

Security Risk Policy Alert – Identity Theft and Fraud

Your Driver's Licence

The Australian Risk Policy Institute (ARPI) has warned that, in the face of organisations adopting higher levels of security, those organisations need to 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 identity security threat responses have led to the *ad hoc* adoption of supposed security measures. One such measure has been the demanding and retention of (or handing over and copying) of drivers' licences as a condition of entry to a facility.

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 a driver's licence (although, such organisations should be aware that some individuals do not have licences and be prepared to adopt different means for establishing identity).

The retention (or copying) of someone's driver's licence is a different matter altogether. It is a **criminal offence** in some jurisdictions for a third party to possess a driver's licence issued to another person (for example, see ACT legislation - s30, *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 organisation or the licence holder, it is unclear whether an 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 changing 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.

Organisations which may have adopted this practice should review the practice urgently and ensure they comply with local law, obtaining professional legal advice where necessary.

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