degradation Works Against Rehabilitation
2. The Motivation Cannot be Security, and must be Cost-Savings
3. There is a Serious Lack of Public Information
4. There is a Serious Lack of Public Consultation