

The Tax File Number Scheme: Political Assurances versus Function Creep

Roger Clarke

When the Australian federal government withdrew its Australia Card proposal in 1987, it resolved to enhance the Tax File Number scheme, which had been in use within the Australian Taxation Office since the 1930s. Roger Clarke, Reader in Information Systems in the Department of Commerce, the Australian National University, outlines the origins, nature, and original and expanded scope of the enhanced TFN scheme.

The scheme to enhance the Tax File Number (TFN) emerged from the ruins of the Australia Card proposal, which was eventually withdrawn in September 1987 in the face of an unprecedented public outcry against the invasion of privacy that it represented (Clarke 1986, 1988; Walker, 1986; Greenleaf & Nolan, 1986; Greenleaf, 1987; Smith, 1989). The initial scope of the TFN was wider than had been commonly understood, and additional uses have accumulated through 'function creep'. The express limitation of the scheme to taxation uses has been progressively circumvented, so that the scheme now applies to virtually every benefit and pension paid by any Commonwealth government agency, and production of the TFN is mandatory. It is becoming the general purpose identification scheme the Australia Card was intended to be. The government's assurances of mid-1988 are shown to have been worthless, and the information technology imperative rampant.

The Enhanced Tax File Number Scheme of 1988

Details of the enhanced TFN Scheme were announced by the government in May 1988. Copious assurances were given that it was to apply exclusively to taxation administration (see Panel 1).

Concerns were expressed by privacy lobby groups about a number of aspects of the proposal. For example, the Australian Computer Society's Submission to the Treasurer referred to:

- the absence of prior, comprehensive legislation protecting information privacy;
- the possession of TFNs by all employers and financial institutions, rather than restriction of their use to the taxpayer and the Australian Taxation Office (ATO); and
- the failure of the draft legislation to make illegal the unauthorised request of, demand for, use of, and disclosure of, a TFN.

The Opposition Liberal-National coalition and the Australian Democrats supported the proposal in principle but negotiated several significant changes in the Bill. As given in the Treasurer's Speech on Amendments to be Moved, December 1988, these ensured that:

- the TFN scheme was completely voluntary;
- the TFN legislation would not commence before the Privacy Act of 1988;
- 'people receiving any part of an age, invalid or other pension from the Department of Social Security or service pension from the Department of Veterans' Affairs will be exempt from the need to quote a tax file number to operate bank or similar accounts, buy shares, or have dealings with other financial institutions. . . . The exemption will not extend to people in receipt of sickness or unemployment benefits as there can be no reasonable expectation that the recipient will remain on the benefit permanently'; and
- 'people in receipt of any part of a qualifying pension or benefit are exempted from the need to quote a tax file number to an employer'.

The amended proposals were passed into law in December 1988. A number of protections existed to ensure that the TFN scheme was not, and could not become, the general purpose national-identification and personal-data system that the Australia Card scheme had been intended to be. These included the explicit assurances provided by the government and the terminology of the enabling legislation.

A further safeguard was the Privacy Act of 1988, passed at the same time as the TFN legislation. This proclaimed the Information Privacy Principles and applied them to (most of) the Commonwealth public sector, created the office of Privacy Commissioner, and established the TFN Guidelines. These Guidelines expressly stated that the TFN could be used or disclosed only in relation to 'taxation law', and that it was not to be used as the basis for a national identification system. As the ATO brochure of December 1988 stated, 'only the Tax Office can use your number and only for tax purposes'.

The Initial Scope of the Scheme

Nevertheless, the scheme was automatically much broader than was generally understood, in several ways. First, key terms such as 'income', 'assessable income' and 'salary or wages' were to be interpreted,

not in a common-sense manner, but in accordance with statutory definitions. These definitions include a large number of seemingly extraneous matters.

Second, 'taxation law' is a term defined in section 2 of the Taxation Administration Act of 1984 as any Act or regulation 'of which the Commissioner [of Taxation] has the general administration'. Reasonable though this seems, it has the effect that any Act that by administrative arrangement becomes the responsibility of the Taxation Commissioner is deemed to be 'taxation law', whether or not it has anything to do with taxation.

