

# Adult Proof of Age Card Bill 2008

## Explanatory Notes

### General Outline

- The Bill makes provision for the issue of the Queensland Adult Proof of Age Card.
- Minor amendments are also made to the *Liquor Act 1992* and the *Tobacco and Other Smoking Products Act 1998*.

This Bill will enable the Minister to replace the current laminated Card 18+ with a new smartcard product, to be known as the Adult Proof of Age Card.

### Short Title

The Short title of the Bill is the Adult Proof of Age Card Bill 2008.

### Policy Objectives of the Legislation

#### Objectives of the Bill

The objective of this Bill is to allow Queensland Transport to issue an Adult Proof of Age Card to people who reside in Queensland and who are 18 years of age or over and may not hold a driver licence or may not wish to use their driver licence as a proof of age credential. The Proof of Age Card, in the form of a smartcard, can be used as evidence of the age and identity of a person.

The Adult Proof of Age Card will eventually replace the Card 18+ currently issued by Queensland Transport.

#### Reasons for the Bill

The Bill introduces a head of power to allow an Adult Proof of Age Card to be issued.

Currently, the Card 18+ benefits those people in the community who have a need for a photo identification document, but who do not currently hold a driver licence, a passport or other trusted photographic identification.

While the Card 18+ has long history of use and acceptance by young people using it as a credential for accessing licensed premises, usage statistics suggest that the Card 18+ is increasingly used by older people who do not hold other forms of photographic identification. This includes, for example, people with medical conditions preventing them from driving, and/or people who have been disqualified from driving. There will be a transition period in which Card 18+ or the new Adult Proof of Card will be issued depending on the installation of smartcard equipment at individual card issuing centres.

The new Adult Proof of Age Card initiative represents the Queensland Government's response to rapidly ageing technology for the issue of the Card 18+. The current laminated card, which is produced by Queensland Transport, is vulnerable to fraud and its use to facilitate identity deceptions is on the increase. The current incidence of identity fraud and other criminal activity using falsely-obtained Card 18+ is unacceptably high, and is one of the main drivers for the Queensland Government's decision to introduce the new Queensland smartcard Adult Proof of Age product.

For the first time Queensland Transport will take and store digital photos and digitised signatures of Queenslanders who apply for an Adult Proof of Age Card. The digital photo will allow the use of facial recognition technology to enable the confirmation of the identity of applicants for new or replacement products. The Queensland Government's *Information Standards IS42* (Information Privacy) and *IS18* (Information Security) will apply to the protection of personal information stored on the smartcard platform.

It is necessary to enact new legislation to address the issues relating to outdated technology (current laminated products), identity fraud and information security. For consistency, where possible, the provisions have been mirrored from the Transport (New Queensland Driver Licensing) Amendment Bill 2008. Specifically, the Bill—

- allows for the collection and storage of digital photos and digitised signatures for the purposes of granting and issuing the Adult Proof of Age Card;
- includes provisions to manage access to biometric data (stored on the department's Image Management System database) and other

information about licence holders stored electronically on the new smartcard;

- contains provisions that manage access to the information stored on the smartchip including information stored by the cardholder;
- creates offences, penalties and sanctions specific to the new smartcard;
- provides for a parliamentary report of access by police to the digital photos; and
- makes amendments to the *Liquor Act 1992* and the *Tobacco and Other Smoking Products Act 1998*, to allow for the new product to be recognised as a proof of age credential.

### **Achievement of Objectives**

The Bill achieves its objectives in relation to Queensland's Information Privacy Principles by—

- ensuring the introduction of a regulated proof of age credential;
- managing the biometric data and other information about the Adult Proof of Age card holder;
- introducing offences, penalties and sanctions specific to the new Adult Proof of Age smartcard;
- introducing an access regime to restrict access to biometric data stored on the database and on the new smartchip;
- incorporating the intent of the recommendations of the Crime and Misconduct Commission's 2005 report on the proposed legislation to ensure that digital photos are treated differently to text based information; and
- establishing a system for the release of information to the Queensland Police Service.

