

rol stations and supermarkets etc are already operating.

- Joining all of these together, the ANZ Banking Group and the National Australia Bank and the State Banking Groups in New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania have announced that they are linking up their EFT/point of sale systems.
- The Department of Social Security is moving to introduce an EFT system of payment of pension and benefits.

the possibility of fraud. Banks meanwhile maintain that there is no cause for alarm and that the new systems present no new or greater concern than the old paper based system of cheques and so on. They assert that there are no more problems for privacy, fraud nor any greater lack of consumer protection. However the Australian Consumers' Association and other bodies have received large numbers of complaints. These include:

- The withdrawal of money from automatic teller machine by a person other than the cardholder, without the PIN number. In some cases these fraudulent withdrawals have exceeded both the amount of money in the account and the daily maximum withdrawal. Under the terms and conditions specified by the banks and other financial institutions the banks look to the customer to carry the loss.
- Difficulties of customers in establishing that they have not received money shown as withdrawn from their account where an automatic teller machine has a malfunction, for example, in the middle of the transaction.
- Concern about security of Bankcard transactions made by telephone or mail.
- Billing errors and difficulty in putting them right.
- Privacy issues including as to the type and detail of personal information re-

quired to be given on application for EFT cards.

- Unsolicited promotions following acquisition of a credit card.
- The widespread accessibility of information within the EFT system.
- The one-sided nature of the terms and conditions imposed on cardholders.

There is even more concern about potential problems which might not as yet have shown up especially as the area seems a legal-noman's-land, with legal regulation and protection lumbering along in the wake of technological development.

national identity card

The stubborn world of things
greeted with its stolid derision
our frail, unique, identities.

Evan Lloyd Jones, *Leaving Again*

Proposals for a national identity card were debated in May by the Labor Caucus and included in the Government's preferred option in its white paper on tax reform, released on 4 June. The proposals are for photographic identity cards which are designed to reduce tax evasion, social security fraud and other ills of modern Australia. The proposals were criticised by former ALRC Chairman, Justice Michael Kirby. Justice Kirby, who is now the President of the New South Wales Court of Appeal, said it was vital that the community should keep control over the direction of science and technology. Justice Kirby was delivering a Centenary address for the Science Faculty of the Sydney University. He said that computerised identity cards were an example of the 'tension between new technology and old legal principles'. He said that such proposals tested our traditional civil liberties, and especially changed the relationship between the State and the individual. Justice Kirby said that he was not concerned that opinion polls disclosed strong support for the idea of ID cards. He said that sometimes 'out of ignorance' people could be 'too ready to throw away ancient freedoms or hard won liberties and reforms'. Amongst

reasons advanced against the proposal for ID cards, Justice Kirby listed:

- They would be ineffective to combat payments in cash or kind, yet they were being urged to combat tax avoidance.
- Decisions affecting important liberties were not to be made on grounds of efficiency only. Tapping telephones without limit would catch more criminals but is not accepted for that reason.
- Sometimes freedom depends upon a degree of inefficiency.
- Requiring people to have an ID card would soon lead to a requirement that they should carry their card. This would soon lead to a requirement for them to produce it. And this would break down the controls over the interference by the State in the life of citizens. He said that a similar erosion of privacy had occurred with the expanding facility of telephone tapping.
- Individual autonomy requires that people should be treated as human beings not numbers. A linkage of ID cards to a central computer would provide a universal data base producing 'the ultimate triumph of the authoritarian State'.

efficiency not everything. Justice Kirby said that it was ironic that the proposal for ID cards should be made in Australia on the 40th anniversary of the Second World War. He argued that efficiency was not everything:

This was vividly illustrated to me when I attended a conference on informatics held in Paris in 1980. When the spokesmen of the new information technology were urging the need for a computerised identity card in France a man, in alarm, rose from the audience. In vivid French, he reminded his listeners of the fate of the Jews in wartime Europe. Why was it, he asked, that 90% of the Jews of the Netherlands perished? Why was it that 60% of the Jews of France survived? At least part of the explanation he attributed to the fact that the Netherlands, with its efficiency, had produced an identity card which could *not* be

forged. The French, though they had an identity card, produced it negligently. It could be forged. Many Jews and many heroes of the Resistance, Allied soldiers and others, survived to see the reestablishment of a freedom in France because of this inefficiency in the identity card. Efficiency is not the only social virtue.

