



**Australian
Privacy
Foundation**

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The Photo Card Bill – how to fix it

The alternative model recommended in *Review of the Photo Card Bill 2004*

- a photographic card where the card holder can choose how much, or how little, of their personal information will be stored or displayed on the card
- there be no requirement to provide or maintain current residential address with the card-issuing agency
- a person may choose to hold more than one card – that is, different cards for different purposes
- photo cards to be issued by a separate agency to the RTA
- photo cards to use a different numbering system to drivers' licences
- the database supporting the range of photo cards not to be shared or linked in any way to the driver's licence database held by the RTA
- the law to explicitly limit the collection and use of data to its original purpose
- the law to have explicit prohibitions on the sharing of information from the database other than with police for law enforcement purposes

Proposed amendments to the Bill to achieve the above model

A photographic card where the card holder can choose how much, or how little, of their personal information will be stored or displayed on the card

This is necessary to prevent third parties from seeing or collecting more personal information about the Card holder than they need, or the Card holder is comfortable with. This is necessary to protect the security of Card holders, and to minimise the risks of identity fraud or theft. (See "Personal security risks for Card holders", p.10 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- amend cl.10(1) by replacing the whole paragraph with these words: “The Authority is to include on the face of the Card the photograph of the applicant, the card number and card expiry date, and only such other information as is chosen by the applicant from a choice of one or more of the following: full name, date of birth, age bracket (‘over 15’, ‘over 18’, or ‘over 60’), residential address, postal address, signature, donor status.”
- insert a new cl.10(3): “The Authority may not include any other information about the card holder in the Card (whether by way of magnetic strip, microchip or other means) other than that information which appears on the face of the Card”
- amend cl.5(2) to add the words “subject to cl.10” at the end of that clause
- insert a new cl.10(4): “The Authority may not seek to include any additional information on or in the Card, including any biometric information about the Card holder, without first conducting a Privacy Impact Assessment, the results of which are to be publicly exhibited with a call for submissions over a period of at least 28 days.”

There be no requirement to provide or maintain current residential address with the card-issuing agency

This is necessary to prevent the Photo Card from being used as a means by which the government may keep track of people’s locations. This is also necessary to prevent the database holding the information from being a ‘honey-pot’ of data that would attract people wishing to find out a Card holder’s current residential address so as to stalk, harass or harm the person. (See “Risk of unauthorised use or disclosure”, p.9 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- replace cl.14(2)(d) with the words “the person’s choice of postal address (suitable for service of notices) and/or residential address”
- delete cl.14(6)
- amend cl.16(1)(b) to replace “residential” with “postal”

A person may choose to hold more than one card – that is, different cards for different purposes

For example a person may choose to have one ‘proof of age bracket’ card (showing just their photograph and a statement that the holder is “over 18”), and a separate ‘proof of identity’ card (showing their photograph and full name).

This is necessary to both deliver what the customer wants in a way that minimises risks to their privacy and security, and to prevent the development of a single identity management system based on each person having either a driver’s licence or Photo Card. (See “Access to services – will the basic problem be solved?”, p.2 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- insert a new cl.10(5): “The Authority may issue more than one Photo Card to an applicant if the applicant so chooses, so long as each different Card shows a different set of information about the applicant.”

This includes allowing a person to hold both a driver's licence and a Photo Card if they so choose. This is necessary to prevent the development of unique identifiers contained on or in the Photo Card. (See "Proposal establishes a unique 'total population' database", p.5 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- delete cl.6(1)(c)

This includes allowing a person to hold a Photo Card even if they have been suspended from driving or convicted of a crime. This is necessary to prevent 'identity denial' as a form of social punishment. (See "Identity denial as social punishment", p.3 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- delete cl.6(1)(d) and cl.6(3)
- delete cl.6(2)
- delete cl.7(2), (3), (4)
- delete cl.11(1)(e)
- delete cl.11(4)
- amend cl.11(5) to replace "this section" with "section 11(1)(a)"

Photo cards to be issued by a separate agency to the RTA

This is a necessary precaution to preventing the linking of the two populations (non-drivers and drivers) into the one dataset (whether or not on the one database). (See "Proposal establishes a unique 'total population' database", p.5 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- amend cl.3 definitions of "Authority" to replace RTA with ... ?

Photo cards to use a different numbering system to drivers' licences

This includes allowing a person to hold both a driver's licence and a Photo Card if they so choose, and/or multiple Photo Cards for different purposes. This is necessary to prevent the development of unique identifiers contained on or in the Photo Card. (See "Tracking and profiling", p.7 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- delete cl.6(1)(c)
- insert a new cl.10(6): "The card number must be unique to that card, but must not be or contain a unique identifier with respect to the card holder."
- insert a new cl.10(7): "The card number must not be of a sequence or pattern similar to that of drivers' licences."

The database supporting the range of photo cards not to be shared or linked in any way to the driver's licence database held by the RTA

This includes only allowing the use of a driver licence photograph on a Photo Card with the person's consent. This is necessary to prevent the linking of data about holders of Photo Cards with data about driver's licences to form one 'total population' database.

How to fix it:

- amend cl.9(2)(b) to insert "if the applicant does not authorise the Authority to use any existing database photograph, or" at the beginning of this clause
- amend cl.14(5) to insert the word "not" after "may", and replace the word "Authority" with "the Roads and Traffic Authority"
- amend cl.26 to delete the words "or the Road Transport (Driver Licensing) Act 1998 or the regulations under those Acts"

The law to explicitly limit the collection and use of data to its original purpose

This is necessary to prevent 'function creep', or the later expansion in the uses of the data, a standard means of privacy protection. (See "Collecting more information than necessary", p.6 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- amend cl.10(1) to delete the words "or useful"
- delete cl.14(3)
- delete cl.18(1)(e)-(g)

This is also necessary to prevent the collection of personal information by businesses or government agencies to track and profile customers. (See "Tracking and profiling", p.7 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- Amend cl.30(1) to insert ", or collect personal information from, copy, download or otherwise take a likeness of the card holder's photograph or other information" after the words "Photo Card"

The law to have explicit prohibitions on the sharing of information from the database other than for law enforcement purposes

This is necessary to prevent the disclosure of personal information about Card holders for other purposes. (See "Sharing more information than necessary", p.6 of *Review of the Photo Card Bill 2004*.)

How to fix it:

- amend cl.15 to delete the words "or under another law"
- amend cl.19(1)(a) to insert the words "where the Authority is satisfied that the photograph and/or information is reasonably necessary to enable NSW Police to help

prevent, solve or prosecute a crime, or to find or identify a missing person” after “Police”

- delete cl.19(1)(b)
- amend cl.19(1)(c) to insert “to NSW Police or the Office of the Director of Public Prosecutions where the Authority is satisfied that the photograph and/or information is reasonably necessary” before “for the purpose...”
- delete cl.19(1)(d)-(e)
- delete cl.19(1)(g)-(i)
- amend cl.19(2) as a consequential amendment