

Chapter 2

Overview of the bill

2.1 The Australian government currently provides a range of benefits, services and payments, through different agencies. This bill concerns the services provided by a number of those agencies, referred to as participating agencies.¹ The Government has announced that from 2010, it will be mandatory to be registered and have an access card to claim Commonwealth benefits from those agencies. The bill concerns some of the arrangements under which this system would operate.

Provisions of the bill

2.2 The main provisions contained in the bill, as described in the Explanatory Memorandum (EM),² are set out below.

Registration

2.3 Part 2 of the bill sets out the arrangements for registering to receive an access card. It explains that there will be a register managed under the authority of the Secretary of the Department of Human Services, and that a person will need to be listed on this register to obtain an access card. A person is eligible to be on the register if they are eligible or qualified for a Commonwealth benefit, are not already registered and are at least 18 or exempted from this requirement.³ The secretary must provide written notice confirming registration.⁴

2.4 The register will be established separately from existing agency databases, and will not be amalgamated with existing databases. It will not contain medical or health information, or transactional records. Detailed customer records will continue to be held by Centrelink, Medicare Australia, the Department of Veteran's Affairs and other participating agencies. Eligible persons will only need to register once for a service, and only notify participating agencies once of changes in circumstance.⁵

1 Participating agencies are the Department of Human Services (including the Child Support Agency, and CRS Australia), the Department of Veteran's Affairs, and the Human Services agencies including Centrelink, Medicare Australia, Australian Hearing Services and Health Services Australia Limited.

2 Most of the text in this chapter is taken directly from the bill, the Explanatory Memorandum to the bill, and the Second Reading Speech.

3 Clause 12, Clause 22.

4 Clause 15.

5 Second Reading Speech, p. 4.

2.5 The information on the register will be verified and will be able to be checked against cards that are presented by individuals when they claim benefits or seek services.⁶

2.6 Information held on the register will include a person's name, date of birth, citizenship or residency status, indigenous status if requested, sex, contact details, benefit card details and registration status. Where the person has an access card, details of that card will also be held, including the access card number, the date the card was issued and its expiry date, a personal identification if there is one, a photograph and a numerical template derived from that photograph, and a digitised signature. If the access card has expired or been deactivated that fact will also be recorded. In addition, the register will include information about the documents used to prove identity, and emergency payment numbers where this is relevant.⁷

2.7 The secretary must not include information about a person where that would be contrary to the person's inclusion in the National Witness Protection Program, or where doing so would be inconsistent with a Commonwealth law.⁸ The register must only contain the information specified in the relevant subsections of the bill.⁹

The access card

Obtaining an access card

2.8 The bill explains that to obtain an access card after becoming registered, a person must lodge a written application to the Secretary, and where this is approved¹⁰ attend an interview,¹¹ have a photograph taken and provide a signature, unless exempt from this requirement.¹²

6 Explanatory Memorandum, Clause 17, p. 20.

7 Clause 17. For those individuals receiving benefits from the Department of Veteran's Affairs, information about veteran status will also be included on the register.

8 Clause 18.

9 Clause 20.

10 Clause 23. In approving an application form, the Secretary must consult with the Privacy Commissioner and take into account any comments made by the Privacy Commissioner; however, a failure to comply with this requirement does not affect the validity of the approval of the form.

11 Applications will be able to be made at a variety of locations and offices throughout Australia, including existing Medicare and Centrelink offices. Explanatory Memorandum, Clause 23, p. 27.

12 Clause 24. A person may be exempted from having a photograph taken or being required to produce a signature in certain circumstances detailed in section 65 of the bill. For example, persons living in remote Australia, homeless persons, frail persons or persons with a disability, or people at risk may not be required to provide all the specified information.

2.9 As a primary objective of the access card is to prevent fraud, the registration process must be robust and secure. Consequently, during the registration process a person will have to provide certain documents to prove his or her identity. These documents will include such things as birth certificates, passports, immigration documents, and drivers' licenses.¹³ Documents will be verified to ensure that forged or duplicate documents are not used to fraudulently register people who are not eligible for an access card.

2.10 The Secretary will issue an access card by post or another method determined by the Secretary, and a person will collect the access card from a designated location.¹⁴

Information contained on and in access cards

2.11 The access card itself will have designated information displayed on its surface. The only mandatory information will be a photograph of the card owner, the owner's name and his or her digitised signature as provided during the interview, and the card's expiry date and number.¹⁵

2.12 In addition to information on the access card's surface, the access card will contain a chip, divided into the Commonwealth's area and a personal area, where further information will be kept. The Commonwealth's area of the chip will include the same information as the register, and in addition the Secretary may include technical or administrative information (for example, audit logs or the chip's serial number) as long as this information does not identify a person by name or other personal identifier. Similarly, the Minister may include other information in the Commonwealth's area of the chip, as long as that information is only necessary for the purposes of this Act.¹⁶

Ownership and use of an access card

2.13 The access card will be owned by the access card holder, and card owners may use their access card for any lawful purpose they choose. This may include using the access card as a convenient proof of identity document; however, such use is not intended to convert the access card into a national identity card.¹⁷

