

28 February 2007

Committee Secretary
Senate Finance and Public Administration Committee
Australian Senate
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Access Card - Inquiry into *Human Services (Enhanced Service Delivery) Bill 2007*

The NSW Council for Civil Liberties (NSWCCL) makes the submission set out below.

Background information

1. NSWCCCL has been involved in the development of the Access Card with the Department of Human Services since mid-2005. NSWCCCL, together with other community organisations, participated a number of consultation forums over 2005 and 2006. These forums were a valuable opportunity to consider and contribute to the issues of principle involved in developing a replacement for the Medicare card and other cards used to access government services.
2. In mid 2006, NSWCCCL also met with and made detailed submissions to the Consumer and Privacy Taskforce considering the Access Card project. Again, this was a valuable opportunity to contribute to the development of this important project.
3. Through these meetings a number of important matters of principle were established, including:
 - (a) the Access Card should be a means of facilitating dealings with government, but possessing an Access Card should not be a pre-requisite for dealing with government;
 - (b) the Access Card should not be capable of use by third parties as an ID card, which can be achieved by ensuring that identifying information does not appear on the face of the card;

- (c) there should be legislation to adequately protect against misuse of the Access Card;
 - (d) there should be legislation to adequately regulate function creep.
4. While NSWCCCL is appreciative of the opportunity to make submissions to this committee, NSWCCCL is disappointed that the Bill fails to reflect the sensible conclusions reached through the community consultation process.

General propositions

- 5. NSWCCCL does not oppose the introduction of a replacement to the Medicare Card and other cards used to access government services. A technologically sophisticated replacement is possible while adhering to the principles in paragraph 3 above.
- 6. NSWCCCL opposes the Bill in its present form primarily because it is in effect legislating for an identity card, and has other unacceptable attributes mentioned below.

Detailed submissions

Population Registration

- 7. The first, and primary, unacceptable aspect of the legislation is that it is legislation for the undertaking of an unwarranted and intrusive population data collection and registration project. The introduction of the Access Card is to be the cloak for collecting and collating in a database key personal data of virtually every individual in Australia. In particular, every applicant for registration must submit a photograph and signature, which will be recorded in the database. This information will be stored in the database linked to other key information, such as name, ID number and address.
- 8. There will be many people in the community who will simply object to the registration scheme on principle. These will particularly include people who have come from (and the descendants of people who have come from) countries where a population registration scheme was a key element in oppression and human rights abuse. Such countries include Nazi Germany, the USSR and South Africa. The reasoning to be applied by such people will not be limited to consideration of statements of present intention by the government in relation to the Access Card – it will include consideration of possible misuse of the Access Card scheme by future governments.
- 9. This consideration underlies why it is critical that possession of the Access Card not be a prerequisite to accessing government services to which there is otherwise an entitlement.

Recommendation 1 – Possession of the Access Card should not be a pre-requisite to accessing government services.

Recommendation 2 – The Access Card scheme should not involve collecting photographs and signatures from the population.

The Access Card is an ID Card

10. The Bill states that it is not an objective of the Bill to establish an identity card. Yet, that is its plain effect.
11. The Access Card will be readily capable of use as an identity card because it will carry on its face 5 pieces of identity information:
 - a unique ID number;
 - a name;
 - a date of birth;
 - a photograph; and
 - a signature.

Plainly, from these pieces of information, anyone can verify that the holder of the card is the owner of the card, and who they are.
12. The requests from the Australian Bankers Association to permit its members to require production of an Access Card as part of their KYC (know-your-customer) procedures underlines how the Access Card is in reality an ID card.
13. An ID card is an undesirable thing in a free society that promotes civil liberties. It unreasonably provides to the State a tool with a range of potentially oppressive uses.
14. At the very least, this Bill puts in place the critical pieces of infrastructure for the introduction of an ID card. Once the Access Card is in place, it will be a small step for future governments to turn it into an ID card.
15. This objectionable aspect of the Access Card is easily remedied. The ID number, photograph and signature need not appear on the face of the card. Recording them on a secure area of the chip, accessible only by authorised persons, would resolve this aspect of the proposal.
16. KPMG, in its report in 2006, confirmed that it is not necessary for identifying information such as photograph to be on the surface of the Access Card.

