

Health and Social Services Access Card:

Submission to Access Card Consumer and Privacy Taskforce

Discussion Paper 1

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) seeks to promote a just and democratic society by making strategic interventions on public interest issues.

PIAC is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

In making strategic interventions on public interest issues PIAC seeks to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law—both statutory and common—that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Centre Funding Program. PIAC generates approximately forty per cent of its income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 The current inquiry

The Federal Government's Access Card proposal has been the subject of some controversy since its inception. In more recent times, the head of the smart card taskforce overseeing the implementation of the Card, James Kelaher, resigned at the beginning of May 2006. Mr Kelaher resigned after citing concerns about the implementation of the Card, including the lack of oversight regarding privacy implications. Mr Kelaher had urged the Minister for Human Services, Joe Hockey, to set up an advisory board of experts outside government to advise on and monitor issues including privacy and security. Mr Kelaher also urged the Government to establish a separate authority to oversee the administration of the Card, but this recommendation was also rejected.

In late May, the Government appointed former chairman of the Australian Competition and Consumer Commission (ACCC), Allan Fels to head a consumer and privacy taskforce to examine the Access Card proposal and to seek public comment about its implementation. It is in this context that the Public Interest Advocacy Centre makes the following submission.

2. The need for an Access Card, public debate and the role of the Taskforce

From the outset, from a public interest perspective, PIAC is unconvinced that the proposed Health and Social Services Access Card (**the Card**) will sufficiently benefit consumers compared with the projected level of expenditure that is proposed for the introduction of the Card.

PIAC is concerned with the lack of detail that has been released about the Card. PIAC is of the opinion that public consultation in regard to the significant public expenditure that has been proposed for the introduction of the Card has been inadequate. In particular, the limited release or non-release of key documents is of concern. The Government has only been prepared to release a heavily edited version of the KPMG business case. The Government has not released at all the Privacy Impact Assessment prepared by Clayton Utz. Given that both of these documents examine at length both the purpose and the implications of the introduction of the Card, PIAC is concerned by the lack of transparency in regard to the release of these documents, particularly in light of the substantial amount of public money expended to produce them.

With the lack of information in the public domain about the card, PIAC is not in a position to support the introduction of the Card. This submission will outline PIAC's key concerns about the Card (based on the information publicly available or provided directly by the Taskforce), as well as its concerns with the process of public consultation and discussion around this controversial and expensive project.

In regard to the work of the Taskforce specifically, PIAC supports the decision by the Government to engage some respected and independent individuals to engage in a public consultation around the implementation of the Card. However, PIAC believes that the work of the Taskforce is constrained by the lack of publicly available information about the Card. There is also no guarantee that the Government will accept the recommendations of the Taskforce, which is of concern to PIAC. As the Taskforce paper also acknowledges:

The Government's proposal ... clearly introduces some new elements into our health and social services systems, some of which are not clearly understood or appreciated in their ramifications.¹

It has been PIAC's observation to date that public awareness of the nature of the proposed card is quite limited, and that this will necessarily impact on the extent to which the public is able to engage with the work of the Taskforce.

PIAC notes that much of the material presented to it during consultations with two members of the Taskforce about how the card will operate is not in the public domain. It is PIAC's view that all the information should be publicly available in order to increase the effectiveness of the Taskforce and the level of public debate on the issue.

2.1 The scope of the card

According to the Government, the Card will not be a national identity card, and it will not be compulsory for every Australian.

The card is envisaged to become a much more reliable way of proving your identity and will be linked to a national database. Aside from public assurances by the Government that the Card will not be an identity card in the traditional sense, there has been no detail on the legislative framework

¹ Access Card Consumer and Privacy Taskforce, *Discussion Paper Number 1: The Australian Government Health and Social Services Access Card* (2006) 21.

that will guarantee this. Indeed, it is unclear what legislative frameworks, if any, the Government is proposing to create in order to introduce the card. For example, there is no information on how the Government proposes to legislate to protect the privacy of the information stored within the card, on the database, or who will have access to the information stored in either location, or to protect against inappropriate demands for production of the Card for identity verification purposes. Until such legislative frameworks are in place, the community will have concerns about the protection of their personal information and about unrestrained expansion of the Card's use over time (**function creep**).

While the Government has stated that the card will not be compulsory, it is apparent that if you do not have a card, once it is comprehensively introduced, you will not be able to access Medicare or any other Government benefits. In PIAC's view, it is simply disingenuous and misleading to state that the card will not be compulsory. As long as the Government fails to be transparent, the public will distrust the Card proposal.

