

Transport for NSW

Report on the Review of the NSW Photo Card Act 2005

June 2013

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Transport
for NSW

CONTENTS

EXECUTIVE SUMMARY	3
RECOMMENDATIONS	3
OVERVIEW OF THE REVIEW	4
THE REVIEW PROCESS	5
RECOMMENDATIONS	5
OTHER MATTERS WHICH REQUIRE ATTENTION	7
CONCLUSION	7
APPENDIX 1	8

Acknowledgements:

Comments and suggestions from members of public, government agencies and other organisations received during this review are much appreciated.

Executive summary

1. This is a report on a review of the *Photo Card Act 2005* (the Act) pursuant to section 39 of the Act. The Act, authorising the Roads and Maritime Services (RMS) (formerly known as Roads and Traffic Authority) to introduce a voluntary photo card for NSW residents over the age of 16 who do not hold a driver licence, received assent on 18 May 2005.
2. Section 39 of the Act requires the Minister to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Minister is to report to Parliament within 12 months following a period of five years from the date of assent.
3. A discussion paper on the Review of the *Photo Card Act 2005* was published on RMS website for public comments. Ten submissions were received during the public consultation. They confirmed that the Photo Card scheme meets the community's needs, the Act is working well and the continued existence of the Act is essential. Amendment to sections 18(1)(c) and 19(1)(c) is required to update references to the *Crimes Act 1900*. Two other amendments are also recommended to restrict the power of delegation under section 31(1) and the definition of 'authorised officer' at section 3(1). These amendments will ensure that any future engagement of private sector under the Act will need appropriate Government approval. Regulatory amendments are also proposed to include a specific provision to cover the issue of replacement Photo Cards. The proposed amendments are consistent with the main objectives of the Act.
4. The report includes recommendations relevant to the Act. The Transport for NSW will respond separately to organisations and persons who have provided comments and suggestions that are outside the scope of this review.

Recommendations

5. It is recommended that
 - 1) The *Photo Card Act 2005* should remain in force.
 - 2) Amendment to sections 18(1)(c) and 19(1)(c) of the Act should be made to include updated references to the *Crimes Act 1900*.
 - 3) Amendment to section 31(1) of the Act should be made to restrict a person to whom the Authority can delegate its functions to public officials and agencies.
 - 4) Amendment to the definition of 'authorised officer' under section 3(1) should be made to restrict it to either a police officer or a public official prescribed by the regulations.
 - 5) Amendment to the Photo Card Regulation 2005 should be made to include a specific provision to cover the issue of replacement Photo Cards.
 - 6) Business and community awareness of the scheme should be increased.

Overview of the review

Purpose of the Act

6. The major purpose of the *Photo Card Act 2005* is to authorise RMS to introduce a NSW Photo Card for NSW residents who do not hold a driver licence. The Act received assent on 18 May 2005 and RMS started issuing Photo Card on 14 December 2005.

Need for the review

7. It is compulsory that all new NSW Acts must be reviewed five years after their date of assent to ensure that the Act is still relevant and meets the community's needs. The review is to be completed within 12 months after the end of the period of five years. The review provision is in section 39 of the Act:
 - The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
 - The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
 - A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.
8. There was a delay in completing this review due to competing priorities, including the introduction of Photo Card concessions to pensioners and war widows in April 2010, amendments to the definition of eligible pensioners in relation to certain eligible war veterans and war widowers in January 2011, and the introduction of free Photo Cards for seniors and carers in November 2012. This delay does not have any impact on the operations of the *Photo Card Act 2005*.

Background information

9. The NSW Photo Card is a voluntary photo identification card to replace the Proof of Age card. The Photo Card is valid for five years. RMS sends card holders a reminder letter about six weeks before its expiry. Card holders can apply for a new card upon expiry of their previous card. A fee, which is set on a cost-recovery basis, is charged for the issue of the card. Between December 2005 and April 2012, 476,884 Photo Cards were issued.
10. In April 2010, pensioner concession for Photo Cards was introduced after a regulation amendment was made. In January 2011 further amendments to the definition of eligible pensioners in the Photo Card Regulation 2005 were made to reflect changes made for driver licences and vehicle registration. Since the introduction of pensioner concession for Photo Cards in April 2010, the monthly number of pensioner applicants has increased by 117%.