### **Alternatives to the Bill**

The policy objectives require legislation to give ongoing effect.

## **Estimated Cost for Government Implementation**

It is not anticipated that the Queensland Government will face any administrative costs associated with the implementation of the Adult Proof of Age Card scheme as it will be conducted on a cost recovery basis. However, there may be some consequential advertising or publication costs for the Office of Liquor, Gaming and Racing to reflect the name of the new Adult Proof of Age Card in its literature.

## **Consistency with Fundamental Legislative Principles**

The Bill has been drafted with due regard to the Fundamental Legislative Principles as outlined in the *Legislative Standards Act 1992*.

Clause 42 (Evidence from APA register) will allow the chief executive to issue a certificate as evidence of a fact so that a range of basic matters relating to records kept in the APA register may be put in evidence before a court through the certificate, rather than through the calling of witnesses. Evidentiary certificates have the potential to breach the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. The Scrutiny of Legislation Committee has considered evidentiary certificate provisions to be unexceptionable where they relate to matters that are non-contentious and if they are treated only as evidence, that is they are not conclusive of a fact. The provision relates to matters that are non-contentious and does not declare the certificate to be conclusive.

The Bill potentially breaches the right to privacy of an individual because of the retention of photos and signatures. However the legislation contains safeguards that restrict access to photos and signatures and their use to specified purposes. These safeguards include restricting access to digital photos—

- to the person whose facial image is encoded on the photo, or someone else with that person's consent;
- to a police officer performing a function under the Act; and
- to a police officer authorised to access a photo under an access approval order or a post-access approval under the *Police Powers and Responsibility Act 2000*.

The Bill also potentially breaches the right to privacy of an individual when information kept on the register is released to another entity that issues proof of age cards in another Australian jurisdiction. However, this release

can only be made where the purpose is the issue of a proof of age card under a law of that jurisdiction. That is, the person named on the card is seeking a proof age card to be issued in another state. Also, any release of information will be made under an agreement between governments as currently applies to the release of driver licence information.

## **Consultation**

The following departments and agencies were consulted on the development of the Bill—

- Department of the Premier and Cabinet;
- Queensland Treasury (Office of Liquor, Gaming and Racing);
- Queensland Police Service;
- Office of Queensland Parliamentary Counsel; and
- Department of Justice and the Attorney-General.

The Crime and Misconduct Commission has been consulted throughout the development of the New Queensland Driver Licence and the protocols recommended by the Commission for access to driver licensing digital photos have been used for the Adult Proof of Age Card.

## **Outline of provisions**

### **Part 1                      Preliminary**

Clause 1 sets out the Short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be fixed by proclamation.

Clause 3 sets out the object of the proposed Act as allowing the chief executive to issue a card on which information may be stored electronically and that may be used as identification of a person's age. The Act's second

objective is to ensure that a person's identity is established before an adult proof of age card is issued.

Clause 4 provides that certain words and expressions used in the proposed Act are set out in the dictionary.

## **Part 2                      Adult proof of age card**

Clause 5 defines an adult proof of age card as a card on which information may be stored electronically and which contains a unique identifying number and a photo of the person named on the card. The card also states the person's name and date of birth indicating that the person is 18 or more and its expiry date.

Clause 6 declares that an adult proof of age card remains the property of the State.

Clause 7 sets out who is eligible to be issued with a card. A person must ordinarily reside in Queensland and be at least 18 years of age to be eligible for the issue of a card.

Clause 8 provides that an eligible person may apply for a card. The application must be made in the approved form and be accompanied by proof of the applicant's identity and the fee.

Clause 9 allows an existing cardholder to apply by electronic communication, when the cardholders proof of age card is about to expire. There must also be at least 5 years before the end of the shelf life for the digital photo and digitised signature or the most recent extension of the shelf life. The chief executive must have notified the cardholder that an electronic application can be made. The standard shelf life is 10 years (see Dictionary).

Clause 10 allows the chief executive to request additional information from an applicant to decide an application. This may be needed, for example, if an applicant fails the one-to-many digital photo matching procedure or if an applicant's evidence of identity documents are incomplete or need to be clarified. By implementing robust evidence of identity processes to obtain an adult proof of age card the department offers a high level of product integrity.