Third, the term 'taxation law' is amendable by any Act of parliament which states that the Act shall be deemed to be 'taxation law' for the purposes of the Taxation Administration Act, whether or not that Act makes an explicit change to the relevant section of the Taxation Administration Act. The scope of taxation law can therefore be readily expanded both by administrative action of the government (i.e. outside the purview of parliament), and by the inclusion in a new Bill of a simple machinery provision that is unlikely to attract careful scrutiny by parliament.

The TFN's scope was automatically expanded merely by parliament enacting the Bills presented to it by the government, in the four areas detailed below.

Unemployment and sickness benefits. In attachments to the original Press Release of May 1988 the government mentioned that unemployment benefits and sickness benefits (USB) — both administered by the Department of Social Security (DSS) — would be included in the TFN scheme, because recipients of these

benefits were 'considered to be employees for tax purposes'. No authority for this was provided, and observers appear to have accepted the statement at face value.

Because of the complexity of the relevant laws, additional legislation was needed to effectively include USB in the TFN scheme. The relevant legislative amendments, passed in late 1989, went much further than the original Act in that they made the quotation of the TFN a precondition for the payment of USB and jobsearch allowance. Until this amendment was passed, the sanctions against failure to provide one's TFN had been restricted to taxation at the marginal rate.

Payments to students. At no stage during the public discussion or parliamentary debates does there appear to have been discussion of the effect of section 221A(1) of the Income Tax Assessment Act on the scope of the TFN scheme. This section deems a number of sources of funds to be 'salary or wages' for taxation purposes. It came as a great surprise to people who had been involved with the issue to discover that the TFN scheme also encompassed a wide variety of payments to tertiary students administered by the Department of Employment, Education and Training (DEET) (e.g. under Austudy), by virtue of various amendments to section 221A that had been enacted between 1985 and 1988.

Higher Education Contribution Scheme. At the same time as it was proposing the TFN enhancements, the government was in the process of introducing the Higher Education Contribution Scheme (HECS). This is a charge levied on tertiary students for each subject in

Panel 1: Assurances of limitation to taxation matters

'The Tax Office will be the only government agency which uses the tax file number for the purposes of identifying and registering its client base.'

'The new measures are designed solely to help reduce tax evasion.'

'The requirement for taxpayers . . . to quote their file number will be limited to the following areas:

- the reporting of income paid by employers . . .;
- the reporting of Government benefits or pensions which constitute salary or wages for taxation purposes — the quotation arrangements will not apply to pensions or benefits where it is presently the practice not to require that tax instalments be deducted, e.g. age and service pensions. Nor will it apply to exempt pensions, e.g. invalid pensions . . .;
- the reporting of interest income paid by financial institutions . . .;
- the reporting of dividend income . . .;
- the reporting of unit trust distribution entitlements.'

Press Release by the Treasurer, No.47 of 25 May 1988.

'No other government or non-government agency will have access to the Tax Office file number registration system, nor will it be able to use an individual's TFN for any registration system of its own.'

The Treasurer's Second Reading Speech to the Taxation Laws Amendment (Tax File Numbers) Bill 1988, 1 September 1988.

'10.26. The Committee recommends that the Taxation Laws Amendment (Tax File Numbers) Bill 1988, if enacted, be strictly limited in its terms, so that it applies only in relation to taxation purposes and those purposes be so framed as to prevent a progressive extension of the ambit of the Bill.'

Senate Standing Committee on Legal and Constitutional Affairs, 'Report on Feasibility of a National ID Scheme: The Tax File Number', October 1988.

which they enrol in a tertiary institution. The scheme is administered by DEET, but is paid by way of additional taxation in years in which the ex-students' taxable income exceeds a threshold.

HECS was originally referred to as 'the graduate tax', but the government dropped the term because it claimed (reasonably enough) that the charge was not a tax but a fee for services: it was to be collected through the taxation system merely as a matter of convenience and economy. Nonetheless, the government drafted the legislation such that the TFN Act and the subsequent Higher Education Funding Act of 1989 established the HECS scheme as 'taxation law', and hence authorised the administering agency to use the TFN.

Child and spouse maintenance payments. The TFN was used also in relation to the collection of child and spouse maintenance payments, a function assigned to the ATO in 1987. Because any Act administered by the ATO is deemed to be 'taxation law', irrespective of its function, the Child Support Agency was automatically authorised to use the TFN. It is noteworthy that the key purpose of this particular use is as a locator service for defaulters.

Extensions to the Scope of the TFN Scheme 1989-91

During 1989-91, use of the TFN was extended in a number of ways.

