

-
- **On Campaigns
of Opposition to
ID Card Schemes**



~~PRIVACY~~
~~INTERNATIONAL~~

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Introduction

Proposals for identity (ID) cards have provoked public outrage and political division in several countries. In this paper Simon Davies analyses the key elements of public opposition to ID Card schemes, and profiles the massive 1987 Australian campaign against a national ID card.

Following the announcement of an official identity card scheme, there is inevitably a public debate. Such debate often occurs as a three stage process:

During the first stage of the debate, a popular view is usually expressed that identification, per se, is not an issue related to individual rights. When an identity card is proposed, the public discussion is initially focused on the possession and use of the card itself. At this level of debate, the perceived benefits of ID dominate discussion. People often cannot see past the idea of a card being used strictly for purposes of verification of identity (banks, public transport, travel etc). Invariably, at this early stage of awareness, support for ID cards is high. The device is perceived as an instrument to streamline dealings with authority.

The second stage of public debate is marked by a growing awareness of the hidden threats of an identity card: function creep, the potential for abuse by authorities, the problems arising from losing your card. Technical and organizational questions often arise at this level of discussion. As for the question of abuse by authorities (i.e. routine ID checks by police) a common response is still "I have nothing to hide, so I have nothing to fear".

The final level of discussion involves more complex questions about rights and responsibilities. At this stage, the significance of the computer back-up and the numbering system come into the picture.

Most public opposition to administration strategies such as numbering systems, Identity cards or the census are structured around an organized campaign of negative imagery (Big Brother) and a more systematic process of public education. In the Netherlands and German anti-census movements, and in the campaign against the Australia Card, hostile imagery sat comfortably alongside a strong intellectual foundation of opposition.

To the organizers of a campaign, the imagery is important. No government assurances can counteract hysteria. The intangible arguments against national ID cards often include:

- A fear that the card will be used against the individual
- A fear that the card will increase the power of authorities
- A feeling that the card is in some way a hostile symbol
- A concern that a national ID card is the mechanism foretold in Revelations (the Mark of the Beast)
- A fear that people will be reduced to numbers – a dehumanising effect
- A rejection of the card on the principle of individual rights
- A sense that the government is passing the buck for bad management to the citizen

The tangible concerns that tend to create a more powerful long term campaign focus are:

- Any card system needs rules. How many laws must be passed to force the citizenry to use and respect the card?
- A card or numbering system may lead to a situation where government policy becomes “technology driven” and will occur increasingly through the will of bureaucrats, rather than through law or public process
- Practical and administrative problems that will arise from lost, stolen or damaged cards (estimated at up to several hundred thousand per year)
- Will the system create enough savings to justify its construction? If the system fails, can it be disassembled?
- To what extent will the system entrench fraud and criminality? What new opportunities for criminality will the system create?
- What are the broader questions of social change that relate to this proposal? How will it affect my children?

Concerns over the potential abuse of ID cards by authorities are supported by the experience of countries which have such cards. Complaints of harassment, discrimination and denial of service are, in some countries, quite common.

The issue of privacy, which is central to concern about ID cards, tends to embrace all political philosophies. Concern over identity cards is as strong on the right as it is on the left. Libertarians and Conservatives believing that a card will increase the power of government, tend to dislike the notion. The left is often split on the issue, but contains a significant number who fear card systems on the basis of human rights.

It is, of course, true that a large number of people will support an ID card in the belief that it will solve many problems of fraud and criminality. Whether a Parliament accepts the notion is another matter. In Australia and New Zealand, MPs have crossed the floor and resigned from their party over this issue. And even when only a minority of the public opposes the card, they do so with vehemence.

It cannot be taken for granted that the public will automatically support the ID card concept. The Australian public took almost two years to protest against the card proposal. Within two months of the New Zealand announcement, hundreds of people were protesting in public. The reaction cannot be predicted.

The United States has always viewed the introduction of ID cards as a fundamental attack on the relationship between authorities and the citizen, and therefore, a proposal that is politically unsustainable.

The government of Ireland recently abandoned plans to establish a national numbering system and ID card.¹ The Data Protection Commissioner for Ireland, Donal Linehan, objected vehemently to the proposal. While acknowledging the importance of controlling fraud, the Commissioner observed that the proposal posed "very serious privacy implications for everybody".²

1 Announced in the 1989 - 1993 Programme For Government document

2 Commissioner's Annual Report, 1991, p.2, 42

Anatomy of an anti-id card campaign – the Australian experience

ID card systems are often made appealing to the public by being marketed as “service cards”, offering access to a range of facilities and benefits. The cards are also often marketed as voluntary instruments, thus neutralizing perhaps the key plank of any potential campaign of opposition.