Clause 11 provides that an application must be considered and that it must be either granted or refused. Before granting an application, the chief executive needs to be satisfied about the applicant's identity and that the applicant has met the eligibility requirements including that the person ordinarily resides in Queensland. Also the application cannot be granted if the fee has not been paid. Where an electronic application from a previous cardholder has been made, the chief executive must be satisfied that the applicant holds a valid card, that there is at least 5 years before the end of the shelf life for the digital photo and digitised signature or the most recent extension of the shelf life. If the chief executive refuses an application, the applicant must be given an information notice for the decision which states the reasons for the decision and information about the review and appeal process.

Clause 12 authorises the chief executive to issue a card if an application is granted. Cards will be issued by post.

Clause 13 provides that a card expires 10 years after its issue unless it is sooner cancelled.

Clause 14 provides that a card may be cancelled if it was issued because of a document or representation that was false or misleading.

Clause 15 sets out the procedure for cancelling a card. It requires that the chief executive give a notice to a cardholder stating the grounds as well as the facts and circumstances which form the basis for the grounds of proposal to cancel a card. The notice must also invite the cardholder to show cause in writing why the card should not be cancelled. A period of at least 28 days must be allowed for the cardholder to respond to the notice. The chief executive is required to consider any representations made by the cardholder within the time allowed.

Clause 16 allows a cardholder to surrender a card.

Clause 17 sets out the circumstances in which the chief executive may require the card to be replaced and the procedures to be followed. The chief executive may issue a notice to the person if the information stated on the Adult Proof of Age Card is incorrect because of an error made by the chief executive. The cardholder must return the card. On receipt of the card a new card showing the correct details must be issued.

Clause 18 sets out the procedure for a cardholder to make application for a replacement card if the information on the card is incorrect or the card is damaged, lost or stolen. The application must be made in the approved

form and be accompanied by the prescribed fee and by the card if it is damaged. The chief executive must issue a replacement card.

## **Part 3                      Offences**

Clause 19 provides that where a card is damaged, lost or stolen that the holder must notify the chief executive. An offence arises if a person does not give the required notice. Where a replacement card under this section is issued and the original card is found or returned to the cardholder, the cardholder will be liable for an offence if the original card is not returned to the chief executive. The purpose is to prevent a person holding two or more cards.

Clause 20 declares that Part 3 Division 2 does not apply to persons carrying out a function, or exercising a power under the Act or another Act.

Clause 21 creates offences of wilfully damaging or destroying a card.

Clause 22 creates offences for making false or misleading representations.

Clause 23 creates offences for wrongful dealing with documents that are used to obtain a card.

Clause 24 creates offences concerned with giving or lending a card to another person and the offence of unlawful possession of a card.

Clause 25 creates offences relating to the transmission or possession of a document that resembles an adult proof of age card.

## **Part 4                      Register of adult proof of age**

Clause 26 requires the chief executive to maintain a register retaining details of each cardholder along with other information also deemed relevant under the Act.

Clause 27 sets out the form of the register and allows the register to be kept as part of another register kept by the chief executive.

Clause 28 provides that the chief executive may amend the register to correct, include or update information.

Clause 29 imposes obligations on the chief executive to ensure the integrity of information on the card register and obligations on a holder to respond to written notice concerning inaccurate, incomplete or misleading information.

Clause 30 authorises the chief executive to release or give electronic access to information about a person on the register. An application for the release of information may be made by—

- the person or someone else with the person's written consent;
- the police commissioner;
- a person who issues proof of age cards under a law about proof of age cards in another Australian jurisdiction;
- an entity to whom a person has produced the card as evidence of the person's identity.

The release of a person's digital photo or digitised signature is not authorised by this section.

## **Part 5                      Biometric data and other information relating to adult proof of age card holders**

Clause 31 requires an applicant for a card to allow the chief executive to take and keep a digital photo and digitised signature and sets out the other ways in which the digital photo and digitised signature can be obtained for their use on a card.

