

AUSTRALIAN GREENS ADDITIONAL COMMENTS AND RECOMMENDATIONS

Introduction

The Australian Greens support the committee recommendation. The enormous number of problems and threats to privacy and human rights posed by the bill require more detail and time for the Australian people and Parliament to evaluate the proposed access card.

The issues outlined in the main committee report must be addressed if the government is to have any hope of convincing the public that the benefits of the access card are greater than the dangers.

However, even if these suggestions are implemented, the Australian Greens remain opposed to this legislation as it will still enable, for the first time, a central national database of information on all Australians to be held by government.

In particular, the unwarranted access of police and security agencies to the database poses a great danger to democracy and freedom.

There also remains the danger that over time the access card will become an ID card.

The Australian Greens will support the changes implied in the report as they would significantly reduce the threat to privacy of all Australians posed by this legislation.

The Committee report calls for a range of matters to be considered by the government when drafting a consolidated bill. The Australian Greens believe that the matters raised need to be changed rather than just considered.

Therefore the Australian Greens make the following recommendation:

Recommendation 1

That if the access card proceeds, it be amended to ensure that

- the provision of appropriate terminals or readers to those agencies and providers providing benefits and services to access card holders be included in the budget for the proposal;**
- the only mandatory information displayed on the surface of the card is the card holder's name and that other information displayed is at the discretion of the card holder;**
- the Commonwealth area of the chip store existing agency identifiers and that these numbers are used when linking a card to a participating agency database,**

rather than the access card number, removing the requirement for agency linkage to a central database;

- the form and manner in which the register is to be kept is set out in legislation and prohibitions such as keeping the register separate from other data bases are expressly stated;

- the following determinations are made by way of legislation or disallowable legislative instrument:

what proof of identity (POI) information and documents are needed for registration (clause 13(2));

when applying for an access card, what 'other specified information' or documents that the secretary deems necessary: (i) to be satisfied of the applicant's identity, or (ii) to obtain information required for the card or the register (clause 23(2)(b), and

- any proposals to appoint additional participating agencies are made through legislative amendment of the principal act.

It is clear from evidence to the Committee and the character of the proposed legislation that despite the extensive public relations effort by the government it is in fact intended that the access card will become a national ID card.

Ms Johnston from the Australian Privacy Foundation told the Committee at the Sydney hearings that, 'The access card is an ID card by design and by effect'.¹

Evidence to the committee showed that the Access Card is far more extensive and intrusive than Labor's Australia Card proposal which was rejected by the Australian people and the then Liberal opposition.

The Committee received as a submission an article by Professor Greenleaf, the Co-Director of the Cyberspace Law and Policy Centre in the Faculty of Law at the University of New South Wales. The article was published in the Computer Law and Security Report. Professor Greenleaf compares the Australia Card to the access card and concludes:

In most respects the privacy dangers of the new ID system are worse than those of the Australia Card.²

The article also includes tables of comparison between the Australia and access card. They indicate that the privacy dangers associated with 18 features of the two cards are the same, the privacy dangers associated with 14 of the features of the access card are

1 *Committee Hansard*, 2 March 2007, p. 14.

2 Graham Greenleaf, *Australia's proposed ID card: still quacking like a duck*, Science Direct, Computer Law & Security Report, Elsevier Ltd 2007, p. 166, provided in *Submission 43a*.

worse than those proposed in the Australia Card, one feature cannot compare and one feature of the access card was better than the Australia Card proposal.³

The government has not been honest about its intention. It is clear it wants a national ID card but, because of public opinion is unwilling to say so.

As a result the legislation has been drafted with an enormous amount of discretion invested in the Minister and the Department of Human Services Secretary. In all there are 29 clauses that empower the Minister or the Secretary to determine the form and structure of the access card scheme, what information can be collected and who can use the information.⁴

We note that it is likely that this bill would be in breach of any Bill of Rights or Human Rights Act if one was in existence in Australia as in the United States or the UK.

Additional Issues and Recommendations

As outlined in the committee's main report there has been little time to examine all issues of concern regarding the access card. Outlined below are some of the additional concerns and recommendations of the Australian Greens and which have not been covered in detail in the report.

Police and ASIO

Citizens' rights to be free of unjustified surveillance and attention by security agencies are the mark of a free and democratic society.

History shows that national identity cards and systems are often associated with authoritarian regimes because they are able to be used to control the population.

