
THE AUSTRALIA CARD

POSTSCRIPT*

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In order to meet the publication deadline, the paper for Prometheus was completed on 2 April 1987, immediately after the second defeat of the Privacy Bill in the Senate. This Postscript relates the sequence of events subsequent to those outlined on pp.29-31 of that paper.

As speculated upon on pp.42-43, the Prime Minister withdrew his undertaking not to exercise the double-dissolution option. He did this in late May, in order to call an election in July, rather than in the September-March period which would otherwise have been necessary. The Labor Government's motivations were that one of the conservative Opposition parties was undergoing a leadership challenge, and the other continued to be the subject of rumours of a leadership challenge. This uncertainty within the Opposition was deemed by the Government to be a threat to good government, and to therefore now justify the exercising of the option.

Although it was the ostensible reason for the election, the Prime Minister's policy speech devoted less than two lines to the Australia Card, and during

the entire campaign the major parties barely mentioned it. The campaign was fought largely on the issue of the alternative Governments' records in economic management, and on 11 July 1987, the Labor Government was returned, the first time that the A.L.P. has ever won three consecutive elections. It gained a slightly smaller proportion of the total vote than at the previous election, and lost a seat in the Senate, but, due to factors specific to one State, achieved an increased majority in the lower house. One of the two sitting Labor members who were defeated mentioned the scheme's unpopularity in his State and electorate as one of the important factors contributing to the loss of his marginal seat.

The Constitution provides that, following such a double-dissolution, if the unchanged Bill were rejected a third time by the Senate, then a joint sitting of the two houses could be called. The net majority which the Government enjoyed in the two houses, together with Labor's very tight rules on block-voting (which prescribe expulsion from the Party in the event of a breach, and are almost always respected), made it very likely that in such a joint sitting, the Bill would be passed.

In the new Ministry, the Minister of Health, Dr Neal Blewett was promoted from the Outer Ministry into Cabinet, and retained an expanded Health

* See Roger Clarke, "Just Another Piece of Plastic for your Wallet: The 'Australia Card' Scheme," Computers and Society, Vol. 18, No. 1, January 1988, pp. 7-21.

Ministry. He announced on 27 July 1987 that the Bill would be one of the Government's first priorities, and would be reintroduced in September, when Parliament resumed. However, on 29 July, responsibility for the scheme was assigned to the previous Minister for Education, Senator Susan Ryan, who had not been assigned a portfolio in the new Government, but had been retained in the Ministry.

By mid-August, the Government had undertaken a substantial administrative reorganisation to accompany the new Cabinet structure. A Departmental Head displaced by that reorganisation was nominated as the future President of the intended watchdog body, the Data Protection Agency, seemingly for no better reason than that there was no other position available for him. Meanwhile, the Minister for Veterans' Affairs announced that he would seek extension of the scheme beyond the original three (or four) purposes of tax, social security, health insurance and (with qualifications) immigration, to include the administration of repatriation benefits.

During the period 1985-1987, a variety of organisations had been established to protest against the Australia Card proposal, but few had had significant impact. The various State Councils for Civil Liberties, particularly in the two major States, had lobbied with considerable energy and some declared interest of a significant proportion of their membership in assisting in the Labor Party's re-election.

During the weeks following the election, a lobby organisation of a different kind was formed. The membership of the Australian Privacy Foundation was broad, in terms of occupations, social attitudes and party affiliations. It contained a large proportion of people who had public relations and media

experience, it included people with high community standing including judges, Royal Commissioners and retired sportsmen, and it included not a few people who were household names in individual capital cities, throughout States, and in several cases throughout the country.

On 31 August, following fund-raising and lead-up publicity, the Foundation launched its anti-Card campaign in the ballroom of a major international hotel in Inner Sydney. The professionalism of the launch, together with the high-profile membership, succeeded in establishing the movement's credibility. With the responsible Minister losing the media battle, the Prime Minister became personally closely associated with the scheme. However, his attempts to brand the Foundation as "a funny collection of people" were treated by most media commentators as equally unconvincing

as his oft-repeated claims to have an election mandate to proceed with the scheme.

