



**Australian
Privacy
Foundation**

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22 August 2007

Dr Helen Watchirs
A.C.T. Human Rights Commissioner
G.P.O. Box 158
Canberra ACT 2601

Dear Dr Watchirs

Re: Prisoner RFID Tagging in the New Hume Facility

I refer to the Report on your Commission's Audit of Corrections, released on 21 August 2007. The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached. The APF applauds the position adopted in your Report in relation to privacy and its importance as an element of rehabilitation.

I am writing to raise a related issue of great significance. The Minister for Corrective Services and the Director-designate have stated the intention that the new Maconochie Centre will use RFID tags to track prisoners. Such electronic surveillance is unprecedented in Australia. It would undermine the rehabilitation of offenders, including those due to be released back into the community in the near future, which in turn threatens public safety. Further, it sets the precedent of treating some people like cattle, pet dogs or pallets full of goods for sale, in, of all jurisdictions, the A.C.T.

I wrote to the Minister for Corrective Services (Simon Corbell) on 5 July, providing the attachment as further explanation. I have received only a brief acknowledgement, followed by a call from Mr John Paget on 12 July. I have received no formal response from the Minister.

The APF believes that it is imperative that the Minister:

- publish sufficient information about how and why it is proposed that the technology be used
- identify and contact all relevant representative and advocacy organisations, and
- facilitate and participate in a public meeting to debate the issues.

Notwithstanding the fact that cost-overruns may scuttle the project, I would appreciate your advice as to whether you will raise these issues with the Minister.

Thank you for your assistance.

Yours sincerely

Roger Clarke
Chair, Australian Privacy Foundation
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Attachment – Summary of Concerns

1. Human Degradation Works Against Rehabilitation

The scheme appears to involve permanent monitoring of all inmates, every 2 seconds. It further appears that data is to be logged, without controls over how long it is kept, and without controls on what further uses it may be put to. It is therefore a means of remote, automated power over prisoners, which is far less human than relationships with prison-warders.

Permanent surveillance of prisoners was rejected in the late eighteenth century, in part because it was regarded as inhumane. At that time, the means was visual, in the form of Bentham's 'panopticon'. The current proposal represents an even more insidious form of observation, because it is unseen, unrelenting and not equilibrated by any human element.

It is far from clear that the actual uses have been planned, and hence it seems to be a speculative, fashion-driven, 'bleeding-edge' measure. For example, it has been reported to include 'pie in the sky' notions like detecting non-compliance with rules about occasional attendance at particular categories of activity.

This is a form of human degradation, rather than part of a plan to prepare prisoners for a positive return to life in the community.

2. The Motivation Cannot be Security, and must be Cost-Savings

The scheme appears not to be focussed on key locations, in particular the perimeter. And it is of no value at all if a prisoner escapes, because readers are only installed inside the facility.

This is in any case a relatively low-security facility, so the justification for such surveillance appears to be purely economic, not security at all.

3. There is a Serious Lack of Public Information

It appears that almost no information has been made publicly available about the objectives, the design, and the justification for the technology. Nothing is to be found on the Department's web-site, nor on that of the Legislative Assembly. We can find only a 1-line mention in a Media Release of November 2006, and two paragraphs in an Estimates Committee answer in 2006. Occasional conversations with reporters are no substitute for public information.

Among many other uncertainties, it is unclear from the few media reports:

- whether prisoners will be forcibly subjected to RFID, or coerced into accepting it by virtue of being offered 'Hobson's choice'
- what will actually give rise to alarms
- whether alarms will be managed by a central monitoring point or sent directly to guards' pagers
- whether prison guards will be subject to RFID-tagging as well
- whether visitors might be forcibly subjected to it as well.

It even appears that the main body of the Request For Tender for the \$800,000 contract to provide the RFID scheme has not been made public.

We understand that Civil Liberties Australia (CLA) wrote to the Chief Minister in November 2006 with specific questions, but that the letter and the questions it contained were not answered.

4. There is a Serious Lack of Public Consultation

Discussions are said to have been held with the ACT Human Rights Commissioner and the Ombudsman (but without mention of the Privacy Commissioner). But it is unclear whether the Commissioner had the technical expertise and resources necessary to consider the matter, whether the Commissioner submitted comments in writing, what the Commissioner said, and whether the design has been adapted to reflect the comments made.

No formal submission is evident on the Commissioner's web-site at <http://www.hrc.act.gov.au/>

It is unclear whether any form of consultation has been undertaken with:

- advocates for the interests of prison inmates
- the Aboriginal community (which is important, because Aboriginals are generally over-represented in jail populations, and it appears likely to be the case here as well)
- Civil Liberties Australia (CLA)
- the Australian Privacy Foundation
- criminologists
- the general public.

Government Documents Located

ACT Estimates Committee 2006:

<http://www.parliament.act.gov.au/downloads/issues-papers/Corbell%20Attorney-General.pdf>

"The tracking of prisoners on a continuous real time basis using RFID will be a first in Australia. ACT Corrective Services have examined the use of RFID in the United States and in two nations with long established Human Rights traditions and legislation - Sweden and the Netherlands. All the operators spoke highly of the system in terms of the added safety it provides for prisoners, the changed behaviour it engenders and its capability to aid incident investigation retrospectively.

"The proposed RFID system has also been discussed with the Human Rights Commissioner and the Ombudsman – neither has raised any objections to its use with either staff or prisoners."

Media Reports Located

The Australian IT Section, 15 August 2006

<<http://australianit.news.com.au/story/0,24897,20098191-15321,00.html>><http://australianit.news.com.au/story/0,24897,20098191-15321,00.html>

ZNDet, 8 June 2006

<http://www.zdnet.com.au/news/communications/soa/RFID-to-track-ACT-prisoners/0,130061791,139259113,00.htm>

Computerworld, 26 June 2007

<http://www.computerworld.com.au/index.php/id;774240213;fp;16;fpid;1>

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems, and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

When necessary, the APF conducts campaigns against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also a participant in Privacy International, the world-wide privacy protection network. Where possible, it cooperates with and supports official agencies, but it is entirely independent - and often critical - of the performance of agencies set up to administer privacy legislation.

The APF's Board comprises professionals who bring to their work deep experience in privacy, information technology and the law.

The following pages provide access to information about the APF:

- papers and submissions <http://www.privacy.org.au/Papers/>
- resources <http://www.privacy.org.au/Resources/>
- media <http://www.privacy.org.au/Media/>
- Board-members <http://www.privacy.org.au/About/Contacts.html>

The following pages outline several campaigns:

- the Australia Card (1985-87)
<http://www.privacy.org.au/About/Formation.html>
- the Medicare Smart Card (2004-06)
http://www.privacy.org.au/Campaigns/ID_cards/MedicareSmartcard.html
- the Human Services Card (2005-06)
http://www.privacy.org.au/Campaigns/ID_cards/HSCard.html
- the Australia Card Mark II (2005-06)
http://www.privacy.org.au/Campaigns/ID_cards/NatIDScheme.html
- the Human Services 'Access Card' (2006-)
http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html