The review process

11. A discussion paper on the review of the *Photo Card Act 2005* was prepared by RMS for public comment. The paper was published on RMS website and a Government Notice to invite comments and submissions from the public on the review of the Act was advertised on two major local newspapers on 8 September 2011. The discussion paper was also posted to major stakeholder groups and relevant government departments for comments.
12. The three-week consultation period ended on 28 September 2011. Ten submissions were received. Suggestions and comments that are outside the scope of this review are not included in this report. The Transport for NSW will respond separately to organisations and persons who have submitted the comments.
13. Appendix 1 shows a summary of all comments relevant to this review received during the consultation, including those not supported and the reasons why they are not supported, such as the suggestion to amend section 11(4) to give a Photo Card holder an opportunity to show cause as to why their Photo Card should not be cancelled and the suggestion to review the amount of other information collected under section 14(3)(c).
14. Some suggestions warrant further investigations before a decision can be made, such as broadening the acceptance of Photo Cards, expanding NSW Police Force access to stored photographs taken for a Photo Card, looking at possible efficiency gains between the NSW Seniors Card and the Photo Card schemes and enabling Photo Cards to be verified online via the National Document Verification Service.

Recommendations

Recommendation 1:

15. It is recommended that the *Photo Card Act 2005* should remain in force. All comments received agreed that the Photo Card scheme meets the community needs. The continued existence of the Act is necessary.

Recommendation 2:

16. Amendments to sections 18(1)(c) and 19(1)(c) of the Act should be made to include updated references of relevant sections in the *Crimes Act 1900*.
17. Section 18(1)(c) stipulates that the Authority may use and keep a Photo Card photograph 'in connection with an investigation relating to or leading to criminal proceedings against a person under any provision of this Act or under a provision of Division 2 or 3 of Part 5 (Forgery and false instrument offences) of the *Crimes Act 1900* in relation to a Photo Card'. There are similar provisions in section 19(1)(c) in relation to the release of a Photo Card photograph.
18. Various sections of the *Crimes Act 1900* dealing with fraud and identity offences have been replaced by Part 4AA and Part 4AB. The NSW Police Force has commented that corresponding changes to the *Photo Card Act 2005* are necessary to update the references to the *Crimes Act 1900*. This would also include an updated brief description of Division 2 or 3 of Part 5 to read 'Forgery and Offences related to forgery' in sections 18(1)(c) and 19(1)(c).

Recommendation 3:

19. Amendment to section 31(1) of the Act should be made to restrict a person to whom the Authority can delegate its functions to public officials and agencies.
20. Section 31(1) of the Act authorises RMS to delegate its functions under this Act to '(a) any member of staff of the Authority, or (b) any person, or any class of persons, authorised for the purposes of this section by the regulations'.
21. The Department of Attorney General and Justice has commented that since RMS functions include administering a database of sensitive personal information, this power should not be capable of delegation to the private sector. If in the future there is a desire to involve the private sector in the administration of the scheme, this should be considered by the Government.

Recommendation 4:

22. Amendment to the definition of 'authorised officer' under section 3(1) should be made to restrict it to either a police officer or a public official prescribed by the regulations.
23. Authorised officers can issue penalty notices if it appears to the officer that a person has committed an offence against the Act under section 34. The term 'authorised officer' is defined in section 3(1) as '(a) a police officer, or (b) a person who is appointed for the time being by the Authority as an authorised officer for the purposes of the provision in which the expression is used, or (c) a person (or a person belonging to a class or description of persons) prescribed by the regulations'.
24. The Department of Attorney General and Justice has commented that the current definition is sufficiently broad to allow the appointment of private sector employees as authorised officers. Generally, enforcement powers, such as the issue of penalty notices, should only be exercised by public officials.

Recommendation 5:

25. Amendment to the Photo Card Regulation 2005 should be made to include a specific provision to cover the issue of replacement Photo Cards.
26. RMS issues replacement Photo Cards for various reasons, such as lost, stolen, damaged and change of personal details. Section 12 of the Act stipulates that 'the person to whom a Photo Card has been issued must notify the Authority as soon as practicable if the Photo Card is damaged, stolen, lost or destroyed during the period for which the Photo Card is valid.' Section 18(1)(b) states that a photo taken or provided in relation to applications for the issue of a Photo Card may be used to determine whether or not to issue or replace a Photo Card.
27. A fee for a replacement Photo Card is prescribed in clause 4 of the Photo Card Regulation 2005. However, at present, there is no specific provision in the Act or its Regulation about a replacement Photo Card. There is no proposal to make any changes to RMS policy on the replacement of Photo Cards.