Additional social-security uses. In the February 1990 Economic Statement, the government announced that a

number of additional classes of people would be required to supply TFNs to DSS by 1 October 1990. The classes were:

- Supporting Parents Benefit recipients;
- Family Allowance Supplement recipients; and
- new applicants for the Family Allowance.

An ATO brochure of December 1988, entitled 'The Facts About Tax File Numbers', had stated that 'only the Tax Office can use your number and only for tax purposes'. But by June 1990, the ATO brochure 'Safeguarding Your Privacy' adopted a very different view, stating that 'tax file numbers are also used to help prevent Social Security fraud', despite the fact that it was not until the following August that enabling legislation was even tabled in the Commonwealth parliament.

Additional benefits-related uses. The Minister for Social Security provided details of yet more uses of the TFN in the Budget Papers of August 1990. The releases referred to the February announcement in relation to three classes of benefits (specified above), and stated that 'tonight's announcement extends the requirement to include the remaining social security payments, such as age and invalid pension, as well as Veterans' Affairs and Student Assistance Act payments together with those under the First Home Owners' Scheme'.

The purpose of the decision was 'to automatically verify income information supplied by clients seeking Government income support payments'. This was already done, but manually, and 'it made sense to cut

Panel 2: People authorised by law to use the TFN

Directly related to taxation (explicit in the original 1988 law):

- the Australian Taxation Office (ATO), to administer taxation laws;
- employers and 'eligible paying authorities' (under the Prescribed Payments Scheme), to assist the ATO in administering tax laws;
- investment and superannuation bodies of all kinds, to assist the ATO in administering tax laws;
- tax agents, solicitors, accountants or anyone else authorised to act on behalf of the person concerned;
- anyone engaged by the above persons to provide services in circumstances in which it is reasonable for them to have access to TFN information.

Legally defined as taxation laws (implicit in the 1988 law):

- the Department of Social Security (DSS), in relation to: unemployment benefits (including jobsearch allowance); and sickness benefits;
- the Department of Employment, Education and Training (DEET):
 - to administer the Higher Education Contribution Scheme (a fee for tertiary education, paid by way of additional tax after graduation); and
 - to administer the Austudy scheme (a benefits scheme for students undertaking education);
- the Child Support Agency within the ATO, to help collect child and spouse maintenance;
- higher-education institutions, in relation to the Higher Education Contribution Scheme, on behalf of DEET;
- anyone engaged by the above to provide services, in circumstances in which it is unreasonable for them to have access to TFN information.

these costs'. This implied that the purpose was not to prevent fraud of any kind, and certainly not tax fraud, but to reduce clerical costs. However, the releases also referred to parallel matching across agencies, using the TFN, to facilitate the detection of 'double-dipping' (the concurrent receipt of two or more mutually incompatible government benefits, most commonly as a result of a failure to notify DSS of a relevant change in circumstances). The Minister was quoted as saying that 'the extent of welfare payment including deliberate fraud had been grossly overestimated' (although by whom and when was not mentioned), but that 'net overpayments last year including those arising from deliberate fraud amounted to [only] about 0.1% of payments made to clients'. It was stated that 'all people will have to provide a tax file number to be eligible for, or continue to receive' any of the benefits referred to. It was also claimed that 'the work will be done in accordance with the Privacy Principles and in consultation with the Privacy Commissioner'.

It is noteworthy that DSS was not a supporter of the Australia Card scheme, which had been promoted mainly by the Health Insurance Commission (HIC). In fact, DSS expressly argued that its identification scheme was sufficient, and that the Australia Card number and register would not assist it materially to improve its fraud prevention, detection and prosecution activities. Between 1985-87 and 1989-90, however, the Department's attitude changed to such an extent that it had become a proponent of extension of the TFN's use far beyond its original scope.

Additions during 1990-91:

- the Department of Social Security (DSS), in relation to all ten or so remaining social-security payments, such as age and invalid pensions, and in relation to parallel matching activities using data extracted from any systems in any of DSS, ATO, DVA, DCS&H, DEET, HIC and the Australian Electoral Office, and possibly also from any other government agency or company whatsoever, under DSS's existing demand powers;
- the Department of Veterans' Affairs (DVA), in relation to all veterans' pensions, including DSS parallel matching activities;
- the Department of Community Services and Health (DCS&H), in relation to the First Home Owners' Scheme, including DSS parallel matching activities; and
- the Department of Employment, Education and Training (DEET), in relation to all student assistance payments, including DSS parallel matching activities.