It is not surprising therefore that much concern about the access card has been centred on police and intelligence agencies access to the national database. This has included comments by a government backbencher that the card failed "the Nazi Test".⁵

It became apparent during the committee hearings that the AFP and ASIO already enjoy extensive access to Human Services databases and that such access would continue under the access card scheme.

It is astonishing that police and intelligence agencies access to such an extensive national population database would only be regulated by the individual decision of an administrative official.

3 Graham Greenleaf, *Australia's proposed ID card: still quacking like a duck*, Science Direct, Computer Law & Security Report, Elsevier Ltd 2007, p. 164, provided in *Submission 43a*.

4 *Submission 35*, pp. 8-13.

5 *The Australian*, 7 February, 2007.

While police must gain a warrant to search homes in this case they would only need the say-so of the Secretary of the Human Services' Department to examine extensive personal information, perhaps much more revealing than what is in your bedroom or kitchen.

The Australian Greens believe that if the access card proposal proceeds access to such information for use in criminal or intelligence investigations must require at least as rigorous scrutiny as is required for other intrusions on individual privacy and other rights by police or intelligence agencies.

It is still unclear exactly what access State and Territory police services would have to the national database and whether they could require a person to produce their card. However it seems that their powers would be similar to those of the Australian Federal Police.

Recommendation 2

That if the legislation proceeds it should be amended so as to require ASIO, AFP and State and Territory police to obtain a warrant from a judicial officer before accessing information held in the access card register (database).

Concessions

Evidence to the committee suggests one-third to a half of card holders will not be able to have their concession status visible on the card; including young people, students and many people with disabilities. This will mean any business and government agency that wishes to issue a concession-priced service will need card readers.

Evidence to the committee showed that the impact on concession eligibility and the practical use of concessions have not been properly assessed. The government was unable to explain exactly how many card readers would need to be issued to, or purchased by, businesses and State government and other federal government agencies.⁶ We still do not know what impact this will have on the willingness of businesses and services to continue to offer concessions. We still do not have information about the impact of this proposal on the workability of concessions in a range of settings, including public transport and commercial outlets, such as cinemas.

The Australian Greens are concerned that additional burdens on business and users will reduce the availability and use of concessions.

6 An additional submission by the Office of the Access Card received late in the Committee process suggests at least 50,000 readers will be needed but is unclear if these are only for government services and medical practitioners. See *Submission 39a*, p. 11.

Young people

The Australian Greens welcome the acceptance by the government that young peoples' access to medical services should not be further restricted by the introduction of the access card. We share the concerns of the Australian Medical Association about the detrimental impact of such a restriction.⁷

But we are waiting to see amendments to the legislation to ensure a young person does not require parental permission to obtain a card, as operates now with Medicare, before being satisfied that the government is not using the access card to prosecute a conservative moral agenda.

How children and young people will interact with the card still seems extremely undefined. Evidence to the committee by the Secretary of DHS revealed the department may be considering an additional card especially for young people. To our knowledge this is the first time this had been raised in public.

Blind and vision impaired

There is a range of concerns relating to vulnerable groups of people and those with special needs that have not been addressed by the government in the design of the access card.

In particular, those who are blind and vision impaired would be significantly disadvantaged by the current design of the card, which is not distinguishable from other cards.

The Australian Greens support the following recommendation of Blind Citizens Australia who gave evidence to the inquiry:

[That] [t]he access card be distinct in its size, shape, tactile and visual appearance to enable people who are blind or vision impaired to distinguish it from the mass of cards people who are blind or vision impaired use in their daily lives. These specific needs for the blind and vision impaired community should be commonly embedded features applied to all cards.⁸

Recommendation 3

That if the access card proceeds it should be distinct in its size, shape, tactile and visual appearance to enable people who are blind or vision impaired to distinguish it from the mass of cards people who are blind or vision impaired use in their daily lives

7 *Submission 38*, p.3

8 *Submission 58*, p. 6.

Emergency Medical Information

The government has attempted to sell the access card to the public by extolling the benefits of the cardholder's 'part of the chip'. One of the uses for this part of the chip could be to hold medical information on the person which could be used in an emergency.

It is clear, however, from evidence to the Committee that there are large problems and health dangers from promoting the card as a source of emergency medical information.

There are concerns that such information would not be a reliable substitute for existing practices of assessing the patient and accessing patient records. Doctors could not rely on the information as it may have been altered by a patient or not accredited in the same way as other information.

