



**Australian
Privacy
Foundation**

February 2005

31 questions for the NSW Minister for Roads about the Photo Card Bill 2004

RTA as social arbiter?

Clause 6 of the Bill says a person who has lost custody of the driver's licence (such as through suspension of their licence for a driving offence which requires surrendering the physical card) cannot obtain a Photo Card.

Clause 7 of the Bill allows the RTA to refuse to issue a Photo Card to people convicted of various offences, or on other, unspecified grounds.

This places some people in the category of people for whom the Photo Card is allegedly intended – people who wish to prove their identity to third parties but cannot use a driver's licence to do so – yet denies them the benefits that the Photo Card is intended to bring.

1. Why can't *any* person who meets the primary eligibility criteria (NSW residents over 16 years who don't have a driver's licence) obtain a Photo Card?

Clause 11 allows the RTA to cancel a person's Photo Card without providing the person an opportunity to show cause why it should not be cancelled.

2. Why should the RTA be able to cancel Photo Cards without procedural fairness to the person?

Building-in 'function creep'

Clause 14 of the Bill allows the RTA to include any information about Card holders, for any purpose, on their database.

3. Why should the RTA be allowed to collect or store any information about Card holders, other than that necessary to establish their age and/or identity?

Building-in the use of biometrics

The Government has indicated that the Bill enables the RTA to “adapt the photo card to incorporate future developments ...which ... may include the use of biometric indicators”¹.

- 4. Why can't the Bill explicitly say what will (and won't) be included on the Card and/or the database?**
- 5. Why can't the Bill prohibit the inclusion of any new information, including biometric information, without a fresh Privacy Impact Assessment and a statutory public consultation period?**

Creating a 'total population' database

Clause 14 of the Bill allows the RTA to store information about Photo Card holders on the same database as that used for driver licences.

- 6. Why should the RTA be allowed to build a database that would capture information, including current address, on virtually all NSW adult residents?**

Allowing the Government to track people

Clause 12 of the Bill requires people to notify the RTA not only if their Photo Card is lost or stolen, but also if it is damaged or destroyed. This should not be necessary if the Card is voluntary, as only a lost or stolen card could possibly be re-used fraudulently by another person.

Clause 14 of the Bill required the RTA to maintain a database of details about Card holders, including their residential address and address for service of notices. It also allows regulations to be made that would empower the RTA to require Card holders to notify the RTA of any change of address.

Clause 16 allows the RTA to insist that a Card holder turn up at an RTA office and show them particular paperwork, to prove their current address. This can be particularly difficult for young people and the homeless. Yet if the person does not comply, they can be fined \$2,200.

The Card is only intended for, and may only be requested by third party users where it is reasonable to request, proof of age or identity². A current address is not a piece of information connected to proving a person's age or identity.

- 7. Why should the RTA be allowed to track the current address of Card holders?**
- 8. Why does the Card need to show a person's home address?**

¹ Second reading speech, NSW Legislative Assembly, 8 December 2004.

² See clause 30 of the Bill.

Allowing the Police and the Sheriff to get information from the database

Clause 19 of the Bill allows the RTA to disclose photographs, or any other information about Card holders held on their database, to NSW Police (for any reason at all), and the NSW Sheriff (to recover fines). The only requirement is that disclosures be in accordance with a protocol to be approved by the Privacy Commissioner.

- 9. Why should the RTA be allowed to disclose Card holders' photographs and other personal information to NSW Police without any justification or limitation set or reviewable by Parliament?**
- 10. Will the Protocol be made and published before this Bill becomes law?**
- 11. What public consultation will occur in the development of the Protocol?**

Allowing other State and Territory governments to get information from the database

Clause 19 of the Bill allows the RTA to disclose photographs, or any other information about Card holders held on their database, to driver licensing authorities (like the RTA) in other States and Territories, for any reason at all. The only requirement is that disclosures be in accordance with a protocol to be approved by the Privacy Commissioner.

- 12. Why should driver licensing authorities in other States and Territories need information about people who *don't* drive?**

Allowing other people to get information from the database

Clause 19 of the Bill also allows information to be disclosed to any person, so long as it is "as provided under any other law", or "in accordance with the regulations".

- 13. Why isn't disclosure to any person or organisation (other than those named in this clause) prohibited outright?**
- 14. What "other laws" might allow disclosure? To whom? For what purposes?**
- 15. What is planned to be included in the regulations?**

Security risks to the Card holder

Clause 10 of the Bill allows the RTA to determine what information will be shown on, or stored on, the Card. It does not set any limitations or provide any details about what information this might be.

- 16. What information about a person will be shown on the face and back of the Card?**

- 17. Can the Card holder choose what information is to be shown on the Card, to suit their purposes (such as showing age but not home address)?**
- 18. What information about a person will be stored on the Card, and in what form (eg. magnetic stripe)?**
- 19. What security measures will be taken to prevent information being captured electronically from the Card by third party users (such as a pub using a magnetic stripe reader)?**
- 20. Why not make it illegal for a third party to copy the Card in any way?**

Corruption risks for the RTA

Clause 26 of the Bill creates an offence of reproducing the likeness of a Photo Card holder. The maximum penalty is \$5,500.

The reproduction of the likeness of a Card holder, onto a new Card relating to a different person, is a means of identity theft. \$5,500 is an inadequate fine to deter the corrupt conduct by RTA employees that could lead to the theft of a Card holder's identity.

- 21. Why isn't the penalty for misuse of photographic identities by RTA employees commensurate with other types of corrupt conduct, such as 2 years imprisonment?**

Untested impact on identity theft and fraud

Clause 14 of the Bill allows the RTA to hold personal information about non-drivers on the same database as personal information about drivers. The Australian Privacy Foundation is concerned that this centralised database model of identity management presents a major security risk, and could hamper, rather than enhance, law enforcement efforts to tackle identity-related crime.

- 22. What expert analysis has been done to evaluate the likely impacts on law enforcement efforts to tackle identity theft and identity fraud?**
- 23. If none, will such analysis be undertaken before the Bill proceeds further?**
- 24. If so, will the results be published before the Bill proceeds further?**

The Government has stated:

"In developing the New South Wales photo card, the RTA has sought a co-ordinated and co-operative national approach to maximise work being undertaken to prevent identity crime."³

³ Second reading speech, NSW Legislative Assembly, 8 December 2004.

However the Australian Government has recognised the security flaws in relying on a single identity document⁴.

- 25. Has the NSW Government sought the views of the Commonwealth Attorney General's Department on the appropriateness of developing a Photo Card for identity purposes?**

Privacy impacts not checked

It would not appear that the privacy and security implications of the Photo Card have been fully realised by the Government.

- 26. Has Privacy NSW been consulted about the Photo Card proposal at any stage?**
- 27. If so, can we see a copy of any written comments made by Privacy NSW on the proposal?**
- 28. Has a Privacy Impact Assessment been conducted?**
- 29. If not, will one be conducted before the Bill proceeds further?**
- 30. If so, will the results be published before the Bill proceeds further?**

Considering alternatives

Following discussion with key community groups who are seeking some form of photo ID for non-drivers, the Australian Privacy Foundation has developed an alternative proposal, which seeks to meet the community's needs without compromising their privacy or security.

- 31. Will our alternative solution be considered before the Bill proceeds further?**

⁴ "Attorney-General Phillip Ruddock said the Government had misgivings about any national identity regime based on a single identifier" – James Riley, "Privacy risk in national ID plan", *The Australian*, 21 January 2005, p.1.