These factors have contributed to the dearth of opposition in recent years to card systems. The specter of an Orwellian Big Brother society has also diminished since the fateful year 1984, and apocalyptic scenarios of information brutality by an information-bloated State have also been treated with more skepticism than in the past. Information Technology has been absorbed by the public.

Over the past ten years, opposition of ID cards has been confined to a handful of countries. French authorities have encountered opposition to their efforts to make cards machine readable. German authorities have run up against public and constitutional barriers in establishing a national numbering system for the German ID card. The Philippine ID card ran aground in 1991 because of cost factors which were made public through a campaign of opposition by human rights groups. The New Zealand public also opposed the Kiwi Card.

The campaign which stands out, however, is the one which stopped the proposed Australia Card. This movement, the largest in recent Australian history, forced a dissolution of the parliament, a general election, and unprecedented divisions within the Labour government. The issues which were raised in this campaign provide important insights into the range of concerns related to ID cards in every country.

The Australia Card

To the older generation of Australians, the idea of a national identity card was not novel. Australians were given an identity card during the Second World War. This scheme, similar to the British identity card, relied on the imposition of rations as an incentive for registration and production of the card, and it was dropped soon after the hostilities had ended.³

3 James Rule, *Private Lives and public surveillance; Social control in the computer age*, Schocken Books, 1974. Supra note 3

Thirty years passed before the idea of a national identity card was again raised. Three government reports⁴ suggested that the efficiency of the Commonwealth Government could be increased, and fraud better detected, through the use of an ID card system. Two Cabinet Ministers of the Fraser Government were reported as viewing such a proposal as politically unworkable, and the idea went no further.⁵

The Australia Card's genesis can be traced to the early 1980s, with widespread concern about tax evasion and tax avoidance. Coupled with concerns over the extent of welfare fraud, there was a belief expressed in some quarters that an identity card or national registration procedure might assist the government's administration processes. Fears over the extent of illegal immigration added fuel to these suggestions.

The identity card idea was then raised at the national Tax Summit in 1985 (initially by Labor MP David Simmons and later by the chief executive of the Australian Taxpayers Association⁶) and found its way into legislation the following year. Playing on patriotism, the government called it the "Australia Card" (it later became widely known as the "UnAustralia Card and the Aush-tralia Card).

The Australia Card was to be carried by all Australian citizens and permanent residents (separately marked cards would be issued to temporary residents and visitors). The would contain a photograph name, unique number, signature and period of validity, and would have been used to establish the right to employment. It would be necessary for the operation of a bank account, provision of government benefits, provision of health benefits, and for immigration and passport control purposes.

The plan consisted of six components:

- * REGISTER A central register containing information about every member of the population, to be maintained by the Health Insurance Commission (HIC)
- * CODE A unique numerical identifier to be given to every member of the population, and assigned by the HIC
- * CARD An obligatory, multi-purpose identification card to be issued by the HIC to every member of the population
- * OBLIGATIONS. The law would require all individuals to produce the card for a variety of reasons, and would require organizations to demand the card, apply sanctions to people who refused to do so, and to report the data to the government

4 Asprey, Australian Government Publishing Service (AGPS) Report of the Taxation Review Committee (1975), Mathews (AGPS) Report on inflation and taxation (1975), Campbell (AGPS) Report on the Australian Financial Systems, (1975)

5 Peter Graham The Australia Card : A technology driven policy ? 45, (1990). Unpublished M.Phil thesis. Griffith University, Brisbane.

6 Roger Clarke, The resistible rise of the national personal data system, Software Law Journal, Chicago, February 1992. p.36

- * USE The number and the Australia Card register were to be used by a variety of agencies and organizations as their administrative basis
- * CROSS NOTIFICATION Agencies using the system would be required to notify each other of changes to a person's details.⁷

Despite the extraordinary change that the plan was likely to prompt in the relationships within the Australian Community, the proposal caused hardly a ripple of concern. Early opinion polls showed a seventy per cent public support for the scheme.

Not everyone was enthusiastic about the plan. A handful of journalists ran occasional stories raising questions about the proposal. The parliamentary opposition opposed the plan. Most significantly, a small number of committed academics and advocates worked to provide a critical analysis of the scheme and its implications.

As early as July 1985, the Privacy Committee of NSW, a government agency, devoted a special issue of its "Privacy Bulletin" to the ID card, warning that the proposal encompassed grave dangers for liberty in Australia. The Committee's view was that this proposal was more than a mere identification procedure. It was, said the Committee, a tool for the centralization of power and authority within the government.

