

Labor Senators' Additional Comments

1.1 Labor Senators on this Committee wish to note the following comments, in addition to the Report.

1.2 Labor Senators do not consider that the statement in the Report that, 'Since the existing state registers are not equipped to handle the new NCSP',¹ is consistent with VCS's evidence. VCS told the Committee:

... we now operate a contemporary cancer screening register platform, and as a condition of our funding from the Victoria[n] government we were required to develop the capabilities to support Victorian women on 1 May in the renewed program as a contingency should this be required.²

1.3 In addition, when asked whether VCS would have been able to operate the register without delay and meet that deadline of 1 May 2017, Professor Saville told the Committee:

The deadline of 1 May is really critical for the National Cervical Screening Program and not so critical, from a program point of view, for the bowel program. Hypothetically—and we do not expect this to happen because I think the contract has been awarded—if we were asked to deliver the cervical screening program by 1 May, the task that would need to be done would be data migration and laboratory interfaces. That could be achieved, but you would want to get your skates on and you would want to be appropriately resourced.³

1.4 Labor Senators are also concerned that the Report does not adequately reflect the breadth of concern about the contract between Telstra Health and the Department of Health, which was uncovered by the inquiry. For example, in his submission Bruce Armstrong states:

For-profit, stock-market-listed corporations, such as Telstra Corporation Ltd, have an irresolvable conflict of interest with the public interest due to the responsibility of their directors, under the Corporations Act 2001, to act in good faith in the interests of the company (effectively their shareholders). ... There are ... many ways in which Telstra Corporation Ltd could act, for example when staffing and resourcing register operations, that would put the Corporation's interest ahead of the public interest; and it would be obliged to act this way because of the Directors' (and therefore

1 Committee Report, paragraph 2.24.

2 Prof. Marion Saville, Executive Director, Victorian Cytology Service Ltd, *Committee Hansard*, 29 September 2016, p. 40.

3 Prof. Marion Saville, Executive Director, Victorian Cytology Service Ltd, *Committee Hansard*, 29 September 2016, p. 43.

management's) responsibility to the Corporation and its shareholders under the Corporation's Act.⁴

1.5 The Australian Medical Association also stated in their submission to the Committee:

Given the potential commercial value of the data contained in the register, the AMA would be more comfortable with it being operated by government, a tertiary institution, or not-for-profit entity that has little interest in how the data in the register might otherwise be used.⁵

1.6 The Royal Australian College of General Practitioners also told the Committee:

RACGP would be far more comfortable with [the Register] being operated by a government, tertiary institution or a not-for-profit entity that has little interest in how the data in the registry might otherwise be used for pecuniary reasons.⁶

1.7 Labor Senators note that the Commonwealth has released a draft contract, but do not regard the draft as sufficient because it preceded contract negotiations between the Commonwealth and Telstra. At the time of releasing this Report, the Commonwealth has provided a redacted version of the Contract to the Committee, however it had not been released publically.

1.8 Labor Senators believe that the Report should reflect the Committee's view that the Commonwealth should release its contract with Telstra to operate the Register. This view was shared by the Acting Chair of the Committee, Senator Reynolds:

While I understand commercial-in-confidence to certain provisions, I think it would be very helpful if the [Health] Department could release further information about the service standards. This would not be only for the Committee but also for the public and people out there who have genuine concerns about what this will actually mean.⁷

1.9 Finally, Labor Senators are concerned that the report does not reflect the significant concern about the Bills' penalty provisions that was expressed to the Committee. For example the Australian Healthcare and Hospitals Association – a significant stakeholder that is currently not mentioned in the report – said in its submission:

the size of the penalty in relation to unauthorised collection, use or disclosure is only \$21,600. While the penalties for breaching the bills' privacy provisions, inadvertent or not, are enough to deter small, not-for-

4 Associate Professor Bruce Armstrong, *Submission 3*, p. 2.

5 Australian Medical Association, *Submission 19*, pp 1–2.

6 Dr Magdalena Simonis, Member, Expert Committee – Quality Care, Royal Australian College of General Practitioners, *Committee Hansard*, 29 September 2016, p. 21.

7 Senator Reynolds, Acting Chair, *Committee Hansard*, 29 September 2016, p. 63.

profit organisations, they are not enough to deter a large, for-profit entity such as Telstra Health. The automatic penalties must be great enough that any risk-management strategies will ensure the organisation and its managers always have consumer privacy as a key concern ... Legislation and the contract between the Commonwealth and Telstra Health should prescribe tough financial penalties that have automatic effect after any unauthorised data release.⁸

1.10 Even stakeholders that were generally supportive of the bills raised this concern. For example, Pathology Australia said in its submission:

PA supports a review of the fine for offences related to the unauthorised access of the Registry to ensure they are an appropriate deterrent related to the confidential nature of the Registry.

Senator Murray Watt

Senator Sam Dastyari

8 Australian Healthcare and Hospitals Association, *Submission 8*, p. 3.