Data-matching uses. Data matching is a process whereby large sets of personal data records relating to particular individuals are compared in order to identify discrepancies that might require further action (ranging from, for example, failure to claim a legitimate tax deduction, through the provision of apparently inaccurate data to a government agency, to the apparent commission of fraud.) Along with the United States, Australia is a world leader in the application of the technique (Clarke, 1991).

The Budget Papers of August 1990 announced that ATO (Taxation), DEET (Employment, Education and Training), DVA (Veterans' Affairs) and DCS&H (Community Services & Health) were now to provide identity details of all of their clients, including TFNs, to DSS for 'parallel matching'. These agencies were also authorised to receive in return results of the matching process. DSS now provides a hub-service for other agencies, in a manner reminiscent of that in which the HIC was to provide centralised services to a variety of agencies in relation to the Australia Card scheme.

DSS's previous reticence about the efficacy of large-scale or scatter-shot data matching, as had been proposed as part of the Australia Card scheme, has been replaced by enthusiasm for more precisely targeted matches. Indeed, senior executives within the Department appear to have been the initiators of the proposed legislation. Such practices would involve the transfer of a large volume of data about a large number of people, which was collected for mutually unrelated uses (such as receipt of unemployment benefits and receipt of student assistance benefits), without the consent or even the knowledge of the persons concerned, and without checks and balances to ensure either the quality of the data being matched or the reasonableness of decisions made on the basis of matches.

Conclusions

Panel 2 summarises the scope of the TFN scheme, showing the originally explicit and implicit uses, and those that have been subsequently added. The initial scope of the enhanced TFN scheme was greater than was understood at the time by those who took an active part in assessing its impact. This was a result of the sheer complexity of the existing and proposed legislation, aggravated by a failure on the part of the Minister and the public servants who prepared the publicly available documents to disclose all of the legislation's implications.

The TFN has exhibited the characteristic popularly referred to as 'function creep', whereby additional uses accumulate, and change the purpose of the scheme. From being an exclusively taxation scheme, the TFN now applies to:

- any statute administratively moved under the ATO's control; and
- any purpose deemed by statute to be 'taxation law'.

The primary areas in which the scope has been widened so far are:

- the administration of virtually all benefits and pensions;
- the location of defaulters; and
- the matching of personal data from all major client-oriented agencies.

That these extensions were announced progressively during the first 20 months of the scheme's operation demonstrates both the worthlessness of the government's assurances of mid-1988 and the ineffectiveness of the protections built into the original legislation.

Fuller analyses of this and related matters are to be found in Clarke (1990), Graham (1990) and Clarke & Greenleaf (1992).

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HAYEK AWARDED HIGHEST U.S. CIVILIAN HONOUR

Nobel Laureate in Economics Friedrich August von Hayek, a long standing member of the Advisory Council of the Centre for Independent Studies, was presented with the Presidential Medal of Freedom by US President George Bush on November 18, 1991. The highest civilian honour in the United States, its presentation honoured a man who according to reports in the New York Times was 'more than almost anyone else in the 20th century, vindicated by events in Eastern Europe.' Professor Hayek is the author of numerous works which are currently being reproduced in full in 19 volumes as *The Collected Works of F.A. Hayek*. The Centre for Independent Studies is one of a number of organisations worldwide supporting the editing and preparation of the *Collected Works*. Volumes I and III have been published.

Hayek's best known and most popular work is *The Road to Serfdom* published in 1944. In it, he warned the West that socialism — whether German Nazism, Soviet Communism or the 'gentler and kinder' British brand — would inevitably lead to poverty and loss of liberty. Mr Tomas Jezek, now the Czech Minister of Privatisation, who at considerable risk to himself translated the book into Czech said that 'If the ideologists of socialism would single out the one book that ought to be locked up at any price and should be strictly forbidden, its dissemination and lecture carrying the most severe punishment, they would surely point to *The Road to Serfdom*.' In Romania, *The Road to Serfdom* was also translated, and the Romanian Minister of Forecasting Mircea Cosea said that after reading it, he was struck by 'the clarity of demonstration that socialism is inefficient, that individual ownership of private property is essential in creating a system of incentives.'

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