

Security Risk Policy Alert – 13 April 2018

Security and Domestic Law

The Australian Risk Policy Institute (ARPI) has warned that, in the face of Government agencies and other entities adopting higher levels of security, those agencies and entities must be alert to the need to ensure their actions are compliant with the law and that their actions do not create downstream security issues.

Recent escalation of agency-based security threat responses have led to the *ad hoc* adoption of supposed security measures. One such measure has been the retention of drivers' licences as a condition of entry to a facility. At the same time, the copying of drivers' licences in a variety of circumstances has become commonplace.

Retention

While an organisation is within rights to impose conditions on entry, such demands cannot be in breach of domestic law. Accordingly, an organisation may properly decline entry to someone who refuses to show an organisation his/her driver's licence (although, such organisations should be aware that some individuals do not have licenses and be prepared to adopt different means for establishing identity).

The retention of someone's driver's licence is a different matter altogether. It is a **criminal offence** for a third party to possess a driver's licence issued to another person (s30, *ACT Road Transport (Driver Licensing) Act 1999*). Further, retention of the licence exposes the organisation to downstream risks associated with fraudulent use, and denies the licence holder the capacity to use the licence for lawful purposes (including establishing identity). Finally, as it is unclear what lawful benefit accrues to the state, an agency (other organisation) or the licence holder, it is unclear whether an agency or organisation would be able to rely on defences of having lawful authority or excuse in holding another person's licence.

While the adoption of enhanced security measures may be a sensible response to the present security environment, the adoption of *ad hoc* measures such as licence retention:

- Does not protect any known security vulnerability; and
- Instead creates new legal risks, new security vulnerabilities and adversely impacts on licence holders.

Agencies and organisations (e.g. security providers) which may have recently adopted this practice should review the practice urgently.

Copies

At the other end of the spectrum, a person may request the taking of a copy of your licence as part of hard evidence of your identity or age. If you do not agree to this, the person may decline the provision of services.

While this practice for such a purpose is not unlawful (and may be prudent), a person taking such a copy exposes themselves and their organisation to a new vulnerability – the possibility of unlawful access to and use of the record. For example, the record might be manipulated to create a licence with a replacement photograph.

People who have adopted this practice should review the practice to ensure that they have appropriate privacy, data security and destruction protocols, to ensure that the records are not misused.

Media Contact Tony Charge +61 408 481 220