



**Submission of the**

**ABORIGINAL AND TORRES STRAIT ISLANDER  
SOCIAL JUSTICE COMMISSIONER**

**on behalf of the**

**HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION**

**to the**

**SENATE FINANCE AND PUBLIC  
ADMINISTRATION COMMITTEE**

**on the**

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

**1 March 2007**

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## A. INTRODUCTION

1. The Human Rights and Equal Opportunity Commission ('the Commission') makes this submission to the Senate Finance and Public Administration Committee on the Inquiry into the *Human Services (Enhanced Delivery) Bill 2007* ('the Bill').

## B. SUMMARY

1. The Commission brings the following matters to the Committee's attention relating to how the access card will impact on Indigenous Australians:
  - As a result of their disadvantaged socio-economic status, most Indigenous Australians will be required to register for the access card in order to gain or maintain access to social welfare payments, Medicare services, and the Pharmaceutical Benefits Scheme;
  - A potentially significant number of Indigenous people will have difficulty providing the documents required to establish their 'legal name';
  - A potentially significant number of Indigenous people will have difficulty meeting one or more of the requirements of the registration process for the access card, as a result of cultural reasons or their disadvantaged socio-economic status. Special consideration should be given to their circumstances and appropriate exemptions granted or special arrangements made.
  - To ensure that the registration requirements for the access card do not unnecessarily disadvantage Indigenous Australians, it is important that they are consulted about the development of guidelines and other mechanisms that will determine eligibility.
2. The Commission's concerns relate primarily to the implementation of the Bill. The Commission's recommendations may therefore be matters for recommendations/comment by the Committee rather than substantive changes to the Bill itself.
3. The Commission's recommendations are as follows:

### **Recommendation One:**

**When the Minister is developing guidelines and/or regulations relating to the means by which alternative processes may be used to determine the identity of an Indigenous person, the Minister should consult with Indigenous peoples and their representative organisations to ensure the provisions are fair, reasonable and culturally appropriate.**

### **Recommendation Two:**

**(a) When determining exemptions for a specified class of individuals under clause 65(1) or (2) that may relate to Indigenous people, the Minister should**

**give special consideration to Indigenous cultural protocols, languages and literacy ability, location and the disadvantaged status of Indigenous peoples,**

**(b) When considering individual requests from Indigenous people to be exempted from one or more aspects of the registration process under clause 65(3) or (4), the Secretary should be required by the Bill or directed by guidelines made by the Minister, to give special consideration to Indigenous cultural protocols, languages and literacy ability, location and the disadvantaged status of Indigenous peoples.**

**Recommendation Three:**

**That the Committee recommends that if the Bill is passed and the access card is to be introduced, the government undertake an information campaign for Indigenous Australians well in advance of its introduction.**

**The campaign should explain how to register for the card, how the card will operate as compared to the current systems, and where they can seek further information and assistance. It should also alert them to any administrative review processes that exist.**

**The campaign should provide information in a range of formats that are sensitive to Indigenous languages, literacy, location and the disadvantaged status of Indigenous peoples.**

**C. THE NEED TO CONSULT WITH INDIGENOUS PEOPLES TO DEVELOP ALTERNATIVE MEANS OF ESTABLISHING LEGAL IDENTITY**

4. The Commission notes that the Explanatory Memorandum to the Bill intends that the registration process for the access card is ‘thorough, robust and secure.’<sup>1</sup> However, the Explanatory Memorandum also acknowledges that:

there will be cases where some individuals (eg. individuals living in remote Australia, homeless persons, or people at risk) may not be able to provide the types of documents required to process their application.<sup>2</sup>

5. Although the Bill does not specify the document(s) that a person will need to provide to establish their identity to register and be eligible for an access card, the Explanatory Memorandum notes that a person’s ‘legal name’ will normally be established on the basis of:

(a) the name on the individual’s Australian birth certificate; or

(b) the name on the individual’s Australian passport; or

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<sup>1</sup> Parliament of Australia, *Human Services (Enhanced Service Delivery) Bill 2007 Explanatory Memorandum*, p18.

<sup>2</sup> Parliament of Australia, *Human Services (Enhanced Service Delivery) Bill 2007 Explanatory Memorandum*, p12.