Legal centers, civil liberties councils, academics and advocates joined the opposition to the ID card plan. Over the next two years, a strong intellectual foundation was developed.

In one of the earliest critiques of the ID card proposal (January 1986) Professor Geoffrey de Q Walker, now dean of law at Queensland University, observed:

One of the fundamental contrasts between free democratic societies and totalitarian systems is that the totalitarian government relies on secrecy for the regime but high surveillance and disclosure for all other groups, whereas in the civic culture of liberal democracy, the position is approximately the reverse.⁸

Australian data protection expert Graham Greenleaf, one of the pioneers of the anti ID card push, warned:

Is it realistic to believe that the production of identity cards by children to adults in authority to prove their age will be "purely voluntary"? The next generation of children may be accustomed to always carrying their Cards, to get a bus or movie concession, or to prove they are old enough to drink, so that in adult life they will regard production of an ID card as a routine aspect of most transactions.⁹

7 *ibid* p.38

8 Geoffrey de Q Walker, *Information as Power*, CIS Policy Forum (Centre for Independent Studies) 22 January 1986

9 *Law Society Journal*, Sydney, October 1987

As the Australia Card Bill was subjected to increasing scrutiny, the surveillance nature of the scheme received more attention. Greenleaf described the components of the Australia Card as “the building blocks of surveillance”. The most obvious of those building blocks were the card, the unique number, the Australia Card Register (containing all the information and acting as an information exchange) and the telecommunications links between different agencies and arms of the Card scheme.

Not so obvious, however, were the extensive reporting obligations throughout the government and the community, the automatic exchange of information throughout the government, weak data protection, the ease of legislative expansion of the system, and the effective encouragement of the private sector and state governments to make use of the card’s number.

Advocates pointed out that whilst it is true that some civil law countries (Spain, France etc) have an ID card, none would have been as intrusive or dangerous as the one proposed by the Australian Government. The Australia Card would have gone much further than the mere identification purpose of ID cards in other countries. It would have created a central information register that would touch many aspects of a person’s life.

At the end of 1985, the Opposition controlled Senate forced the appointment of a Joint Select Committee to investigate the proposal. The Committee raised a wide spectrum of concerns that eventually came to haunt the government. The majority of the Committee, including one government member, came down against the proposal, warning that the scheme would change the nature of the relationship between citizen and state and create major privacy and civil liberties problems. The committee pointed out that the cost benefit basis for such a scheme was speculative and rubbery, and that all common law countries had rejected such proposals.¹⁰ The fact that no common law country has accepted an ID card was crucial to the whole debate over the Australia Card.

Rather than supporting the Australia card option, the Committee’s report recommended a number of reforms to Departmental practices and information management. The government ignored the findings of the Select Committee, and proceeded with its proposal.

A self proclaimed “unholy alliance” was formed in Victoria between such figures as the Builders Labourers Federation’s Norm Gallagher, Western Mining Corporation chief Hugh Morgan, Civil liberties leader Ron Castan and popular singer Peter Garrett, and had placed advertisements in National publications. Several organizations also publicly opposed the Card, including the libertarian Adam Smith Club and Centre 2000, the NSW and Victorian Councils for Civil Liberties, the NSW branch of the Australian Computer Society, and a number of left wing trade unions. Three academics, Roger Clarke, Professor Geoffery de Q Walker and Graham Greenleaf, provided powerful and persuasive analysis of the government’s proposals. The arguments against the card were seldom reported by media, who appear to have generally been persuaded by the government’s revenue arguments.

¹⁰ Report of the Joint Select Committee on an Australia Card, AGPS, Canberra, 1986

The committee's report formed the basis of the Parliamentary Opposition's rejection of the scheme. On two occasions the Government presented the legislation to the Senate, where it does not have a majority, only to see the bill rejected. After the second rejection by the Senate, the Government used the issue as the trigger to employ its constitutional right to call an election on the ID card legislation, and to call a joint sitting of Parliament, where it would have had a majority.

As things turned out, the election campaign of July 1987 contained almost no reference to the ID card issue. In the opinion of the media, the ID card was simply not on the agenda.¹¹ The government was re-elected and promptly re-submitted the ID card legislation.

Until then, few Australians had taken any notice of the proposal. A rally in Sydney's Martin Place convened by Democrat Senator Paul McLean, succeeded in attracting less than a hundred people.¹² People held concerns privately, but were reluctant to express these fears lest they be branded "friends of tax cheats" (as the government had already labelled the parliamentary opposition).

