

# The Naked Exposure Draft - 'Is that an ID card you have in your pocket'?

Graham Greenleaf  
Professor of Law, UNSW  
Co-Director, Cyberspace Law & Policy Centre  
*Australian Institute of Administrative Law*  
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# The Exposure Draft Bill

- Only available late yesterday afternoon
- 200 clauses, 180 pages
- Very different in much of its drafting from the previous bill
- “Errors and Omissions Excluded” (E&OE)
- Bottom Line: ‘Meet the new Bill, same as the old Bill’ (The Who, ‘Won’t Get Fooled Again’, 1969)

# Few improvements

- Objects clause requires 'privacy friendly' interpretation (s7(3))
- Joe Hockey's IpoD Card is dead
  - 'your area' of the chip is no more
  - No current provision for storage of medical or financial information
  - But see later re built in function creep...
- Information in the Register is protected against demands by / disclosure to other agencies
  - ... except any (senior) cops or spooks ...

# The Register

- Still an unjustified accumulation of personal information unprecedented in Australian history
- Contents of the Register (s34) still unreviewable
  - Eg whether ID status is ‘full’ or ‘interim’
- Function creep:
  - s34 item 18 allow additions if the ‘Administrative Rules (ARs) require this;
  - s187 allows ARs to contain matters permitted by s34;
  - Could POI items still be included by this means?
  - Could this allow unlimited expansion of Register content?
  - But s182 makes ARs (by Minister) disallowable
  - If so, expansion of the Register would not require legislation

# The Card - on the face

- No change, despite Task Force and other recommendations
- Form of card still by Minister's determination
  - not a legislative instrument (s67(6))
  - Which items on face of card are machine-readable is beyond Parliamentary scrutiny
- Minister can still change name to 'Australia Card' (s67(1))

# The Card - in the chip

- No longer any distinction between 'Commonwealth area' and 'your area' of the chip
- Seems exhaustive of information that can be on the chip (s73) - no allowance for 'user-generated content' or even 'doctor-generated content'
  - No Joe Hockey IpoD card any more
- Function creep: s74 item 14 may allow the Administrative Rules, in combination with s187, to provide a mechanism for unlimited expansion of what can be in the chip
  - Legislative instrument required, but not legislation
  - Is this more dangerous than it was before?

# The Card - protecting the chip

- PIN protection of chip content is only required for name, DOB and POI status (full/interim) (s77)
- The card and the chip are not 'protected records' (s89), so none of the confidentiality provisions apply
- Prohibitions on unauthorised access to / modification of chip content (s97) only apply to 'restricted information' (ie held in chip and an 'access control system' applies)
  - Nothing in Bill requires such protection (except PINs in s77)
  - So photos, signatures etc on the chip are not required to be protected against anyone accessing/copying them from the chip, no matter what means they use
- This slackness opens the door for expanded uses by the private sector
- Nothing to prevent chip content being read remotely

# Claytons Card ownership enshrined

- No changes to the stupidest legislative provision ever proposed (ss78-80)
  - Joe Hockey's equivalent to the green & gold livery of the Australia Card



# Access/disclosure limits and the Register

- Access / disclosure / use is generally restricted to the purposes of the Act (Pt 5, Div 1 & 2)
- Disclosure of Register information is prohibited generally (s116), despite contrary provisions in either existing or future laws
  - Fishing expeditions by most agencies prohibited
- BUT Division 4 exceptions give very broad access rights to any (senior) Police, or intelligence agencies or Minister for Immigration
- The Register as the 'honeypot' for investigators is now enshrined

# No limits on pseudo-voluntary production

- Anyone can request production of a Card
- As everyone knows, it is easy to pretend to 'request' while in effect requiring, by limiting the acceptable ID that can be proffered ('pseudo-voluntary' production)
- Anyway, the Crown (all jurisdictions) cannot be prosecuted for offences
- It is still what it was always intended to be: a national ID card
- "This is not an ID card" (s7(2)) is as it has been from the start

# The Big Lie