

**SENATE COMMITTEE ON FINANCE AND PUBLIC
ADMINISTRATION**

**INQUIRY INTO HUMAN SERVICES (ENHANCED
SERVICES DELIVERY) BILL 2007
ACCESS CARD**

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SUMMARY

The introduction of the Access Card, while purportedly intended for the streamlining of various health-related services and not intended to fill the role of a national identification card, does provide a framework in which the Federal Government could develop a national ID card.

INTRODUCTION

The Access Card, in the form proposed by the Member for Longman, is pitched at streamlining existing processes of the various health services and at significantly reducing the number of fraudulent claims of those services. Neither of these goals are unworthy of a responsible government, but the framework being established to facilitate these goals could also be utilised or expanded to incorporate currently unintended services or tasks.

As it is easier to modify existing legislation, possibly over a long period of time, than to pass completely new legislation; it is important to assess this legislation not only with regards to the current intentions for it, but also its potential evolution.

LEGISLATIVE FRAMEWORK

The current scope of proposed legislation outlines a central authentication point (the Register) for verification of identification, limited circumstances by which it can be utilised and penalties for unauthorised use or access.

The details of the requirements of effective Proof of Identity (POI) for registration on the Register do not appear to have been finalised; except that guidelines based on the Attorney-General's National Identity Security Strategy (NISS) are to be used. While the Register and accompanying Access Card are intended for the use of the provision of health and social services, the NISS is also being developed as part of a wider range of national identification concerns, including matters related to the Document Verification Service (DVS) and counter-terrorism initiatives.

The legislation presented to Parliament defines which type of authorised officers may access the Register and the select circumstances by which the Access Card may be requested of a person. It does not, for example, clearly state that this restriction is limited, for example, to only public servants.

Only the explanatory memorandum indicates this is due to the definition of authorised personnel being wider than indicated solely by the legislation. The explanatory memorandum indicates that employees of corporations which aid the provision of relevant services, such as those which have obtained a tendered government contract to provide services, may also access the Register or request the presentation of the Access Card. This is just one of many aspects of the Bill which may have been overlooked by the general public.

The legislation differentiates between authorised access and unauthorised access. With much of the latter being addressed solely through specifications of the penalties for obtaining or attempting to obtain unauthorised access, either of the Access Card or the Register itself. There is no clear indication within the legislation of what constitutes authorised access, or the methods by which such authorisation may be granted in the future.

The definitions for authorised access or authorised personnel appear to be couched in suitably vague language as to be readily expandable to expediently incorporate a widening of that access. Neither is there an indication of whether such an expansion of authorisation could only be necessitated by an expansion of the services offered by the government. This in turn indicates that authorisation to access the data held in the Register or to view a person's Access Card may be granted by either expanding the definition of authorised personnel or by increasing the range of available services for which the Register can be used.

There is no indication whether authorised access will include access by police and other security personnel as part of existing security procedures, such as running a background check on an individual. Certain questions pertaining to this remain unasked.

For example, would applicants for employment in the public service be required to sign a waiver authorising access to the Register as part of any currently required background checks? Or would checks against information held in the Register be incorporated into existing procedures for background checks and, if so, would that vary according to the nature of the check being performed (e.g. the differences between a background check performed by a State or Territory police service, as opposed to one performed by a Federal security service)?

As the focus of the current intended use of the Access Card is to streamline the provisioning of services, it is likely that there will be an argument made in the future to expand the list of services which may utilise the Register. Beginning with other Federally provided services and possibly including services provided by the States and Territories.

Any service currently provided, at either a State or Federal level, which requires a claimant or applicant to provide POI first is one which could potentially benefit from the streamlined processes granted by the introduction of the Access Card. As a result arguments will be made, on the same grounds as the current arguments for establishing the Register and Access Card, for the system to be expanded to include these additional services.

Consequently there is the potential for the services utilising the Register to be gradually expanded over a period of time. Beginning with obtaining health and social services, but possibly growing to

include any or all of the following:

1. Enrollment in a University, TAFE or other educational institution.
2. Issuing of motor vehicle licenses (e.g. driver's license, motorcycle license, truck driver's license, pilot's license, etc.).
3. Issuing of other types of licenses (e.g. primary producers, firearms, pyrotechnic, etc.).
4. Issuing of an Australian Business Number (ABN), particularly for Sole Traders.
5. Other services not listed here.