Three weeks after the election, the fortunes of the Australia Card were reversed. On 28th July 1987, seventeen people from wildly different edges of the political spectrum met to plot the card's demise. The meeting involved well known libertarians, communists, mainstream political party leaders, media figures, and business, farming and community leaders.¹³

The meeting established a trust (later to be called the Australian Privacy Foundation) and resolved to form a campaign as a last ditch effort to fight the card. The almost complete absence of media interest demanded a publicity stunt, and the group decided to launch its campaign in the Ballroom of Sydney's plush Sebel Town House.¹⁴

The key element in the campaign launch was the diversity of speakers. Right wing broadcaster Alan Jones, Democrat leader Janine Haines, America's Cup hero Ben Lexcen and rock singer Peter Garrett provided an unprecedented mix of famous talent, and the launch enjoyed saturation coverage. Ben Lexcen threatened to leave Australia forever if the scheme proceeded. Peter Garrett called it "the greatest threat Australia has ever faced".¹⁵

11 Neither the Government nor the Opposition raised the ID card as a key issue during the election campaign.

12 June 1987

13 An account of this meeting was published in the Sydney Morning Herald on 5 October 1987

14 The launch took place on August 28, 1987

15 These comments were published in an Australian Privacy Foundation booklet entitled "Why the ID Card must be stopped NOW"

Once these well known figures had stated their opinion, other highly respected Australians rapidly joined the condemnation of the scheme. Former Westpac Bank chairman Sir Noel Foley stunned his colleagues with the blunt assessment that the card would pose “a serious threat to the privacy, liberty and safety of every citizen”. Australian Medical Association president Dr Bruce Shepherd went as far as to predict “It’s going to turn Australian against Australian. But given the horrific impact the card will have on Australia, its defeat would almost be worth fighting a civil war for.” Fuelled by the unique alliance, newspapers and talk-back shows recorded a logarithmic increase in public concern.

More Australians joined the Privacy Foundation to voice protest at the scheme. Right wing academic Professor Lauchlan Chipman, communist author Frank Hardy, former Whitlam Government minister Jim McClelland, and left wing economist Professor Ted Wheelwright all linked arms with their ideological foe to fight the scheme.

Within weeks, a huge and well organized movement was underway, Rallies were organized on almost a daily basis. Although these were described as “education nights” the reality was that most were hotbeds of hostility rather than well ordered information giving sessions.

The strength of public feeling was never more clear than on the night of September 14th, when 4,000 angry people crammed the AMOCO hall in the central New South Wales town of Orange. One in eight of the cities population attended the meeting. Other towns responded in a similar way.

The massive wave of public outrage was generated by scores of ad-hoc local and regional committees from coast to coast. Rallies formed on a daily basis, culminating in a gathering of 30,000 outside Western Australia’s Parliament House. The Australian Privacy Foundation, which had organized the campaign, had planned rallies in Sydney and Melbourne that were tipped to have sealed off the Central Business District.

The passion of those weeks reached the point of open civil disobedience. The Labor caucus came close to violence on one occasion,¹⁶ while public demonstrations against the ID card began to turn nasty.¹⁷

The letters pages of most newspapers reflected the strong feelings of Australians. “We won’t be numbers!” was a typical letters page headline, with others such as “I have no intention of applying”, “An alternative is the ball and chain”, “Biggest con job in our history”, “Overtones of nazi Germany”, “I will leave the country” and “Passive resistance gets my vote”.¹⁸ The cartoonists contributed to the strong feelings, with some constantly portraying then Prime Minister Robert Hawke in Nazi uniform.

16 The Australian, 23 September, 1987

17 The Australian, 24 September, 1987 reported that a car carrying the Western Australian Premier was attacked by demonstrators in Perth, and required police assistance.

18 West Australian, 12 September, 1987

Historian Geoffrey Blainey compared the extraordinary protest to the Eureka Stockade. "The destruction of the licences at Ballarat, and the stand at Eureka Stockade was a rebellion against the erosion of personal liberty associated with the Australia Card of that era".¹⁹ The card had touched a nerve in the national psyche by cutting across what many saw as the national character.

A major national opinion poll conducted in the closing days of the campaign by the Channel Nine television network resulted in a ninety per cent opposition to the card. The normally staid Australian Financial Review produced a scathing editorial which concluded "It is simply obscene to use revenue arguments ("We can make more money out of the Australia Card") as support for authoritarian impositions rather than take the road of broadening national freedoms".²⁰

Within weeks of its commencement, the campaign had galvanized Australia against the Card. Despite elements of hysteria, the average Australian came to understand that the introduction of such a scheme would reduce freedoms and increase the power of authorities. Indeed, "freedom" would come to mean the freedoms granted by the card. As the Financial Review had so eloquently observed, Australia's rights and freedoms are far more fragile than those of older counterparts. A government should be committed to strengthening those freedoms.

