



**Australian  
Privacy  
Foundation**

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22 August 2011

Mr M. Georgison  
The ACT Greens

Dear Matt

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

Thank you very much for your time relating to the mass surveillance aspects of the above Bill.

I confirm my verbal comments that:

- (1) the APF has the gravest concerns about the ACT Government's proposal to collect images of the registration data of all vehicles that pass control points
- (2) contrary to the Government's claims, the privacy assessment has been anything but adequate
- (3) the Bill as it stands does not fulfil the Government's own commitment to ensure that the cameras are not used for mass surveillance purposes

The attached document provides further information in support of those points.

We submit that it is essential that the Assembly not pass the Bill as it stands.

The mass surveillance aspects need to be removed, for example 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 deletion immediately after capture . For point-to-point schemes, that means deletion immediately after the time it becomes apparent that no infringement has been detected
- **preclusion of all purposes other than immediately-detectable infringements of traffic laws**, specifically point-to-point speeding, but possibly also unregistered vehicles (with considerable care taken with the process) and possibly also other vehicles of interest (but with even greater care taken)
- **creation of a criminal offence, by any party, and particularly the Police**, for the collection, retention, use or disclosure of data for any reason other than those authorised

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

Yours sincerely

Roger Clarke  
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**Australian Privacy Foundation**  
**The A.C.T. Government's Point to Point Legislation**

Submission of 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.

Instead of a PIA:

- (1) the Government has performed a mere legal compliance assessment
- (2) it has failed to engage either the public or privacy advocacy organisations
- (3) it has represented its discussions with the Privacy Commissioner as an adequate substitute for a PIA and community consultation. But that is not the case, for the following reasons:
  - for the last 6 years, the Privacy Commissioner has not fulfilled the role of protector of privacy, but has 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 reasons, the Privacy Commissioner has very little credibility with the public. 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

The APF has sought dialogue with the Government since October 2010, and sent a specific request to the Minister on 17 July, which remained unacknowledged until 22 August. The Bill is already before the Assembly and the Government is understood to be seeking its passage this week; so the Government has given every appearance of avoiding public scrutiny of the Bill 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 images or 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](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 both the previous and the present Ministers' undertakings, the Government is explicitly enabling the use of the data for purposes other than the detection of offences related to road traffic, and the prosecution of those specific offences.

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 would prefer that the Bill be rejected at this stage, and the Government instructed to 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. Alternatively, the mass surveillance aspects need to be removed, for example 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 deletion immediately after capture. For point-to-point schemes, that means deletion immediately after the time it becomes apparent that no infringement has been detected
- **preclusion of all purposes other than immediately-detectable infringements of traffic laws**, specifically point-to-point speeding, but possibly also unregistered vehicles (with considerable care taken with the process) and possibly other vehicles of interest (but with even greater care taken)
- **creation of a criminal offence, by any party, and particularly the Police**, for the collection, use and disclosure of data for any reason other than those authorised