2.14 A Commonwealth officer from a participating agency may use an access card only with the consent of the card's owner, and for the purposes of the Act. This

13 Explanatory Memorandum, Clause 13, p. 18.

14 Clause 28.

15 Second Reading Speech, p. 4.

16 Explanatory Memorandum, Clause 34, p. 38.

17 Explanatory Memorandum, Clause 40, p. 40-41.

provision is intended to constrain the use of the access card and address concerns about function creep.¹⁸

Offences

2.15 Section 15.4 of the Criminal Code will apply to offences listed in the bill, and these offence provisions will apply wherever they occur – whether in Australia or not and whether they are committed by an Australian citizen or not. Accordingly, if a foreign national manufactures false access cards overseas, that person will commit an offence against the bill.¹⁹

Requiring production of an access card

2.16 There has been some concern expressed about the possibility that businesses would be able to demand the production of the card as a form of identity. A person will be taken to 'require' the production of an access card if they provide no alternative option for a card owner to prove they are who they say they are.²⁰

2.17 This bill makes it an offence, punishable by a maximum penalty of five years imprisonment or \$55,000 (or both) for any person – and up to \$275,000 for a company – that requires a card owner to produce his or her card for any purpose except for the provisions of Commonwealth health and social services benefits or to verify concessional status.

2.18 Similarly, it will be an offence for a person to make a copy of, or divulge, a card owner's photograph, signature or card number unless it is for the limited purposes of the Act or with the owner's consent.²¹

2.19 It will not be an offence for a person who is a delegate or an authorised person under the bill to require the production of an access card for identification purposes where that production is for the purposes of the bill. This is a necessary exemption and is consistent with the policy to introduce the card as an effective anti-fraud measure in relation to the delivery of Commonwealth benefits.²²

Doing things to access cards

2.20 The bill makes it an offence to intentionally deface or damage an access card belonging to someone else, or a person's own card where this is with dishonest intent. It will also be an offence to intentionally change the information in the

18 Explanatory Memorandum, Clause 41, p. 41.

19 Explanatory Memorandum, Clause 44, p. 43.

20 Explanatory Memorandum, Clause 46, p. 45.

21 Second Reading Speech, p. 4-5.

22 Explanatory Memorandum, Clause 45, p. 44.

Commonwealth's area of the chip in someone else's card, or in a person's own card where this is with dishonest intent.

2.21 Even though a person may own their access card, the bill makes it an offence for the person to intentionally sell their access card. Similarly, it will be an offence to sell someone else's access card. This is important given that the card is intended to be a major factor in reducing fraud against the Commonwealth, and significant penalties are attached to these offences.²³

Other offences

2.22 The bill also makes provision for a variety of other offences related to access cards which are designed to safeguard the integrity of genuine access cards.

2.23 In particular, it will be an offence to dishonestly obtain an access card, or to obtain an access card using false or misleading statements, information or documents; to possess a false access card; or to copy an access card number, photograph or signature without authorisation. Any attempt to degrade the anti-fraud aspects of the card warrants significant penalties.²⁴

2.24 Similarly, it will be an offence for persons with authority to issue access cards if they know that issuing the card will be contrary to the bill; or to pressure someone else to do so knowing it will be contrary to the bill.²⁵

2.25 In view of the importance of the access card to the effective delivery of Commonwealth benefits (including as a fraud prevention measure), the Government believes the name of the card should be protected and not available for use in business. The use of the name in business could cause significant confusion amongst consumers, degrade the integrity of the card and could facilitate the manufacture of misleading cards. For these reasons the Government has decided that the name of the card should vest exclusively in the Commonwealth.²⁶

Exemptions and delegations

2.26 The general rule of the bill is that all individuals seeking to obtain an access card will need to follow the same procedures. However, it is recognised there may be times when this is not possible. For example, some individuals may be too ill to attend an interview; some may suffer emotional distress if required to have their photograph taken; or there may be times when it is inappropriate to include a person's residential address in the Commonwealth's area of the chip.

23 Explanatory Memorandum, Clauses 47 to 53, pp. 46-50.

24 Explanatory Memorandum, Clause 54, p. 51.

25 Explanatory Memorandum, Clause 61, p. 55.

26 Explanatory Memorandum, Clause 63, p. 56.

2.27 For these reasons, the bill makes it possible for the Minister or the Secretary to exempt persons (other than a Department of Veteran's Affairs (DVA) individual) from the general requirements in appropriate circumstances. A similar power is provided to the DVA Minister and DVA Secretary in relation to DVA individuals. Ministers will be able to exempt certain classes of individuals, while Secretaries will only be able to exempt specific individuals.²⁷

2.28 The Ministers and Secretaries will also be able to delegate certain powers of functions to Commonwealth officers in a participating agency in some circumstances.²⁸

27 Explanatory Memorandum, Clause 65, p. 58.

28 Explanatory Memorandum, Clauses 68-71, pp. 59-61.