the benefits. The *Sydney Morning Herald* (25 May 1985) devoted an editorial to Justice Kirby's speech. It argued that card-carrying in various forms has become routine in Australia and said that identity cards were a part of normal life in many countries in which citizens' rights and privacy are not routinely trampled. It cited Canada, Denmark, West Germany, Sweden and the United Kingdom. The Herald argued that we have drivers' licences, bankcards and credit cards; we are numbered by Medicare, for Social Security benefits and pensions, and for tax purposes. The Herald argued that Justice Kirby and other opponents of a national ID card were being too pessimistic and suggested that a national ID card system would have many benefits. It referred to the high levels of tax evasion and social security fraud which it said an ID card system might help to overcome.

instruments of social control? From the other side of the continent, the *West Australian* argued that the ID card issue raised questions vitally important to society:

Its implications for individual rights are so wide-ranging that it should not be pushed aside in the rush to ensure the retention of the dollar in the pocket.

The *West Australian* acknowledged that fraud and tax avoidance cost Australia dearly. However desirable eliminating such cheating is, it said, we are not in such desperate straits that any means can be justified in achieving it:

Though ID cards may seem innocuous compared with some of the practices which are commonplace in totalitarian States, their introduction would represent a significant shift in the traditional relationship between State and individ-

ual. It does not follow that because we live already with a plethora of licences, cards and numbers that one more would make no difference, just as it does not follow that ID cards, once introduced, could be restricted to dealings between citizens and government departments.

The *West Australian* asked how long it would be before government officers at all levels, including the police, came to see the cards as an essential preliminary to any dealing with the public. It commented that given our 'natural aversion' to taking a difficult course when an easier one is available, restraining legislation would be 'about as effective as laws to make water run uphill':

The big danger, however, results from advances in computer technology. A universal ID system would produce an instantaneous data base able to amass and retain copious amounts of confidential information about every citizen. Control over that information would pass from the individual to the State.

The *West Australian* concluded that the case for such a change in Australia's present circumstances had not yet been made (4 June 1985). The *Courier-Mail* (3 June 1985), on the other hand, supported the proposal for an identity card:

We believe the idea has a deal of merit. Tax cheats and social welfare frauds deserve no public sympathy; they are sponging off the efforts of others who pay their contribution to the community. There might be some grounds for disquiet if a malevolent government was inclined to abuse the purpose of these cards. In the Australian political context, this is most unlikely.

Mr Jim Nolan, Executive Member of the New South Wales Privacy Committee, said his Committee strongly disagreed that the benefits of an identity card system would outweigh its disadvantages, as argued by the Federal Treasury. He said that there were serious doubts about the so called benefits anyway: 'cash transactions would not be affected one way or another by the ID card system', he said. 'If a plumber got a hundred dollars in cash for a job he would not put it in a bank; he would go into Grace Bros and

spend it. Ms Beverly Schurr, Secretary of the New South Wales Council for Civil Liberties, said federal privacy policy would have to be properly established before any consideration was given to the ID system' (*Sydney Morning Herald*, 6 June 1985).

hampering surveillance? Meanwhile, a proposed Victorian Government Privacy Bill drew criticism from police, private investigators, the security industry and journalists. Police claimed that the proposed Bill would hamper sensitive surveillance operations: 'Up until now we have been able to take pictures of people meeting on private property as long as we stayed on public ground', a policeman is quoted in the *Melbourne Sun* of 15 March as saying 'We would need a warrant from a County Court judge before we could move, and that just would not work'. The Victorian Attorney-General, Mr Jim Kennan replied that the legislation would not affect police operations. Mr Kennan said that he had hoped to have the legislation ready for Parliament's Autumn Session but that that was now out of the question and that he wanted comment from all interested parties.

personal freedom

O God! I could be bounded in a nutshell,
and count myself a king of infinite space.

Shakespeare, *Hamlet* II, 2, 263

safeguards. The Federal Director of Public Prosecutions, Mr Ian Temby QC spoke of a need to preserve the safeguards to personal freedom in a speech to a university gathering during the past quarter. Mr Temby, speaking at a graduation ceremony at his Alma Mater, the University of Western Australia on 18 April 1985, said:

It may be that in the more austere age which looms, personal freedom is undervalued ... There has been a retreat from the ideal of the supreme importance of the individual, and an increase in the power exercised by Government authorities, Courts, or the politicians, and perhaps most dangerously 'the majority'. It should be a matter of concern to us all.