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The Committee Secretary
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Via Committee Website

Human Services Amendment (Photographic Identification and Fraud Prevention) Bill 2019

This submission responds to the invitation by the Senate Community Affairs Legislation Committee for comment on the *Human Services Amendment (Photographic Identification and Fraud Prevention) Bill 2019* (Cth) as part of the Committee's inquiry into that Bill.

The submission is made by the Australian Privacy Foundation, the nation's preeminent civil society body concerned with privacy. The Foundation is apolitical. It draws on the expertise of lawyers, clinicians, public/private administration analysts, information technology specialists and researchers.

A simplistic solution to a complex problem

The Bill represents a misplaced faith in photographic information on identity cards, in this instance the Medicare card, as a mechanism for the prevention of fraud and other identity abuses.

Senator Hanson has repeatedly advocated the mandatory inclusion of photographs, sometimes with a biometric feature, on a multi-purpose national identity card and on sector-specific identity cards such as the Medicare card that are used by many Australians in interaction with public/private sector identities.

It is obvious that very little, if any, thought has gone into a wide range of issues associated with the implementation of the proposal, and in particular the potential risks and limits on the effectiveness of the proposal.

Section 41B of the proposed amended bill will purportedly "ensure that the identity and eligibility of anyone issued with a Medicare card is established before it is issued".

Regrettably the section does not give any guidance about how this or any other aspect of the scheme is to be put into effect, and whether it is an advance on the existing regime.

As with such proposals, the problems that the system will create with respect to identifying and photographing most of the population have not been explored or costed. The aborted Human Services Access Card of 2007, which also included a photograph, was estimated at over \$1 billion, with the majority of the costs being identity verification and the taking of photographs. After years of detailed assessment, it was abandoned before the 2007 election.

The lack of estimates regarding ongoing support and maintenance costs here mean that this initiative has significant financial and other, as yet unknown, consequences which have not been properly examined. In a project as big as this, and one with such sensitive social and political implications, this neglect of preparation and analysis is dangerous.

There is no evidence that Senator Hanson's approach is the most effective or efficient way of achieving the Senator's objectives. Alternatives exist and may be better suited to delivering the required outcomes with fewer risks and threats to data protection, privacy and personal information security.

The proposal will not solve ID crime

There is little reason to believe that inclusion of photographs will significantly reduce identity offences. It is regrettable that neither the Explanatory Memorandum nor Reading Speeches accompanying the Bill engage with actual practice. Offering rhetoric about supposed harms and the size of the health system is not the same as providing substantive data about the incidence of those harms, their severity and the scope for harm reduction in a real world environment.

The proposal will instead facilitate ID crime

There is substantial reason to believe that merely incorporating a photograph will foster identity crime, given that technology for 'faking' cards is readily available and that, in practice, clinicians/support staff are typically busy and have neither the expertise nor forensic training to determine whether a card is genuine. A photo ID card will instead serve as a misleading proof of identity in a range of interactions, given that all adult Australians and many visitors are recurrently asked to "produce ID" as proof of identity.

In essence, requiring photographic identification on Medicare cards will **not** meaningfully "mitigate against fraudulent use by someone other than the person to whom it is allocated", and is instead likely to facilitate the commission of identity offences within and beyond the health system.

The proposal is not necessary

The Foundation notes that the national government has a major and longstanding investment in systems for the interrogation of health and other welfare databases to detect fraudulent behaviour by service providers such as clinicians, third parties and recipients of services. The existence of those systems, and their constant iteration and refinement, raises questions about whether the proposed amendments are necessary.

The Foundation further notes that fraud against the Commonwealth is already a criminal offence, indeed an offence that the Commonwealth actively prosecutes and for which it gains convictions. There is no basis to conclude that the proposal is necessary, nor to assess what if any difference it may make in practice to fraud control efforts, and thus whether the many risks and costs are proportionate.

The Bill is defective

From a legal drafting and administration perspective the Bill is defective. The proposed Section 41A requires that a card must include "Medicare card information", but does not specify the nature of that information, which is not necessarily an image of the bearer.

The Foundation cautions against an apparent belief that simply placing a photo on a card will solve a range of problems. It notes the large volume of official reports and independent studies regarding the difficulties experienced by the Commonwealth in establishing and maintaining biometric identity schemes, some of which (such as the Aviation and Maritime Security Identification Card schemes) have been readily subverted, and others of which have experienced substantial delays, cost over-runs and cancellations.

Senator Hanson has given no indication of whether she envisages that every health service provider will have networked access to a population-scale biometric database – photos of everyone who has a Medicare or other service card – as the basis for identity verification.

Creating a networked photographic image of every Australian adult is repugnant. So is networked access by the hundreds of thousands of people who work in the health sector. Networked access, if indeed intended by Senator Hanson (given the disquieting lack of clarity and detail in her proposal), is an invitation to pervasive data breaches that are inadequately prevented by data custodians and inadequately addressed by the under-resourced Office of the Australian Information Commissioner. It is also at odds with the Senator's recurrent warnings about 'Big Brother'.

It is also worth noting again that biometric identifiers have an extra flaw for those subjected to them, beyond other forms of identity authentication, namely that if and when they are hacked or compromised (and the prospect of such breaches is increasingly unavoidable) the biometric credential cannot be revoked – the risk of identity theft and other abuses is projected onto the person for life. It is concerning to see no discussion of this issue, given the potential lifelong consequences.

The Bill should not be endorsed

The Foundation suggests that the Committee notes the disquiet of civil society and Australians at large regarding both:

- a poorly conceived legislative proposal, and
- the ongoing erosion of privacy through biometric or other schemes that are disproportionately risky and costly, based on the flawed notion that bureaucratic convenience (and the interests of technology solution providers) are more important than the freedoms of citizens.

To go down the path of such an ill thought-through initiative is highly risky.

If the government is keen to pursue such an approach, a comprehensive study of all the issues should be undertaken. The government should also endeavour to confirm and obtain the acceptance by the Australian people of a de facto National Identity Card, something that they have consistently declined to approve over the years, most recently in the failed Access Card proposal.

If you have any questions please do not hesitate to contact Bernard Robertson-Dunn

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