Recommendation 6:

28. Business and community awareness of the scheme should be increased. Since it was introduced in December 2005, there has been no further publicity campaign to promote the acceptance of Photo Cards as a form of photo identification. Many transactions require photo identification these days. Improving the acceptance of Photo Cards will make it easier for people who do not have a driver licence to access various government and social services. A communications campaign will be undertaken to raise the awareness of Photo Cards in the community.

Other matters which require attention

29. There was a Government election commitment to deliver free photo identification for NSW Seniors Card holders. Photo Cards are already issued and replaced free of charge to holders of a pensioner concession card and people with a disability support pension (who automatically receive a pensioner concession card).
30. In addition, NSW Carers Australia proposed in its submission that Photo Card concessions should be expanded to carers in NSW. Carers provide unpaid care and support to family members or friends who have a disability or medical condition, or an adult who is frail aged. Free photo identification would be invaluable in supporting carers in both their caring roles and their social inclusion.
31. People who receive the Carer Payment from Centrelink already hold a Pensioner Concession Card and therefore are exempt from fees under current legislation for the issuing of a Photo Card.
32. People who receive only the Carer Allowance from Centrelink are not eligible pensioners under the existing definition at clause 4A of the Photo Card Regulation. They do not have a Pensioner Concession card and are not entitled to any Photo Card concessions. It is estimated that 25,137 carers in NSW do not currently hold a driver licence and would be eligible for a free Photo Card under the proposal.
33. Cabinet approved the issue of new and replacement Photo Cards to carers free of charge. Regulation amendments and systems changes were made to allow RMS to issue free Photo Cards to NSW Seniors Card holders and Carer Allowance recipients from 26 November 2012.

Conclusion

34. It is confirmed from the comments received during this review that the Photo Card scheme meets the community's needs, the Act is working well and its continued existence is essential. The proposed amendments to the Act and its Regulation are consistent with the main objectives of the Act.

Appendix 1

Summary of comments received during the public consultation and Transport for NSW responses.

-----The End-----

APPENDIX 1

Summary of comments received during the public consultation and Transport for NSW responses

Item	Comments	Responses and recommendations
1	The continued existence of the Act is necessary.	Supported.
2	Update sections 18(1)(c) and 19(1)(c) of the Act to reflect updated references to the <i>Crimes Act 1900</i> .	Supported. Various sections of the <i>Crimes Act 1900</i> dealing with fraud and identity offences have been replaced by Part 4AA and Part 4AB. Corresponding changes to the <i>Photo Card Act 2005</i> are necessary to reflect the changes to the <i>Crimes Act 1900</i> . This would also include an updated brief description of Division 2 or 3 of Part 5 to read 'Forgery and Offences related to forgery' in sections 18(1)(c) and 19(1)(c).
3	Amend 31(1) of the Act to restrict a person to whom the Authority can delegate its functions to public officials and agencies.	Supported. Section 31(1) of the Act authorises RMS to delegate its functions under this Act to any persons authorised by the regulations. RMS functions include administering a database of sensitive personal information. This power should not be capable of delegation to the private sector without seeking Government approval.
4	Amend the definition of 'authorised officer' to either a police officer or a public official prescribed by the regulations.	Supported. Current definition of 'authorised officers' is sufficiently broad to allow the appointment of private sector employees as authorised officers to issue penalty notices. These enforcement powers should only be exercised by public officials.
5	Amend the Regulation to include provision for the issuing of replacement cards.	Supported. A fee for a replacement Photo Card is prescribed in clause 4 of the Photo Card Regulation 2005. However, at present, there is no specific provision in the Act or its Regulation about a replacement Photo Card. There is no proposal to make any changes to the current policy on the replacement of Photo Cards.
6	Improve business and community awareness of the scheme.	Supported and separate action will be taken.
7	Issue and replace NSW Photo Card free of charge to carers who	Supported and implemented. Carers provide unpaid care and support to family members or friends who have a disability or medical condition, or an adult who