Recommendation 3: The ID number, photograph, signature and date of birth should not appear on the surface of the Access Card

The Database

17. The creation of a single database holding key personal identifying material is conceptually fundamentally flawed. It creates a resource of such value, that unauthorised access and misuse will be a constant temptation.
18. By analogy, would anyone expect an owner of a large stockpile of gold to adopt a storage system which involved all of the gold being kept in one place? Basic risk

management strategies lead to a system of distribution, such that unauthorised access to one part of the stockpile does not put at risk the whole.

19. In addition, there is a risk of the registration of false identities.
20. The potential dangers of false identities and unauthorised access and misuse of the database are reflected in the number of criminal offences that are created as part of the scheme, and the serious penalties that attach to many of the offences. It can be inferred that the penalties have a heavy element of deterrence associated with them.
21. The likelihood is that the Access Card will result in an increase in identity fraud issues, and not a reduction.
22. Institutions such as banks with an enormous vested interest in database security have been unable to eliminate entirely frauds conducted using unauthorised access to databases. There is no reason to expect that the government will be able to do better than private enterprise.
23. Part of the solution is to reduce the amount of data stored in a single database – for example, there should be no need to store the photograph, signature (if they are to be collected at all) and benefit profile on the central database. It would be sufficient for this information to be stored on the chip in the card alone.
24. The Bill is strangely short on provisions dealing with unauthorised access to the database. Given the special nature of the database, special penalties should apply over and above ordinary criminal penalties for unauthorised access to computers.

Recommendation 4: Reduce the amount of data stored in the register (database).

Recommendation 5: There should be special sanctions for unlawful access to the register (database).

Colour Association

25. The Bill provides for possible optional colour associations for the Access Card. For example, it is envisaged that people entitled to DVA benefits may have the option of being issued a “Gold Card”.
26. While this may seem like a minor matter, and adopting a coloured will be optional for eligible people, this is an insidious and unsatisfactory part of the proposal.
27. Firstly, the underlying assumption is that the Access Card is a token that can, and should, say something about who the holder is. This implies use in a wide range of circumstances.
28. Secondly, the government seeks to confer status on certain card holders. The choice of the colour gold for DVA benefit holders is a statement about the government’s view of their status, in comparison to everyone else.

29. Thirdly, this will enable businesses to discriminate between Access Card holders. The Bill does not prevent business from offering special concessions to holders of a gold Access Card. More insidiously, if there ever were a time in the future (such as there have been in the past) where DVA benefit holders were not generally venerated in the community, there is the possibility of negative discrimination.

Recommendation 6: That there be no colour discrimination on the Access Card.

Function Creep and Oversight

30. The scale and significance of the Access Card project is such that maintaining public confidence in it is a necessary and ongoing consideration. Oversight of the Access Card should not be left to the Minister for Human Services.
31. The Bill provides maximum flexibility for change in the functionality of the Access Card. This is dangerous. An aspect of the legislation should be to provide a transparent process for changes in functionality that ultimately involves Parliamentary approval.
32. There should be an independent commission established with power to receive and investigate complaints concerning the Access Card, consider and report on any proposals for changes to the functionality of the Card.

Recommendation 7. That an independent commission be established to deal with complaints about the Access Card, and to report on proposals to change functionality.

Ownership

33. The provisions of the Bill conferring ownership of the Card on the benefit holder are bizarre. The owner has no rights to dispose of or otherwise deal with his or her property, a restriction entirely inconsistent with the ordinary notion of ownership. The owner remains fully responsible for the consequences of losing possession of his property.
34. The consequences of losing an Access Card are not clear. The Bill does not provide a right to receive a replacement. Thus, people can lose their entitlement to government services and benefits because they have lost their Access Card.
35. NSWCCCL is aware of cases where passports have been refused to people on the grounds that they have lost a number of previous passports. While security or other discretionary grounds may come into play with passports, there is no room for such concepts in the case of access to government benefits.

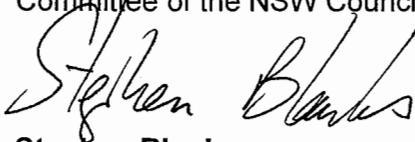
Recommendation 8: That the Bill provide that people who are otherwise entitled to government services or benefits are entitled to be issued with an Access Card.

Law Enforcement Access to the Database

36. There will undoubtedly be demand from law enforcement and security agencies for access to the database. The Bill does not anticipate or seek to regulate this. This is an issue that must be faced up to as part of developing the scheme to introduce the Access Card.

Recommendation 9: That the Bill contain the proposed regime regulating access to the Register by law enforcement and other agencies.

Signed for and on behalf of the
Committee of the NSW Council for Civil Liberties



Stephen Blanks