

1. Executive Summary

The NSW Council for Civil Liberties remains opposed to this exposure draft of the Human Services (Enhanced Service Delivery) Bill, because it fails to address the fundamental flaws previously discussed in NSWCCL submissions.

The fundamental flaws include:

- the population registration aspect of the scheme, which is unnecessary and inherently objectionable;
- the potential for function creep, which is not adequately addressed in the exposure draft;
- potential for privacy breaches;
- too permissive a regime for access by law enforcement and security agencies;
- misleading provisions concerning card ownership

These flaws lead inevitably to the conclusion that this exposure draft of the Bill is for a national identity card, and not just a government services access card.

2. Register Problems

2.1 Increased identity theft resulting from a centralised database

- As expressed in our previous submission, the CCL opposes any introduction of a compulsory centralised database containing a register of personal information of nearly all Australians. The unwarranted collection and harbouring of potentially intrusive personal data risks increased identity theft and government surveillance.
- First, the Bill calls for the submission of a photograph, signature, and address linked with the individual's access card number.¹ This creates a centralised database that contains nearly every Australian's personal information that could potentially access anything from individual's private records to financial accounts.
- Part 1 Division 4 states that a partial objective of this act is to reduce fraud on the Commonwealth.² While the Register may in fact help the Commonwealth reduce

¹ See Clause 71 of *Human Services (Enhanced Service Delivery) Bill 2007* (Cth)

² See Part 1 Division 4 of *Human Services (Enhanced Service Delivery) Bill 2007* (Cth)

the abuse of benefits, any fraud reduction the Commonwealth obtains will not outweigh the increased propensity of fraud that is bound to affect Australian's after the passage of this bill.

- This is due in part to the use of a centralised database. As no database is safe from security breaches, the wealth of information contained within the Access Card register will attract a number of criminals because of the limitless potential for abuse.
- As other governments, banks, and large corporations are unable to fully protect databases of this sort from infiltration, there is no reason to think that Australia will do any better. Since this wealth of information will likely be a target of criminals, employing safeguards is essential to mitigate this chance.
- The United Kingdom recently determined that such a centralised database was ill advised because of the potential for abuse. They instead opted to compartmentalise essential data into three separate databases.³ Australia should follow safeguards such as this because they mitigate the amount of damage that any security breach can cause.
- While the bill tries to alleviate concerns of potential identity theft by requiring the database in Australia, this safeguard, alone, is not enough. This is because under the current proposed scheme, the database is essential to all of the involved government services. This implies that the Internet will facilitate the transfer of Australian's personal information to fill the register's database. Transferring information of this sort increases the potential for the release of personal identification information, thus subjecting Australian's to increased identity theft.
- As shown by the low identity theft rates in the European Union, the only proven way to combat fraud from identity theft is by limiting flow of information and the amount of information stored.⁴
- The potential for identity theft resulting from the transfer of information is a grave danger. This is because Clause 101 affords agencies the means to have automatic transfers of information.⁵ This means that one agency can automatically transfer personal information to another so long as the person has had any sort of record with the other agency. Enabling agencies to do this without any oversight will increase the propensity for security breaches.
- To combat the risk of identity theft, the bill must limit the information stored within the database by preventing the storage of individual's digitalized signature and photo identification. This information is unneeded to meet the objectives of the Access Card and the elimination of these objects from the register will mitigate the potential of identity theft resulting from security breaches in the register. Furthermore, the bill must prevent the automatic transfer of information absent individual request.

³ See Text of Identity Cards Bill 2006 available at <http://www.publications.parliament.uk/pa/ld200506/ldbills/071/2006071.htm>

⁴ See Nicole M. Buba, *Waging War Against Identity Theft: Should the United States Borrow from the European Union's Battalion?*, 23 Suffolk Transnat'l L. Rev. 633, 648 (2000)

⁵ See Clause 101(2) of *Human Services (Enhanced Service Delivery) Bill 2007* (Cth)