As is outlined in the Taskforce's discussion paper:

A certain level of public trust in Government is the glue which holds free and democratic societies together. It cannot be denied that people are more trusting of Government and its operations when those operations are open and transparent, result from public discussion and consensus about issues and are guaranteed and enforceable through the legal system.²

The Government has outlined that fraud reduction is one of the principal reasons that it wishes to introduce the Card. PIAC is not convinced that the amounts that will be saved through fraud reduction will meet the costs of introducing the Card. From whichever way the issue is considered, the introduction and implementation of the Card will be enormously costly. The Government has failed to provide detail around the projected amounts that each Government agency will save through fraud reduction. No detail is available as to the assessments from each relevant Government agency as to how much it is estimated is lost through fraud each year and how much of this fraud involves identity fraud. This information is clearly necessary in order for the Government's assertions to be openly analysed.

The Minister for Human Services has outlined that he is not prepared to put limitations at this stage on who may access the information on the Card, or the database itself. This seems unwise, given that many Australians will no doubt be concerned about who will have access to key information about their identity and personal circumstances. This further shows the difficulty of responding to the proposals. There is no clear proposal on the functions and limits of the Card, and in the absence of this, it is difficult to respond to the current proposal with any degree of specificity.

PIAC notes that many of its major concerns about the Card centre on the protection of personal information through the national identity database that will be encompassed in the Secure Customer Registration Service (**SCRS**) and the document verification system (**DVS**). There is very little information publicly available about the DVS, and PIAC was only alerted to this element of the proposal through the face-to-face consultation with the Taskforce. It is the establishment of the national identity database and document verification system that are significant in terms of altering the management of personal information by Government. PIAC supports technological developments that may result in insecure forms of technology such as magnetic strips being replaced with new technology so long as the technological fix is effective to meet the identified purpose and does not infringe privacy and other rights. At issue is how the personal information is collected, shared, matched and used.

² Ibid 21

PIAC is of the opinion that function creep is an inevitable and undesirable outcome of the introduction of the Card unless clear and legislative restraints are placed on the Card. Even with such restraints there is a clear risk of future governments seeing the potential of broader uses of such a powerful and comprehensive database and seeking to amend legislation to achieve those uses. The Government needs to be clear with the public what the Card, and the database, may be used for, and by whom, into the future. As has been previously articulated, but is worth repeating, public trust is not served when there are no limitations at all put on what a card with unique identification information may or may not be used for in the future. As there have been no clear dimensions on the possible uses of the Card, it is difficult to comment on possible function creep except to state that widening the agencies that can have access to such information increases the risk. The Minister for Human Services, in his public comments about utilising the card through banks³ and supermarkets, is already suggesting functions beyond the scope of administering health and social service benefits. If the Minister is already suggesting that commercial entities unconnected with the distribution of health and social service benefits will be able to read and utilise the card it seems likely that the functions of the card will be expanded. It is PIAC's view that public debate about a Card with wider uses and potential access by a greater range of entities is also required.

As the Taskforce has outlined:

Great care will need to be taken to specify the exact purposes for which the access card is to be introduced, but equally to specify the purposes for which it cannot be used. In between the poles of express usage and express prohibition lies a grey zone.⁴

3. The benefit to consumers and consumer choice

The Government has outlined that it is introducing the Card because it is of the view that the Card will improve the delivery of health and social services benefits for all 'eligible Australians'.

The Government has stated that the Card will make it easier for consumers to negotiate filling out forms with Government agencies by pre-populating forms with certain information before they are sent out. PIAC is of the view that \$1 billion of taxpayers' money could be much better spent if service delivery is the Government's principal aim of introducing the Card. The key ways in which consumers will benefit by the introduction of the Card do not outweigh the costs to taxpayers of the introduction of the Card, and the potential risks of the card, such as the vulnerabilities inherent in the establishment of a new, single, national identity database.

PIAC works extensively with marginalised and disadvantaged groups that have high levels of engagement with Government health and social services, in particular homeless people, Indigenous people and people with disabilities. These are some of the vulnerable consumers that the Government asserts will benefit from the Card. PIAC disagrees that there will be the purported benefits to consumers who have either high or low engagement with Government services.

PIAC rejects the assertion that the benefits will be particularly significant and will not outweigh the significant risks to consumers with respect to their personal information. The major benefit to consumers is one that is negatively framed, that being that the only way they will be able to access Government benefits will be to have the Card. In effect this is a consumer benefit (access to

³ *Smart card could access Govt payments through ATMs: Hockey* (2006) ABC News Online <<http://www.abc.net.au/news/newsitems/200606/s1673617.htm>> at 24 July 2006.

⁴ Access Card Consumer and Privacy Taskforce, above n 1, 22.

benefits to which they currently have access without the card) that consumers will not choose, but will be forced to accept.

