

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE  
QUESTIONS ON NOTICE TO ATTORNEY-GENERAL'S DEPARTMENT

RESPONSE TO QUESTIONS ON NOTICE  
BY SENATOR LUDWIG

[Fourth set of Questions: 24 November 2005]

*Senator Ludwig asked the following questions:*

1. In relation to Clause 138, why are the penalties for all the offences in this clause the same? For example, why aren't the offences relating to making fake documents, or equipment for making false documents, aggravated as opposed to the offences for possession of documents or equipment?

Response Q 1

The penalties in clause 138 are maximum penalties. A court in sentencing a person for any of these offences is best placed to make appropriate penalty decisions. The maximum penalties are the same because there is no necessary distinction between the seriousness of the consequences of making a false document and possessing a false document. Possession of a false document with the intention of producing it for the purposes of identification under the Act should be regarded as a serious offence.

*Senator Payne asked the following questions:*

*Question 1: Senator Payne, p.39 of Transcript*

**CHAIR**—So the committee ended up this morning, Ms Blackburn, with the view that it is potentially the case that the retailing of a stored value phone card—\$20, \$25, \$10; whatever that might be—may come within the purview of the operation of the act if other matters are satisfied and so on and so forth. These are sold through a newsagent, for example, or a 24-hour store. The implications for that would be significant at that level because the AMTA representatives certainly left the committee with that view. Could we have your comments on that.

**Ms Blackburn**—It caused us some confusion because of the inclusion of the designated services at items 21 through to 24. We were somewhat at a loss to include that card in the definitions of a designated service.

**CHAIR**—We need some clarity around that for the purposes of exploring those issues.

**Ms Blackburn**—We can provide that. I am happy to undertake to provide a brief analysis of that to the committee because, if you look at the definitions that are in the table of items, I cannot see where a \$25 phone card fits. I am happy to specifically take that one on notice and include that in our answers.

Response Q 2

Items 21, 22, 23 and 24 in table 1 of Clause 6 of the Bill cover stored value cards.

Items 21 and 22 apply where part of the value of the card may be withdrawn in cash

and items 23 and 24 cover cards where the value cannot be withdrawn in cash. Phone cards would be covered under items 21 and 22 if the stored value exceeds \$1,000. Phone cards would be covered under items 23 and 24 if the stored value exceeds \$5,000. The Department is not aware of any phone cards currently available that exceeds these values.

Item 18 will only apply to a phone card if it enables the holder of an account to debit the account. If the record of the value is stored in the phone card and does not link to an account which is debited when the card is used then Item 18 will not apply.

**Senator Ludwig asked the following questions:**

*Question 2: Senator Ludwig , pp.42-43 of Transcript*

**Senator LUDWIG**—In terms of section 82, the superannuation industry also indicated that they use the tax file number. It is important in that industry, so it seems, whereas the legislation does not require that nor does it preclude them, I suspect, from continuing to use the tax file number. Have you seen their submission in respect of that issue?

**Ms Blackburn**—It is not one that I read recently, that I remember.

**Mr Jensen**—I cannot recall the specifics of the submission. The use of the tax file number has limitations because of the tax legislation. We have been through this process over a number of years and looked at the feasibility of being able to use the tax file number in the process of an identification scheme and that is still not, as I understand it at this stage, able to be done.

**Senator LUDWIG**—I think their concern is that they would like to be able to use it and it is not part of the program because you only need a name and those sorts of limited things. Clearly it is a matter for the superannuation industry, but perhaps you could explain to the committee why TFNs cannot be used at this point in time?

Response Q 2

Section 17 of the *Privacy Act 1988* provides that the Federal Privacy Commissioner shall publish guidelines on the use of tax file number information. These guidelines are available on the website of the Office of the Privacy Commissioner (<http://www.privacy.gov.au/government/guidelines/index.html>).

Guideline 2 states that the tax file number information is not to be used or disclosed to establish or confirm the identity of an individual for any purpose not authorised by taxation, assistance agency or superannuation law. The AML/CTF Bill does not alter this position and accordingly TFN information cannot be used under the AML/CTF Bill.