2.2 Privacy Invasions Resulting from Register

- This Register creates the potential for unwanted infringements on Australian's right to privacy. As members of a democratic nation, Australian's expect their government to limit infringing on their personal life. Creating a register that contains each Australian's every interaction with the government creates an easy method for Commonwealth agencies to perform electronic surveillance on all Australians. This potential surveillance is unwanted and has over two decades of criticism against it.
- Furthermore, Clauses 109 and 111 allow law enforcement and intelligent agencies to obtain this information with little oversight.⁶ The precaution against abuse afforded to the public is a compulsory report delivered per annum detailing requests for Register information. This per annum report does not have adequate oversight curtailing potential abuse, nor does it inform affected Australian's of their privacy breaches. This creates nearly limitless and unsupervised power for Commonwealth agencies to obtain surveillance on Australians.
- Clause 110 is also troublesome.⁷ This clause allows the Australian Crime Commissioner to obtain data on individuals to help in "the performance of [their] functions." This again requires only a senior officers' approval to obtain any information about any individual. Allowing an individual to have such broad discretion in obtaining Australian's private information will lead to illegal surveillance and data harbouring. It is also unclear why the Crime Commissioner would ever need information relating to individuals medical records or health care benefits. Affording this unnecessary provision infringes upon the fundamental right of privacy without realizing any legitimate benefit.
- Although "Big Brother" regrettably is a hit show in Australia, this does not mean that Australian's want Commonwealth's agencies acting as their "Big Brother." Granting surveillance powers of this type is a sign of a totalitarian government like Nazi Germany or the former USSR. People from these former governments will be hesitant and apprehensive to take part in a scheme that was essential to oppression and human rights abuse. A UK poll reinforces this hesitance resulting from increased surveillance because over 3 percent of those polled would rather have long prison sentences than take part in such large-scale surveillance.⁸
- These powers are more worrisome when viewed through the lens of increased CCTV. It's perceived that biometric photos will permit police officers to easily match individuals held on CCTV and have vast surveillance powers over the population. Although other governments have similar photo banks, Australia is one of the few that is proposing such detailed photos.⁹ The only foreseeable purpose of this is to use the matching technology. Since government use of this matching technology is not detailed in the bill, there is no need for biometric images, and this provision should be dropped.

⁶ See Clause 109-11 of *Human Services (Enhanced Service Delivery) Bill 2007* (Cth)

⁷ See Clause 110 of *Human Services (Enhanced Service Delivery) Bill 2007* (Cth)

⁸ See YouGov / Daily Telegraph Survey Results 28th-30th November, available at http://www.yougov.com/archives/pdf/TEL060101024_4.pdf

⁹ See Graham Greenleaf, *Australia's proposed ID Card: Still quacking like a duck* [2007] UNSWLRS 1 (19 January 2007)

- It is essential to eliminate, or at least reduce, the ease for information transfer to agencies outside the scope of this legislation. At the very least, further oversight and informing the affected individuals are necessary to prevent overly intrusive invasions of privacy.

3. Access Card is a National Identification Card

- The bill continually emphasizes that this card is not a national identification card. The Commonwealth defines a national identification card as:¹⁰
 - “A national identity card system would include the aspects of its being compulsory, producible on demand by certain authorities, a requirement for people to carry it at all times, its linkage with a unique identifying number and the fact that it is the sole form of identification recognised by Government authorities”
- However, this definition is too stringent of a definition, and most national identity cards do not meet it.¹¹ Even the previously submitted “Australia Card” does not meet this standard. This implies that the Access Card may in fact be a national identity card veiled under a different name.
- The card contains all aspects of information generally found in an identification card, namely¹²:
 - a unique ID number
 - a name
 - a date of birth
 - a photograph, and
 - a signature
- The inclusion of all of these elements allows viewers of the card to ascertain who the owner is. This facet, combined with the fact that it is necessary for essential government services implies that this is a national identification card.
- Graham Greenleaf, a Professor of law at UNSW, recently did a comparison between the previously proposed Australia Card and the Access Card.¹³ He determined that in most regards, the Access Card is not different in scope than the Australia Card. This is because both cards were not compulsory by law, but were still practically compulsory because of their effects due to non-enrolment (refusal to produce the Australia Card resulted in taxation at the highest rate).
- Furthermore, the Commonwealth admitted that it is likely that every Australian, will sometime need an Access card. If every citizen will need to have the card, it is indistinguishable from a National Identification Card. As a democracy’s success is reliant upon transparent legislation, it is wrong for the Commonwealth to disguise the implementation of a national id card with marketing ploys such as “access.”