In order to continue accessing Medicare benefits, all Australians will need to be registered on a national identity database, and show the requisite identification documents in order to be registered. PIAC is concerned by the Government's position that people who cannot provide the required identification to be issued with a Card will not be able to access benefits after 2008. With respect to disadvantaged individuals, who may have difficulties establishing their identity, it is unclear how they will be assisted financially to establish their identities, as finding the resources to pay for certain documents will be beyond the means of some.

PIAC's Homeless Persons' Legal Service currently assists many homeless people to access the documents they require to establish their identity. This process is often expensive, time consuming and requires literacy. PIAC is concerned that there are currently no safeguards for people who may have difficulty establishing their identity and that an approach that ties benefits to having the Card could place some groups in even more extreme financial difficulty.

Restricting access may also impact adversely on the health of disadvantaged groups through denying them access to Medicare. The Government needs to consider how people who have been outside 'one hundred point' identity verification schemes will be assisted to prove their identity. PIAC believes that a significant number of older people, Indigenous people and people who are experiencing homelessness will face problems establishing their identity for the purposes of registration. These are also the most vulnerable and marginalised consumers who the Card is supposed to assist.

The Government has argued that the Card will increase convenience for consumers of welfare benefits in particular. The Government has outlined, for example, that if you change your address, you will only need to call up once and the system will record these changes for a range of government services and agencies. However, as the Australian Privacy Foundation has outlined, there is already a webpage that has been established that allows you to record your change of address details once and a range of government agencies are notified. There are many ways that the system could be improved without the introduction of a national access card and identity database, which is a completely disproportionate response to the level of convenience it is supposed to afford consumers. Most consumers have only limited interactions with the relevant agencies and, as such, any perceived inconvenience is currently very limited and should not be overstated in support of the introduction of this Card.

PIAC is concerned by the proposed costs of introducing the Card. At present, \$1 billion has been allocated to implement the Card, but PIAC is concerned that the ongoing administration costs of the Card have not been included in this amount. As the UK experience has indicated (see further detail below) the costs of implementing identity or access cards can be enormously costly and budgets can, and often do, blow out. The same is true more broadly of the implementation of new technology. PIAC is of the opinion that \$1 billion will not be an adequate amount to manage the roll out, and ongoing administration of the Card. Compared with the benefits to consumers, which PIAC believes will be minimal, PIAC is not convinced that the public interest will be served by the introduction of the national access card and national identity database.

4. Information protection and privacy implications

As outlined above, it is not yet clear how the information contained within the national identity database will be protected, and who will have access to the information. PIAC is also concerned

that key aspects such as the document verification scheme are effectively outside the scope of public knowledge.

Given that an information technology project of this size will have privacy and data protection implications, a discussion around these implications should occur with the Australian public so that can all be assured about how personal information about identity and other characteristics will be protected. Australians have never had a national identity database of this size or kind before, and it is important that the public be informed of the protections that the Government plans to implement. At this stage, the Privacy Impact Assessment produced for the Government has not been released to the public because it was supposedly based on a 'previous model' of a national identity card. Because there are very minor differences between a national identity card and what is being proposed, PIAC finds this completely unacceptable.

Given the resources available to the Government to forward its proposal PIAC believes that if there are significant differences between the card contemplated by the Privacy Impact Assessment and the current model, the Government can and should release the Assessment and articulate these differences and then allow the public to decide. The current approach requires the public to simply take the Government on trust. PIAC does not believe this is an adequate measure to ensure accountability.

The Government needs to clearly outline what information will be collected and stored in the proposed national identity database, and how it proposes to protect that information.

In regard to data protection and privacy, the Taskforce has outlined some key questions such as 'who will have access to the data on the SCRS' and 'how will the system will ensure that the SCRS data is accessed only for authorised purposes' on page 23 of its discussion paper.

It is important that the Taskforce ask these questions, but PIAC is concerned that these questions even need to be asked because these details have not been released by the Government. Once again, it is impossible to provide meaningful feedback on the adequacy of a card or a system when no relevant detail has apparently even been worked out or at least publicly disclosed. If important detail such as the adequacy of data protection has not been broadly outlined to the public or the Taskforce, how can a useful or meaningful discussion around these important issues even occur? In PIAC's view, it makes a mockery of the process and shows an unhealthy lack of respect by the Government for the community's right to be informed and to engage in the public policy development process.

PIAC is also concerned that this detail is not being outlined not simply because the Government is awaiting the Taskforce's feedback, but to limit the extent of public comment on this issue. It is apparent from the information provided by the Government representative to the Taskforce that many aspects are actually highly developed by the Government, but not publicly available.

5. Accountability and legislative protection

As has been outlined above, PIAC is concerned that the Government has failed to specify what legislative protections (if any) it plans to put in place in relation to the Card. In particular, PIAC is of the view that safeguards must be put in place in relation to the purpose of the card, but similarly protections must be in place in regard to who can access the information stored on the card, and in the identity database, and when and by whom production of the Card may be required.