Clause 32 sets out the purposes for which digital photos and digitised signatures can be used. This includes—

- verifying the person's identity for the issuing of a card;
- the reproduction of the person's photo and signature on a card;
- verifying the person's identity for the security features of a smartcard, such as setting a PIN; and

- for the investigation or prosecution of an offence.

Clause 33 imposes restrictions on the release of digital photos. The chief executive will give a cardholder access to a photo if the person's facial image is encoded on the digital photo and the person's connection to the photo is established by facial recognition technology or some other evidence of the person's identity. A police officer must be granted access for exercising a power under the Act or where the access is authorised under the *Police Powers and Responsibilities Act 2000*. Access means obtaining a copy of the digital photo including by electronic communication.

Clause 34 sets out the obligations of the chief executive to ensure that digital photos and digitised signatures are deleted from any register kept by the chief executive when their retention period has ended.

Clause 35 provides for a cardholder's emergency contact information to be stored electronically on a card.

Clause 36 restricts access to information stored electronically on a card to—

- the cardholder or someone with the cardholder's consent;
- a police officer authorised under the *Police Powers and Responsibilities Act 2000*; and
- a person authorised under another Act. However this person must not access the emergency contact information.

Access includes viewing or taking a copy of the information.

Clause 37 provides that the retention period for a digital photo or digitised signature is 30 years. However the section provides for different periods in particular circumstances and the method for working out the retention period.

Clause 38 imposes obligations on the chief executive to provide an annual report regarding access by police officers under section 33 to digital photos on the card register allowed. A report will be tabled by the Minister that shows what access the police have had to digital photos kept on the register.

## **Part 6                      Review and appeal**

Clause 39 provides for the review by the chief executive of decisions to cancel a card or to refuse to issue a card using the processes under division 2 of part 5 of the *Transport Planning and Coordination Act 1994*.

Clause 40 provides a mechanism for a person to appeal against a reviewed decision to a magistrate. Division 3 of part 5 of the *Transport Planning and Coordination Act 1994* applies to the appeal.

## **Part 7                      Legal proceedings**

Clause 41 declares that the Part applies to proceedings under the Act.

Clause 42 provides the manner in which the chief executive can supply evidence from the card register.

Clause 43 allows a presumption of validity for the chief executive's appointment and authority in proceedings unless a party requires proof.

Clause 44 declares that a signature purporting to be the chief executive's signature is evidence of the signature it purports to be.

Clause 45 provides for the proceedings for offence to be taken summarily under the *Justices Act 1886*.

## **Part 8                      Miscellaneous**

Clause 46 imposes obligations on persons involved directly or indirectly in the administration of the Act to keep information about individuals confidential. This includes restrictions on recording, disclosing, using and giving access to information, including digital photo and digitised signature.

Clause 47 gives protection against civil liability in connection with the exercise of functions under the Act. Civil liability may attach to the State.

Clause 48 authorises the chief executive to approve forms.

Clause 49 creates a general regulation-making power but restricts a regulation from prescribing a penalty for an offence of more than 20 penalty units or the prescribing of a fee for a replacement card where the card needs to be replaced because of an error made by the department. This section allows a regulation to be made for a PIN to be used as a security measure for information stored electronically on a card and for the verification of a person's identity for security purposes for the card (for example, a shared secret).

## **Part 9                      Amendment of other Acts**

Clause 50 declares that Division 1 amends the *Liquor Act 1992*.

Clause 51 replaces the provision dealing with acceptable evidence of age with a revised provision that includes reference to an adult proof of age card under the *Adult Proof of Age Card Act 2008*.

Clause 52 amends s.158(3) to insert a reference to an adult proof of age card.

Clause 53 amends s.159(1)(b) to insert a reference to an adult proof of age card.

Clause 54 declares that Division 2 amends the *Tobacco and Other Smoking Products Act 1998*.

Clause 55 extends the definition of proof of age card to include an adult proof of age card.

### **Schedule Dictionary**

Defines terms such as *damaged, digital photo, electronic communication, emergency contact information, prescribed Act, retention period, shelf life, take and valid proof of age card*.