

Conceptualising Identity

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Abstract

*'Just think about it. Our whole world is just sitting there on the computer. It's in the computer. Everything. Your DMV records, your Social Security, your credit cards, medical files. All right there. A little electronic shadow on each and every one of us, just begging for someone to screw with it. And you know what, they did it to me. You know what; they are going to do it to you. I am not Ruth Marx. They invented her and put her on the computer with my thumbprint.'*¹

This paper examines the legal nature of identity and identification in the context of transactions, considering recent developments in law and practice in the United Kingdom and Australia. 'Transaction' is used in its widest sense, to describe any dealing, including any communication, whether in person (i.e. face to face) or using remote communication (such as a telephone, the internet or a computer network), for which an individual is required by corporate, industry or government policy or procedure or by legislation, to identify himself or herself. Identity and identification have not previously been analysed in this context, from legal perspective.

The composition and legal function of identity is considered, having regard to legislative changes and developments in technology and commercial practice in the United Kingdom and Australia. In particular, the concept of identity under the United Kingdom Identity Cards Act 2005 c 15 (UK) is compared to the concept of identity developing under Australian law. Identity under Australian law is considered in relation to the identity theft provisions in Part 5A of the Criminal Law Consolidation Act 1935 (SA), the only legislation in Australia specifically designed to address identity theft, and the new federal Anti-Money Laundering/ Counter-Terrorism Financing Act 2006 (Cth) enacted in December 2006.

The distinction between identity and identification of an individual in this context is also considered, along with the distinctions between 'identifying information', 'personal information' and 'personal identification information' under United Kingdom and Australian legislation. The legal nature and role of requirements for identification for transactional purposes are analysed and discussed having regard to recent legislation. In particular, the legal meaning, legal function and practical implications of authentication of identity and verification of identity under the Identity Cards Act are compared to the requirements for verification and re-verification of identity under Australian legislation, especially under the Financial Transaction Reports Act 1988 (Cth) and Regulations and under the new Anti-Money Laundering /Counter-Terrorism Financing Act and the Draft Rules.

Overall, the paper considers whether the United Kingdom and Australian legislation is merely establishing an evidentiary standard for identification of individuals for transactions, or whether identity and identification are emerging as distinct, new legal concepts. A framework for conceptualising identity and identification in this context, from a legal perspective, is presented.

¹ *'The Net'*, 1995 Columbia Pictures Industries Inc. Dialogue of the character Angela Bennett played by the actress Sandra Bullock. After she is arrested as Ruth Marx, she tries to explain to her court-appointed lawyer that she is not Ruth Marx and that she is the victim of identity theft following an incident in which her purse containing her passport and credit cards were stolen while she was on vacation in Mexico.