Due to the lack of detail in relation to how the Card will operate, PIAC can only recommend the most stringent legislative protections in relation to all of these aspects of the Card. There are also clear issues about how data can be used and matched against other data.

It is concerning that the Card is being discussed without any reference to the legislative package that will accompany it. For a Card to provide a balance between efficiency and consumer protection, the Card must be developed within a legislative framework that is part of the model proposed by the Government.

Simply legislating against the ability of business and agencies to demand the Card as a form of identification will not be sufficient to alleviate PIAC's concerns about the Card. Legislation will also be required on areas such as:

- who has access to the document verification scheme;
- who has access to SCRS;
- penalties for unauthorised access;
- protection and destruction of personal information and records;
- protection against the retention of incorrect information;
- criminal penalties for misuse of personal information;
- legislative limits on what agencies can access information and the extent of that information;
- legislative limits on data matching.

6. The experience of other countries

6.1 Case Study Example: United Kingdom

In 2005, The London School of Economics and Political Science (LSE) produced an analysis of the UK Identity Card proposal being currently considered and introduced in the United Kingdom, *The Identity Project: An assessment of the UK Identity Cards Bill & its implications (the Report)*.⁵ PIAC hopes that the Taskforce will take time to consider models that have been introduced, or are being introduced, in other jurisdictions, as we have found this exercise most instructive.

The LSE, in its report, outlined some key concerns with the identity card proposal in the UK, some of which are set out below.

The Report assesses the implications, costs, opportunities and consequences arising from current legislative proposals for a national identity card in the UK. The Report does not challenge the purposes for which the card is purportedly being introduced, and accepts *a priori* that combating terrorism, reducing crime and strengthening national security are legitimate functions of government.

However, the Report challenges the assertion that an identity card is an appropriate, cost-effective means of achieving those ends. The Report concedes that an identity card may have benefits in terms of reducing identity fraud, yet this is one among many aims and is not significant enough to offset the possible far-reaching negative consequences of the introduction of the card.

The Report expresses concerns that the technology proposed for the introduction of the card and the storage of information are largely untested and unreliable, and that the use of biometrics gives rise to concern because the technology has never been used on such a scale. One of the key concerns is that the scheme introduces a new technological infrastructure that will carry high risks if it fails. For example, the Report expresses concern that a centralised database, similar to that being introduced

⁵ London School of Economics and Political Science, *The Identity Project: An assessment of the UK Identity Cards Bill & its implications (2005)* <<http://www.lse.ac.uk/collections/pressAndInformationOffice/newsAndEvents/archives/2005/IDReport.htm>> at 20 July 2006.

in Australia, could itself become the subject of terrorist attacks and/or hacking. No system is absolutely safe against possible incursions. One of the key concerns expressed was that the 'National Identity Register' to be created in the UK may in fact pose a greater risk to the security of UK citizens than the system it purports to replace.

The Report outlines that because of its size and complexity the system will require enhanced security features, and that this will take the costs higher than initially expected.

The conservative cost estimate over ten years is £10.6 billion. The Report makes a point, which is also applicable to the Australian model, that the cost estimates do not include the cost of readers for use in the private sector, possible cost overruns and implementation problems.

The Report comments that the British Government has significantly underestimated the cost of gathering biometric data, and that special equipment will need to be used for people with disabilities who may have particular (additional) reasons for being sensitive about giving their biometric data.

The Report also concludes that the British Government has underestimated the cost of registration, as well as noting that costs will also increase as 17% of the population (aged, disabled, young) will need to have their biometric information updated every five years; responding to this situation may require multiple biometrics to be gathered, in turn adding to the cost of the scheme.

The Report suggests some alternative models such as a more-confined system based on international best practice, and that the scheme on the scale suggested was unlikely to meet its basic aims and is likely to prove costly and insecure.

The Report also outlines that all identity card models create a range of new and unforeseen problems, including:

- growing financial costs;
- increased security threats; and
- unacceptable imposition on citizens.

The Report states:

The risk of failure in the current proposals is therefore magnified to the point where the scheme should be regarded as a potential danger to the public interest and to the legal rights of individuals.⁶

7. Conclusion

PIAC holds some grave concerns about the current Access Card proposal that has been outlined in Australia. PIAC believes that public debate must extend beyond the work of the Taskforce, and that the Government needs to be more transparent and accountable in relation to its current proposal. Clarity and detail around the proposal and requisite legislative safeguards are imperative. Until these basic requirements for a meaningful public discussion are met, PIAC will oppose the introduction of the Card, because at present the proposal is too unclear, and PIAC remains convinced that the aspects of the card that have been outlined are in the public interest.

⁶ Ibid 9