Following the wide coverage for the launch, the many members of the media who had long been concerned about the scheme provided sufficient ongoing exposure to 'keep the snowball rolling'. By mid-September, the letters to the editor columns were overflowing. The Sydney Morning Herald published the ratio as being 9-1 against the scheme. The Australian stated that it received 526 letters between 3 and 15 September, 475 against, 25 for and 26 unspecified - "There has never been a debate like it on the letters page: there has never been such a cry of opposition from the nation over one topic". The Parliament House Bills and Papers office was unable to keep up with demand for copies of the 130-page Bill.

Within three weeks, the opinion polls recorded a turnaround from about 60-30 in favour of the Card

in late 1986 to about the same proportion against. There were large meetings, particularly in provincial and country centres. On 23 September, 20-30,000 people marched in Perth. The issue gave every impression of developing into the most divisive social issue at least since the Vietnam War and possibly since the Second World War, but with the additional aspect that demonstrations were not likely to be confined to the capital cities

In late August, the A.L.P. State Conference called on the Victorian Labor Government to boycott the scheme. In early September, the N.S.W. Labor Cabinet, facing an election within six months, expressed overwhelming disapproval of the scheme. Also in early September, rank and file representatives at the trade union congress blocked the intentions of the A.C.T.U. executive to announce support for the scheme, and called for a comprehensive review. The three non-Labor States announced that they would not provide births, deaths and marriages registry data to support the scheme. There was increasing discomfort within the Federal Parliamentary Labor caucus, with many members in marginal seats fearing that their prospects at the next election would be slim, particularly since at that time the issue of Cards would be likely to be in full swing.

With the Prime Minister continuing to take a high profile on the issue, the Bill was reintroduced in mid-September, with 7 October publicised as the target for the Senate vote. At this stage the Government felt forced to promise a subsequent Bill containing amendments. It did not provide any detail as to what was intended but likely contenders were matters relating to data security, and could not incorporate such amendments in the original Bill without foregoing the right to a joint sitting. In the press on 23 September, it was reported that the Bill was likely to be passed in early 1988, after a short

Senate enquiry, rejection in the Senate, and a joint sitting.

On 23 September 1987, the Opposition dropped a bombshell on the Government during Question Time by identifying a tactical flaw within the Bill: the date for implementation of the Act was not part of the legislation, but would have to be subsequently passed by Regulation.

Such a legislative feature, whereby implementation details are deferred to a later time, is standard practice. However, its potential to undermine the Government intentions had come to light in a curious way. A previous Deputy-Secretary of the Commonwealth Attorney-General's Department recently retired from the Administrative Appeals Tribunal (and thirty years earlier a cricket teammate of the Prime Minister's), had written letters to two newspapers opposing the Card. A retired Secretary of the Treasury, who had become an Opposition front-bench Senator in the July election, contracted him to discuss the possibilities for defeating the Bill, and the need to set an implementation date by Regulation was brought to his attention. In effect, then, a proposal devised by, and arguably mainly to serve the interests of, senior public servants, was scuttled by two ex-senior public servants.

The Government announced a few days later that it was withdrawing the Bill, but would significantly tighten the identification provisions relating to income tax. As if to confirm that the Privacy Bill was only ever intended as a sop, the Government gave no immediate indications of any intention to re-draft that component of the package.

Because the ministerial responsibility elements of the Australian version of the Westminster system are barely operative, the Health Minister, whose

staff had failed to bring the deficiency to the Government's attention, did not feel constrained to resign. However, in late 1987, the Minister without portfolio, who had taken direct responsibility for the Bill between 29 July and 23 September, accepted an offer to return to the publishing industry.

Although a considerable political embarrassment to the Government, the Opposition's manoeuvre removed an increasingly large albatross from around the Labor Party's neck. From the viewpoint of the scheme's opponents, however, the defeat of the national identification scheme was not a Knock-Out, based on a clear acceptance of its inherent ineffectiveness and/or repugnance, but merely a Technical Knock-Out.

A great deal of the intent of the Australia Card Bill can be implemented administratively and by smuggling various elements through in other legislation. The populace has no real scope to influence such proceedings.

Moreover, there is still no data protection legislation in Australia, despite the Federal Government's undertakings in relation to the OECD Data Protection Guidelines. The States still await guidance from the Federal Government, and must either proceed independently, or await developments. Australians have no constitutional or other protections against unfair practices and actions by Commonwealth public servants or the private sector, and very little recourse in relation to State public servants. Technological development has created a need for what most would regard as a natural extension to existing democratic rights, the privilege of protection against unreasonable practices relating to personal data. Clearly, such a privilege must still be fought for.