The potential misuse of a national identity database is — of course — a major concern that has exercised many people. These concerns are hardly assuaged by the extensive powers of the Home Secretary to provide information from the register to a range of agencies, including the security services, the police, the tax and customs authorities, and other government departments. This trading in personal information is to take place without the knowledge and consent of the individual to whom it relates. There is also a power in cl 22 for the Home Secretary to extend by resolution (which must be approved by both Houses of Parliament) the people to whom information may be passed without the consent of the individual to whom it relates.

Which brings us to the identity cards themselves, and to the concern that they will be used as instruments of control and harassment. This was a major issue when identity cards were in place just after the Second World War. According to the High Court in 1951 it was said to be 'obvious' that the police 'as a matter of routine', could 'demand the production of national registration identity cards', for example 'whenever they stop or interrogate a motorist' for 'whatever reason'. The current Bill gives false assurances that this will not happen under the new regime, with cl 18(1) stating that it will be 'unlawful in cases not falling within subsection (2)' for any person to 'impose a requirement on an individual to produce [an ID] card'.

But this is Newspeak: the prohibition in cl 18(1) is swallowed by cl 18(2). Even when ID cards are not compulsory, individuals will be required to show them as a condition of access to public services (such as a visit to the doctor) thereby providing a cynical measure of coercion in a supposedly voluntary regime. And when ID cards do become compulsory (as they surely will), their production will lawfully be demanded by unspecified persons, no doubt including police officers while exercising stop and search powers under terrorism and other legislation. How long before the police formally request the random power to require the production of ID cards, given that one of the statutory purposes of registration and the issuing of cards is the 'prevention or detection of crime'?

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WORKPLACE LAWS

An ethical dilemma

MICHAEL RAWLING ponders what Howard's proposed IR laws mean for the idealistic lawyer in a firm servicing employers.

When I graduated in law, I took a job with a large law firm. It was the only job offer I had received and I justified it on the basis that the firm would be a good training ground. I would stay no longer than it took to become a competent lawyer and move on to more ethical pursuits. How naïve and misguided I was to think I would not become implicated in the darker side of capitalist relations.

When I began work, although feeling like a fish out of water in corporate culture, I was comforted by just how many individual lawyers working for large law firms quietly held views that diverged from the firm's prevailing ethic of pandering to the needs of large corporate clients above all other considerations. These lawyers justified their involvement in advising large corporations by pointing out that their advice would often not be all that clients wanted to hear about how to facilitate business activities. Rather, it invariably included advice pointing out the need to comply with intricate regulatory regimes that would be a handbrake on getting business done.

In the meantime, my own thinking about large law firm practice had significantly altered. I had joined the labour law department and was finding out a lot about the grubby end of large law firm practice. The group routinely gave advice on sackings of sick, injured, inefficient or just downright meddlesome workers. However, the talented young lawyers around me still thought that their practices were by and large justifiable in terms of their personal ethical beliefs. According to them, they were not implicated in the exploitation of employees, rather in the main their job was to point out the complexities of Australian labour laws to international clients. Five years ago this was only partly self-delusion. However, the imminent changes to workplace laws are about to destroy the grounds for this justification for being an employer's lawyer in Australia.

The final death knell to my large firm career came with my involvement in advising a company wanting to sack a worker, who in my opinion had an arguable case that she was suffering discrimination on the basis of gender and race. A friend emailed me at this stage and simply said it was time for me to get out. I did not have an exit plan; I had no idea what I would do next. But it was all I needed. Before the end of the month I had left my job. I was unemployed but very relieved to not have to conclude the piece of advice on unlawful termination that to me, at the time, presented insurmountable personal ethical problems.

It took a long time to find something else to do. However, five years later I look back and am most thankful for that email from a friend brave enough to not sit on the fence but who advised that I quit. Today there are many young, intelligent lawyers who have personal ethical dilemmas in their jobs as lawyers in large firms or as in-house counsel. There are card-carrying members of the ALP who work for employer groups and tax lawyers who lie awake in bed at night wondering about whether the money they have saved a client in one single transaction could have been better spent on establishing a new school or hospital.

As the screws tighten on the corporate world with increased competitive pressures of globalisation, leaner companies wanting to increase profit margins by reducing costs pass on such pressures to the legal advisers of those corporations. For lawyers with even moderate ethical commitment, especially those involved in workplace relations, there is less and less room to justify their actions on the basis they are mainly advising clients to comply with complex laws. The Workplace Relations Amendment (Workchoices) Bill 2005 represents an attack on trade unions and will be to the detriment of working people. It also represents the corporatisation of labour law.[1] Fairness in labour laws will be debased or erased and employer prerogatives will be radically extended. In such circumstances we may face the demise of protective labour law in Australia. There will then be no advice left that an employer's lawyer can give that will suggest that labour laws will restrain employer conduct. When asked by a client how to deal with their workforce arrangements, the employer's lawyer may still attempt to provide a nuanced answer but there will be no hiding that employers will be able to do whatever they like. If the Howard government has its way, employers will simply be able to put profit before employee welfare with the knowledge that in all probability this will be within the scope of Australian laws.

If you have ever considered quitting your job as an employer's lawyer, now is a good time to do it — or at least do it before the new workplace laws are effective. Start making your exit plan immediately by finding something else to do. This may involve downsizing your personal wealth commitments. Or it may involve trying to get into legal practice other than an employer practice such as a plaintiff, public interest or legal aid practice. Alternatively, you could utilise your talents to write that screenplay, thesis or novel you have always wanted to write. As Clive Hamilton tells us, all that such a downshift involves is 'an open recognition that personal contentment is more important than money'.[2] The workers of Australia are not counting on you to quit, but on themselves and the labour movement to put up the best fight possible in the circumstances. However, in the long run you won't regret quitting and your conscience will be eased with the knowledge that you are not one of the people facilitating the establishment of workplace practices that are based on an ideologically loaded and regressive package of labour laws.

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Postscript

As it turns out, the Workplace Relations Amendment (Workchoices) Bill 2005 is a massive re-regulation of work relations along neo-conservative lines. This will place employer lawyers at the front line of advising business how to implement new laws that are designed to undermine the strength of unions and decent wages and conditions.

REFERENCES

1. Ron McCallum, 'The Australian Constitution and the Shaping of Our Federal and State Labour Laws' (2005) 10 *Deakin Law Review* 41-50, 48-50.

2. Clive Hamilton, *Growth Fetish* (2003) xvi.

*Thanks to Joellen Riley for commenting on an earlier draft of this brief. Any errors are my own.