As news of the specifics of the ID card legislation spread, the campaign strengthened. If you were in employment without an ID card, it would be an offence for your employer to pay you (Penalty \$20,000). If you were then forced to resign, you could not get a new job, as the law would make it an offence for an employer to hire a cardless person (penalty \$20,000). Farmers without ID cards could not receive payments from marketing boards for their produce (penalty \$20,000). A person without an ID card would be denied access to a pre-existing bank account, and could not cash in investments, cannot give money to or receive money from a solicitor, or could not receive money in unit, property or a cash management trust.

Cardless people could not buy or rent their own home or land (penalty \$5,000), nor would benefits be paid to the unemployed, widows, supporting parents, the aged, the invalid or the sick.

If your card is destroyed for any reason than cannot be proven as accidental, the penalty would be \$5,000 or two years imprisonment or both. A \$500 penalty would be imposed if you lost your card and failed to report the loss within twenty one days. Failure to attend a compulsory conference if ordered to by the ID card agency would result in a penalty of \$1,000 or six months' gaol. Failure to produce your ID card on demand to the Tax Office would invoke a penalty of \$20,000.

19 Daily Sun, Brisbane, 8 September 1987

20 The Australian Financial Review, 28 August 1987

By this time, the Card's architect, the Health Insurance Commission was well and truly on the nose. Talk back radio hosts had become fond of quoting a paragraph of an HIC planning document on the Australia Card:

'It will be important to minimize any adverse public reaction to implementation of the system. One possibility would be to use a staged approach for implementation, whereby only less sensitive data are held in the system initially with the facility to input additional data at a later stage when public acceptance may be forthcoming more readily.'²¹

The campaign organizers stressed the pseudo-voluntary nature of the card. Whilst it was not technically compulsory for a person to actually obtain a card, it would have been extremely difficult to live in society without it. Indeed, the government actually coined the term "pseudo-voluntariness" to describe its aspirations.

By mid September, the Government was facing an internal crisis. The left of the party had broken ranks to oppose the card²² while right wing members (particularly those in marginal seats) were expressing concern within caucus.²³ Deputy Prime Minister Lionel Bowen urged the Party to tread with caution, and suggested that a re-think may be necessary.²⁴

Within weeks, in the face of mass public protests, a party revolt and civil disobedience, the government scrapped the ID card proposal. It was provided with the convenient face-saver of a technical flaw in the legislation revealed by opposition senator John Stone. The government had the option of re-introducing the legislation, but did not do so. Journalists reported that the government was overwhelmed with joy that the flaw had been discovered.

The Hawke Government made several key mistakes in its preparations for the Australia Card scheme. First, it had made assumptions about the right of government that simply did not match community expectations. People felt that the government did not have a mandate to do as it pleased. Second, the resort to patriotism (calling this the Australia Card) was resented hotly. Finally, and perhaps most important, the Government was simply not able to establish that it and its law enforcement agencies could be trusted with the mechanism.

21 Health Insurance Commission, Planning Report of the Health Insurance Commission, Feb 26, 1986

22 Daily Telegraph, Sydney, September 8, 1987

23 The Sun Herald, Sydney, 13 September, 1987

24 Daily Telegraph, Sydney, 19 September, 1987

The sophistication of public debate was highly developed. Letters to the newspapers and calls to radio stations put the argument that with the implementation of the card, the onus of proof in day to day transactions would be reversed. Trust within society would be replaced by the demand for formal identification. The government appeared unable to understand people's concern that there would emerge a shift in the balance of power in the relationships between citizen and the state. According to academic experts and privacy advocates leading the campaign, the card would suffer "function creep" and would find its way into many aspects of life. These were fears that could never be countered by government assurances.

There can be little doubt that, in addition to the problems listed above, several very substantial privacy and data protection fears were established. These included matters of data security, function creep, incursions related to data matching, improper use and disclosure of data, erroneous data, the establishment of central control and tracking, and the possible development of an "internal passport". Coupled with the government's inability to establish that the system would actually tackle major problems such as the underground economy, even the most conservative government supporters became skeptical.

There was a very real fear in the Australian community in 1987 that the fundamental balance of power was shifting. Justice Michael Kirby, President of the New South Wales Court of Appeal, observed "If there is an identity card, then people in authority will want to put it to use....What is at stake is nothing less than the nature of our society and the power and authority of the state over the individual".²⁵