For each service added to those able to utilise the Register there would be a corresponding increase in the number and type of personnel authorised to access information it contains or to request the presentation of a person's Access Card.

The provisions and penalties in the legislation for unauthorised access of either data in the Register or viewing an Access Card would remain as is. As the legislation is fairly non-specific as to who would currently qualify as authorised to access the information and as the authorisation of additional personnel can be readily expanded, as outlined above, there is no need to diminish the penalties for unauthorised access.

Maintaining these penalties provides the Government with both a means of securing their monopoly on how the Register is to be used and also a method of distracting the populace with apparent safeguards.

TECHNICAL IMPLEMENTATION

The technical aspects of creating the Register or Access Cards has not been fully described. As yet what information is available, about either these aspects or whatever specifications such implementation is required to meet, is limited.

The legislation refers to “secure smartcard” technology, but does not define what level of security will be required or how this security is to be maintained with regards to future technological advancement.

Only a brief statement in response to questions from Senator Stott-Despoja even loosely addresses these concerns. This response states that the system is to be certified by the Defense Signals Directorate (DSD), but not stating what level of certification the system will be required to achieve. It also states that the system will be continuously monitored and logs analysed for unauthorised access, but does not state what level of access to records will be granted to those auditing the system in order to perform their tasks.

Either the Federal Government or the DSD need clarify the following points:

1. The level of security of the Register systems, along with the DSD certification.
2. Whether the certification process, and any ongoing certification requirements, grants the DSD access to the data contained within the Register.
3. Whether the ongoing auditing of the Register systems will be performed by DSD personnel.

Furthermore, as the DSD is a military organisation, will any information obtained regarding the Register or its contents be shared with other Australian military or intelligence organisations?

PRACTICAL AND POLITICAL CONSIDERATIONS

The Member for Longman has repeatedly stated that registration for and use of the Access Card will not be mandatory. He does, however, sidestep the fact that in order to obtain any services to which the Register is linked possession of the Card will be a requirement. Meaning that being on the Register may well be technically and legally voluntary, for most citizens and permanent residents it will be a practical requirement of life.

Only those who can afford to bypass these services can realistically consider it voluntary. Effectively only those people who can afford health insurance without the 30% rebate presently provided, or can afford any health services entirely out of their own pocket, including any legal aspects of such, could truly consider the Register and Access Card to be voluntary.

Should the legislative framework be expanded in the future to include other services not related directly to health, as outlined above, then even these wealthier members of society may find the practicality of opting out of the Register significantly diminished.

The Member for Longman has also resorted to the “if you're not with us, you're against us” argument in his introduction of the Bill to the House of Representatives. His closing remarks clearly indicating that opposition to the Bill can only be a minority opinion driven by a “blinkered view of the world.” Rather than help make his case, this attitude is merely evidence of a mind already closed to any assessment or opinion which is not in complete accord with current Government policy.

CONCLUSIONS

The Human Services (Enhanced Service Delivery) Bill 2007 is a potentially dangerous piece of legislation. Not in the current form of the Access Card, which is not technically a national ID card at this point in time, but in the legislative framework it provides the current or any future government to develop a national ID card or national integrated database of the populace.

The existing legislation leaves a great many questions regarding its implementation unanswered and is extraordinarily bare on facts regarding the security precautions to be built into the system. The emphasis of legislative safeguards appears to focus more on punishments for unauthorised access, than on restricting authorisation or a specific security policy for the data in the system.

A cogent argument could be made for the emphasis on penalties for unauthorised access being more in the nature of political mis-direction; to distract citizens from the inherent flaws in other aspects of the legislation.

Finally, the brief amount of time between the opening of this Inquiry and the final date for submissions is indicative of motivations to reduce the number of carefully considered evaluations and responses to the Bill. This is in stark contrast to the statement by Senator Mason that the Finance and Public Administration Committee “looks forward to receiving a wide range of views” after all.