(c) the name on a certificate of citizenship granted under the Australian Citizenship Act 1948; or

(d) the name on a certificate or record of the individual's marriage kept by the relevant Australian Registrar of births, deaths and marriages; or

(e) a name effected by way of a change of name of an individual kept by the relevant Australian Registrar of births, deaths and marriages; or

(f) the name on the individual's foreign passport.<sup>3</sup>

6. For some Indigenous Australians, particularly those who are elderly, living in more remote areas or who are homeless, it may not be possible to provide any of these forms of proof of identity.
7. The Bill nevertheless attempts to avoid such problems resulting in people being unable to register and obtain an access card, by providing for:
  - a) The Minister to make regulations to list an alternative document that may be used to establish a legal name (clause 5, paragraph (g) of the definition of 'legal name'); or
  - b) The Minister to develop 'identity guidelines' for the Secretary to take into account when making a decision about establishing a person's identity (clause 66(1)).
8. The Commission is therefore concerned that any guidelines or regulations are developed in a manner that takes into account the particular circumstances facing Indigenous peoples.
9. **Recommendation One:**

**When the Minister is developing guidelines and/or regulations relating to the means by which alternative processes may be used to determine the identity of an Indigenous person, the Minister should consult with Indigenous peoples and their representative organisations to ensure the provisions are fair, reasonable and culturally appropriate.**

#### **D. THE NEED FOR SPECIAL CONSIDERATION OF INDIGENOUS CULTURAL REQUIREMENTS AND SOCIO-ECONOMIC DISADVANTAGE WHEN GRANTING EXEMPTIONS**

10. The Bill provides for exemptions from a number of the requirements for registration and the granting of an access card, such as the requirement to attend an interview, to have a photograph taken, and to provide a signature.

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<sup>3</sup> Parliament of Australia, *Human Services (Enhanced Service Delivery) Bill 2007 Explanatory Memorandum*, p11. The definition of 'legal name' in clause 5 of the Bill also includes 'the name on a document prescribed by the regulations': see paragraph (g) of that definition.

Exemptions may be granted either by the Minister for individuals in a specified class (see clause 65(1),(2)) or by the Secretary for specified individuals (see clause 65(3),(4)).

11. The Commission anticipates that many Indigenous peoples will find themselves in a situation where they require an exemption from some of the requirements to enable them to obtain an access card. For example, an Indigenous person may not be able to:
  - attend a face-to-face interview for registration because of their remote location, lack of transport, ill-health or disability;
  - provide a 'legal name' because of a lack of documents;
  - sign their name; or
  - be prepared to have their photo taken.
12. The Commission is therefore concerned that the particular cultural, economic and social circumstances of Indigenous peoples in Australia are taken into account in determining any exemptions.
13. **Recommendation Two:**
  - (a) **When determining exemptions for a specified class of individuals under clause 65(1) or (2) that may relate to Indigenous people, the Minister should give special consideration to Indigenous cultural protocols, languages and literacy ability, location and the disadvantaged status of Indigenous peoples,**
  - (b) **When considering individual requests from Indigenous people to be exempted from one or more aspects of the registration process under clause 65(3) or (4), the Secretary should be required by the Bill or directed by guidelines made by the Minister, to give special consideration to Indigenous cultural protocols, language and literacy ability, location and the disadvantaged status of Indigenous peoples.**

## **E. THE NEED FOR AN EARLY INFORMATION AND AWARENESS RAISING CAMPAIGN FOR INDIGENOUS AUSTRALIANS**

14. The Commission notes that there are no administrative review mechanisms in the Bill and that these will appear in the second tranche of the legislation.<sup>4</sup>
15. The Commission also notes that the government is still to determine the nature of the transition process between the use of the current systems and the introduction of the access card.<sup>5</sup> It will be necessary to develop an information campaign for Indigenous Australians to ensure they clearly understand the

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<sup>4</sup> Parliament of Australia, *Human Services (Enhanced Service Delivery) Bill 2007 Explanatory Memorandum*, p63.

<sup>5</sup> Parliament of Australia, *Human Services (Enhanced Service Delivery) Bill 2007 Explanatory Memorandum*, p64.

changes and what action they will need to take to ensure they can continue to access their entitlements without disruption. This campaign should take a variety of forms, including plain English guides, oral briefings and DVD, all of which should be delivered in Indigenous languages wherever possible.

16. **Recommendation Three:**

**That the Committee recommends that if the Bill is passed and the access card is to be introduced, the government undertake an information campaign for Indigenous Australians well in advance of its introduction.**

**The campaign should explain how to register for the card, how the card will operate as compared to the current systems, and where they can seek further information and assistance. It should also alert them to any administrative review processes that exist.**

**The campaign should provide information in a range of formats that are sensitive to Indigenous languages, literacy, location and the disadvantaged status of Indigenous peoples.**

17. The Committee might note that Recommendation Three warrants consideration also for ethnic and low socio-economic status Australians and Australians with a disability.

**Tom Calma**  
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