Item	Comments	Responses and recommendations
	receive a Carer Allowance.	<p>is frail aged. Free photo identification would be invaluable in supporting carers in both their caring roles and their social inclusion.</p> <p>Regulation amendments and systems changes have been made to allow RMS to issue free Photo Cards to NSW Seniors Card holders and Carer Allowance recipients from 26 November 2012.</p>
8	Consider the need of interstate and overseas visitors for photo identification while they are residing in NSW temporarily.	<p>Supported. No change required.</p> <p>Existing policy already allows people from interstate or overseas who reside in NSW temporarily to apply for a NSW Photo Card as long as they can provide proof of their current NSW residential address.</p>
9	Consider accepting the Photo Card as an acceptable proof of identity (POI) for learner licences.	<p>Supported. No change required.</p> <p>The comment is made in reference to an old policy which was no longer in force. A current Photo Card or one that has expired within the last 2 years is a standalone POI. A Photo Card that has expired less than 5 years is a primary POI.</p>
10	Include NSW Photo Card as an identification document for the 100 point verification procedure prescribed in the Commonwealth Financial Transaction Reports Regulations 1990.	<p>Noted for further consideration.</p> <p>NSW Photo Card is widely accepted as a form of identification in the community. It is a decision for individual business or organisation as to whether to accept a NSW Photo Card as a proof of identity document.</p> <p>The Commonwealth Government has advised previously that the formats of photo cards issued by states and territories are not standardised and therefore should not be included on the 100 points list.</p> <p>Austrroads has completed a report on a national best practice framework which recommends mandatory and optional data elements on Photo Cards, including layout design, issuance processes and security features. It is anticipated that standardising data elements across all Photo Cards will enable wider acceptance of these cards in the community as an alternative identity credential once adopted by states and territories.</p> <p>Transport for NSW proposes to make a fresh approach with the Commonwealth seeking recognition of the NSW Photo Card in the 100 point identification list, given that the issuing process of NSW Photo Cards closely aligns with the proposed national best practice framework flowing from the Austrroads project.</p>
11	Expand NSW Police Force access to photographs of Photo Card holders.	<p>Noted for further consideration.</p> <p>Section 19 of the Act deals with, among other things, release of photographs to the NSW Police Force in accordance with a protocol approved by the Privacy Commissioner.</p>

Item	Comments	Responses and recommendations
		<p>The NSW Police Force currently has access to driver licence photographs in accordance with privacy protocols approved by the NSW Privacy Commissioner.</p> <p>Transport for NSW will consider this request to expand NSW Police access to Photo Card photographs in consultation with Police, the NSW Privacy Commissioner and RMS.</p>
12	<p>Consider opportunities for efficiency gains between the NSW Seniors Card and the Photo Card schemes.</p>	<p>Noted for further consideration.</p> <p>NSW Photo Card is a photo identification card issued by RMS to people who reside in NSW and aged at least 16, including temporary residents regardless of their work status.</p> <p>NSW Seniors Card is only issued to permanent NSW residents aged 60 or over and work no more than 20 hours a week. NSW Seniors Card holders are entitled to certain concessions offered by private enterprises and public organisations. The NSW Seniors Card scheme is administered by the Department of Family and Community Services, Ageing Disability & Home Care.</p> <p>The Department of Family and Community Services has been advised to prepare a proposal for consideration by the Government. Transport for NSW would provide inputs as appropriate in consultation with RMS.</p>
13	<p>Include Photo Card in the National Document Verification Service.</p>	<p>Noted for further consideration.</p> <p>The Document Verification Service (DVS) is an online service that allows agencies to verify certain types of Australia documents, such as passports and citizenship documents.</p> <p>RMS, as a DVS subscriber, verifies identity documents with other government agencies and also provides verification service on NSW driver licences for other DVS subscribers.</p> <p>Driver licences in Australia are issued in accordance with a National Driver Licensing Scheme. At present, there is no such national scheme for Photo Cards issued in each state and territory. Photo cards issued by states and territories have different formats and are currently not in scope under the DVS.</p> <p>Strategically there is value in Photo Cards being verified via the DVS and this may be considered in the future. It is anticipated that this initiative will be discussed by the Austroads Registration and Licensing Policy Working Group in the medium term. TfNSW will work with the Policy Working Group on this matter in consultation with RMS.</p>
14	<p>Report a lost or stolen identity document to the Police for a replacement document to be reissued upon completion of a</p>	<p>Not supported.</p> <p>Photo Card replacement application forms already include a declaration that will allow RMS to prosecute people who obtained a card by means of false declarations.</p>