¹⁰ See *id.* citing (Discussion Paper (Taskforce, 2006a))

¹¹ See *id.*

¹² See Clause 71 of *Human Services (Enhanced Service Delivery) Bill 2007* (Cth)

¹³ Australia's proposed ID Card: Still quacking like a duck [2007] UNSWLRS 1 (19 January 2007)

- Even if the Access Card is not a national identity card, it can easily transform into one. Part 9 affords the Minister, with Parliamentary approval, power to add further uses for the card.¹⁴ The bill should explicitly limit the cards usage to those contained within the bill.
- As the stated objective of this bill is to **not** create a “national identification card,” the card must be altered to meet this goal. Eliminating the photograph, signature, ID number, and date of birth from the front of the access card will prevent the Access Card from serving as a national identification card. This information is easily accessible, for all necessary Commonwealth functions, through the SmartCard.

5. General problems with access card number

- One troubling aspect of the creation of the Access Card is the use of a single identification number for all government services. While CCL recognises that it is more efficient to use one number, safeguards need to prevent this number from use as a form of identification.
- This is because the reliance on a single identification number vastly increases the propensity of fraud resulting from identity theft. The United States reliance on a Social Security Number as a form of identity contributes to their high rates of fraud from identity theft.¹⁵ Preventing the Access Card number from turning into a form of identity is essential reducing the spread of identity theft.
- Therefore, it is important that the Bill limit the number’s use to those currently contained within the bill. This, combined with removing the ID number from the face of the card, will prevent industry and individuals from relying on the number as a personal identification number.

6. Potential limitless use

- Future function creep remains a major concern. There is no attempt to allay that concern in the exposure draft. For example, the Bill could mandate that the technological implementation of the card not have any capacity to handle functions not mandated by the legislation. A failure to include such assurances is strongly suggestive that it is the intention to permit future governments to increase the functionality of the Access Card.
- Although the general population is opposed to the use of a national identification card, private enterprise is in favour of it. This is shown by the Australian Bankers Association request to use the Access Card as part of their Know Your Customer plan. As the goal of the Access Card is to not become a national identification card, steps must be taken to achieve this goal.
- Currently, Clause 80 specifically states that the individuals are free to use the access card for any legitimate application.¹⁶ This creates the potential for citizens developing a reliance on the card, essentially transforming it’s use from a government services card to a national identification card.

¹⁴ See Part 9, of *Human Services (Enhanced Service Delivery) Bill 2007* (Cth)

¹⁵ See Jim Kouri, *Social Security Cards: De Facto National Identification*, American Chronicle, March 9, 2005 Available at <http://www.americanchronicle.com/articles/viewArticle.asp?articleID=3911>

¹⁶ See Clause 80 of *Human Services (Enhanced Service Delivery) Bill 2007* (Cth)

- Clauses 131 and 146 unsuccessfully attempt to mitigate this potential by criminalising private parties from requiring this form of identification.¹⁷ However, this is insufficient because businesses can easily require qualifications that are narrow enough to only include the Access Card.
- This potential limitless use start is statutorily contained within the bill. Clause x, which allows businesses to use the card for proof of concessions is, at the very least, a step toward the Access Card endless use.¹⁸ Eliminating this provision would discourage this practice rather than encourage it.
- The only way to ensure that the Access Card does not creep into a national identification card is to remove the photograph, signature, ID number, and date of birth from the card.

7. Problems with different card types

- Clause 71 allows the card to vary colours based upon the individual's benefit entitlements.¹⁹ An example given is that people with DVA benefits may opt to receive a "gold" or "white" card.
- This clause is unwelcomed provision in the bill for many reasons. The largest problem is the underlying assumption that this card's use as a national identity card. The fact that different colours implies that individuals should receive different benefits shows implies use in a wide range of circumstances.
- The different colour schemes show preferential treatment by the government (namely that DVA recipients are a higher class than others). Colour coating citizens reflects that the Commonwealth's view of their status compared to everyone else.
- Furthermore, this will allow businesses to discriminate between Access Card holders. The bill does not prevent distinguishing between different card holders when granting concessions. This power could potentially be used in the future to discriminate against members of the armed services.

8. "Ownership" issues

- Clause 78 confers ownership rights of the card to the cardholder. It's unclear what this provision does.²⁰ Property rights usually allow an individual to sell, destroy, and use an item as they choose. This bill does not allow for any of the normal entitlements of ownership and therefore should not be labelled as conferring these rights.

¹⁷ See id.

¹⁸ See id.

¹⁹ See id.

²⁰ See id.