Currently a major source of emergency medical information is provided through the issuing of emergency emblems or bracelets and accessing a national register maintained by the not-for profit Australian Medic Alert Foundation. Over 260,000 Australians currently have important medical information held by Medic Alert which is accessible to health professionals via a 24-hour hotline.

Evidence to the Committee suggests that the access card, while not being able to replace the service supplied by Medic Alert, could undermine the viability of the Medic Alert service and lead to a reduction in reliable information available to medical professionals in an emergency. In the words of Mr Bray, Australian Medic Alert Foundation, in evidence to the Committee, '[w]ithout authentication, the health alert on the card can be so misleading that it can be dangerous'.⁹

Recommendation 4

That emergency health information not be stored on the card.

Copying the Card

The bill makes it an offence to copy information on the surface of the card, but not the information on the chip or in the database. This is a significant omission, particularly given the admission by the Secretary of DHS during evidence to the Committee that a deliberate decision was made to omit such an offence.

If the access card proposal proceeds, the Australian Greens believe that it should also be an offence to copy information on the chip or in the database.

Graham Greenleaf, *Australia's proposed ID card: still quacking like a duck*, Science Direct, Computer Law & Security Report, Elsevier Ltd 2007, p. 166, provided in *Submission 43a*.

Recommendation 5

That if the legislation proceeds it should be amended to include an offence prohibiting the unauthorised copying of information on the chip or in the database.

Keeping of scanned documents

The Committee heard from several witnesses about their concerns about the storing of proof of identity documents in the central database.

The Australian Privacy Foundation in its submission to the Department of Human Services on 12 January 2007 writes that, 'the copies of so-called "proof of identity" documents represent the raw materials needed for identity theft'.

The Committee heard how this would make access to the database more appealing for people seeking to engage in identity theft and that if such people did gain access to the central database the carrying out of identity theft would be made much easier because of the presence of identity documents.

The Australian Greens do not support the storing of scanned copies of proof of identity document in the central database and therefore make the following recommendation:

Recommendation 6

That if the legislation proceeds it should be amended to remove any capacity for scanned proof of identity documents to be kept and stored in the central database.

Alleged Financial Savings

A number of wildly diverging claims have been made by proponents of the access card for the savings to government revenue and the reduction in fraud that might be possible as a result of the scheme.

While it is impossible to properly assess these claims, not least because of the refusal of the government to release its business case for the card, it is clear that substantial arguments can be made that the card could also increase fraud and identity theft.

The Australian Privacy Foundation in evidence to the committee stated that the Access Card 'is a solution looking for a problem. I would argue that is not a good

enough reason to spend \$1.1 billion in an almighty hurry or to put Australians at increased risk of identity theft'.¹⁰

It is still unclear from evidence to the Committee to what degree claims for a reduction in fraud are based on the current use of concessions by out-of-time or underage ID as opposed to large scale defrauding of the Commonwealth.

Evidence to the committee highlighted the threat of increased identity theft and the possibility that the development of a single form of identity could facilitate identity fraud as much as reduce it.

It is clear that all systems are incapable of being totally secure from hacking or fraud. The Australian people deserve to know that the system will be as secure as it can be.

Yet evidence to the committee from the Defence Signals Directorate who will be advising on the security of the project has said they are unable to assess the security of the card because the project is too undeveloped.¹¹

Parliament should not be expected to sign off the creation of the access card with the issues of fraud and security unresolved.

Conclusion

The Greens remain opposed to the access card proposal and this legislation.

The access card must be opposed for the same reasons John Howard gave for opposing the Australia Card in 1987 when he said:

... so we've come down against the present ID card, for three fundamental reasons: the first is the enormous invasion of privacy, the second is that the savings and the advantages of it are not great, and thirdly and most importantly, the cost of it...

The access card proposal is so riddled with problems and threats to privacy that there are no doubt improvements can be made.¹² The Australian Greens will seek to move amendments to do this.

However the fundamental core of the proposal, a universal card and a national population database, so threatens Australian's human rights that it must be rejected.

Senator Kerry Nettle

10 *Committee Hansard*, 2 March 2007, p. 15.

11 *Submission 59*, p. 2.

12 See, for example, the suggested amendments by Professor Greenleaf in *Submission 43* and the Australian Privacy Foundation *Submission 30*.