Item	Comments	Responses and recommendations
	legally enforceable declaration to the issuing authority.	
15	Issue Photo Cards to people who have difficulties meeting the 100 points of identification in the community.	<p>Not supported.</p> <p>RMS does not use the 100 points system for identification and has its own stringent POI requirements. It aims to maintain the security and integrity of its database and minimise opportunities for identity and other fraud in the community associated with fraudulently obtained photocards and the creation of multiple identities. The POI requirements are broad enough for existing Photo Card holders and prospective applicants.</p>
16	Amend section 11(4) to give opportunity to a Photo Card holder to show cause why their card should not be cancelled.	<p>Not supported.</p> <p>RMS may cancel a Photo Card in some cases without giving the card holder advance notice if the card is issued in error or incorrect in any respect, or if the card holder is not eligible. If this happens, before a decision is made to cancel the Photo Card, RMS will make sure that the customer is not solely relying on their Photo Card as their only identification document and therefore should not be significantly impacted as a result of the cancellation.</p> <p>In other cases, RMS will write to the customer requesting the customer to attend to the matter on a specific date. It is only if the customer fails to do so, that the Photo Card will be cancelled.</p> <p>Section 13 of the Act provides that 'a person aggrieved by a decision of the Authority to refuse to issue or to cancel a Photo Card may apply to the Administrative Decisions Tribunal for a review of the decision'.</p> <p>Existing provisions under the Act and RMS cancellation process are sufficient and meet the procedural fairness requirements.</p>
17	Give reasons and notice to the holder of a card which RMS has seized and then decided to retain it on the grounds set out in section 29(3) of the Act.	<p>Not supported.</p> <p>Section 29(3) authorises RMS to retain possession of and deal with a Photo Card or thing forwarded to the Authority in such manner as the Authority thinks fit if satisfied that the Photo Card or thing:</p> <ul style="list-style-type: none"> (a) is not the Photo Card of the person from whom it was seized or contains information that is false or misleading as to that person's age or identity, or (b) has been forged or fraudulently altered or altered in a way that is calculated to deceive, or obtained by a false statement or misrepresentation or other dishonest means, or (c) is being used in contravention of any provision of this or any other Act or law. <p>A Photo Card may be seized by authorised officers. If this happens, the card will be forwarded to RMS for return to the card</p>

Item	Comments	Responses and recommendations
		<p>holder or retention by RMS. If retained by RMS, the cards will be destroyed securely.</p> <p>Given the nature of the grounds in section 29(3), RMS does not consider it practicable to write to the person whose Photo Card or thing is seized under this provision.</p> <p>A person whose Photo Card is lost or stolen can apply for a replacement card online or at a motor registry. The current arrangements for seized fraudulent cards have no adverse impacts on the legitimate card holder.</p>
18	<p>Consider to repeal subsections 14(3)(b) and (c) unless there is strong justification (e.g. identification purposes) to retain them.</p>	<p>Not supported.</p> <p>Section 14(3) of the Act authorises that RMS to record in the Register other information for:</p> <ul style="list-style-type: none"> (a) the purposes of this Act or the regulations, or (b) the purposes of another Act, or (c) other purposes, as the Authority considers appropriate. <p>Information collected by RMS for other purposes is about organ donation and residency status.</p> <p>Organ donation consent is optional and a separate declaration is contained in the application form. Following a Government decision, RMS has closed its organ donation register in November 2012.</p> <p>Residency status is recorded in the RMS database when establishing a new customer and is necessary for the issue of driver licences to temporary overseas visitors. Because the same computer system is used, the process also applies to Photo Card applicants. There is no indicator about residency status on the Photo Card itself and it does not affect the eligibility for a Photo Card. There is no proposal to make any changes to the computer system in this regard.</p>
19	<p>Clarify the wording of section 18(1)(e) and (f).</p>	<p>Not supported.</p> <p>The sections are clear and should remain unchanged.</p> <p>Section 18(1)(e) allows RMS to keep and use Photo Card photographs for the purposes under Part 5 of the Road Transport (Driver Licensing) Act 1998.</p> <p>Section 18(1)(f) allows RMS to keep and use Photo Card photographs for the purposes under Division 3 (Security and protection of photographs) of Part 4A of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p> <p>These are references to different legislation and the provisions in these Acts mirror each other following careful considerations.</p>