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**SENATE STANDING COMMITTEE ON
FINANCE AND PUBLIC ADMINISTRATION**

Monday, 5 March 2007

Members: Senator Mason (*Chair*), Senator Forshaw (*Deputy Chair*), Senators Carol Brown, Fierravanti-Wells, Fifield, Moore, Murray and Watson

Participating members: Senators Barnett, Bartlett, Bernardi, Boswell, Brandis, Bob Brown, Carr, Chapman, Conroy, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Heffernan, Hogg, Joyce, Ludwig, Lundy, Ian Macdonald, Marshall, McGauran, McLucas, Milne, Nettle, O'Brien, Parry, Payne, Robert Ray, Ronaldson, Sherry, Siewert, Stephens, Trood and Webber

Senators in attendance: Senators Carol Brown, Fierravanti-Wells, Fifield, Forshaw, Lundy, Mason, Moore, Nettle and Watson

Terms of reference for the inquiry:

To inquire into and report on: Human Services (Enhanced Service Delivery) Bill 2007

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Committee met at 9.05 am

CHAIR (Senator Mason)—I declare open this meeting of the Senate Standing Committee on Finance and Public Administration. This hearing is for the committee's inquiry into the Human Services (Enhanced Service Delivery) Bill 2007, which the Senate referred to the committee on 8 February 2007 for report by 15 March 2007. If enacted, the bill will establish the legal framework for the government's proposed access card. This hearing follows the committee's hearing on Friday. The third and final hearing on the bill will be tomorrow in Canberra. The committee has received 58 submissions for this inquiry and has published all of them except for those where the authors have requested confidentiality. Is it the wish of the committee that the remaining submissions, except where confidentiality is requested, be published? There being no objection, it is so ordered. All public submissions will be available on the committee's website. These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. To ensure that proceedings are not unnecessarily delayed, I will not read through the procedural orders for committee hearings for the protection of witnesses. Copies of these can be obtained from the secretariat officers in the room today if people are interested.

[9.06 am]

FISHER, Ms Michelle, Manager, Policy, Office of the Victorian Privacy Commissioner

VERSEY, Ms Helen Kathryn, Acting Victorian Privacy Commissioner, Office of the Victorian Privacy Commissioner

CHAIR—Welcome. Would one of you like to make an opening statement?

Ms Versey—Thank you. I have made a written submission to this inquiry and do not wish to add to or alter anything in that written submission. But what I would like to say to the committee is this: I do not object to the use of technology to update and improve the existing Medicare scheme or people's access to Commonwealth benefits and concessions. Nor am I opposed to a scheme that assists in the prevention of identity theft, as outlined in the bill. But the question must be asked whether the scheme, as outlined in the bill, will truly deliver the benefits claimed for it and whether the benefits outweigh the cost and the potential loss of privacy and security of approximately 16.7 million people's personal information and whether the stated objects of the scheme can be achieved by a more modest approach.

In my written submission I stated that for the first time Australia will have a national population database. This database, or register, as the bill calls it, will contain a considerable amount of personal information about every man, woman or child who is a citizen, a permanent resident and, in some cases, a temporary resident in Australia. Since it will be compulsory from 2010 to register to obtain an access card and the access card will eventually be the only means to obtain any Commonwealth benefits such as Medicare, then few will not be on the database. As with any large database containing a lot of personal information, it will be especially vulnerable to unauthorised access and use. One only has to reflect on repeated reports of unauthorised access and misuse of police databases or, more recently, the Centrelink database, to know that this is not just possible but inevitable, as is function creep. Audit trails and criminal sanctions will not prevent it. This database will be the richest of them all. It not only contains extensive personal identifying information but also a photograph, digitised signature, copies of identity documents such as birth certificates, and a unique identifier in the form of an access card number. In the second reading speech the Hon. Mal Brough stated:

The register will not be amalgamated with the databases of existing participating agencies. It will be established separately ... and will not contain medical or health information.

That may be so, but the creation of a unique identifier will allow data matching and data sharing between those agencies that hold the unique identifier without the merging of those databases. The bill does not prevent this. Clause 57 only prevents the recording, copying and using of a card number from the card, not the register. It is therefore small comfort that the register will be kept separately from the participating agencies' databases.

The card itself is said to carry less information than a driver's licence, but this is not a relevant comparison. It carries more information than the Medicare card. It has a photograph, the unique identifier and a signature. It also carries other information of a person's choosing, such as a date of birth. The government has been adamant that this card is not a national identity card. It has made this an express object of the act. It has created penalties for people who require it as an ID card except for the purpose of the act. Yet the very presence of a

photograph and voluntary date of birth means that it will become an identity card albeit through the stated means of choice and consent.

The very process of registration and application for the card is intended to meet the proposed Commonwealth gold standard for evidence of identity. When a driver's licence did not contain a photograph, no-one apart from the police for purposes connected with the driver's licence asked to see it. But the moment it had a photograph on the face of it then it became a de facto ID card. The presence of a photo on the face of the card will do the same. There may be criminal sanctions, but the committee must ask itself how likely it is that these will be enforced in practice.

The chip on the card contains much more information, including residential address. Apart from veteran or age pension status, by choice, the face of the card does not identify what Commonwealth benefits the holder of the card is entitled to. This is contained in the chip. This means that whenever an organisation is offering concessions to certain classes of persons, whether it be a state or territory government, a pharmacist or the local video shop, they will require a reader for the chip. Thousands of people and organisations will have some degree of access to information on the chip. This is a significant security concern. It is unclear how access will be limited to what the reader needs to know. The bill, in clause 34(1), makes reference to a card PIN and password, but these features appear to be optional. PINs and passwords are security features. If they are needed to protect the information on the chip, they should not be optional.

One of the benefits of the card that has been promoted is that it will give easier access to persons requiring emergency payments after events such as Cyclone Larry, therefore both the register and the chip will contain an emergency payment number. Putting aside whether people involved in natural disasters such as Cyclone Larry are going to have their access card preserved, it is worth reflecting what this feature means in practice. The emergency payment number, while not an individual's bank account number, is the means by which a person accesses an emergency payment and, thus, the card will also have to be able to be read at ATMs. This is another outlet which will have to be able to read the chip.

The chip will not only contain information said to be relevant for access to Commonwealth benefits and concessions; the bill creates a so-called customer-controlled part of the chip. As yet the size of this is unknown. What information could be put on this part of the chip is also unknown, save that the bill, in section 40, allows the cardholder to use the card for any lawful purpose. Apparently Queensland is already interested in it containing driver's licence information. Other states and territories may follow.

Sections of the private sector such as banks are no doubt keenly interested. The consumer and privacy task force has just issued a discussion paper that flags that information such as allergies, drug alerts, chronic illness, donor status and next of kin may be included. The more information and the wider the diversity of the information that is to be included, the greater the security risks, especially, as has been suggested, if the customer has access to the information on the customer part of the chip and is able to update it or alter it from the internet-enabled home computer. Although the bill stipulates that the card cannot be required to be produced for purposes other than the purposes of the bill, if information such as driver's licence information is included then mandatory production widens. It is also easy to predict

that those that want to populate the customer part of a card will be able to coerce consent through such methods as significant financial incentives.

In spite of the enormity of this project, the bill at present before parliament is silent on many significant areas—for example, reviews and appeals; privacy protection; effective oversight and governance; protection of information; issues relating to the customer controlled part of the chip; dependants, carers and other linked persons. The task force is yet to report on these matters. It is yet to do a privacy impact assessment. The bill gives the authority to the executive without the protections to the public.

The existing federal Privacy Act is not sufficient. It is a generic act with many exemptions. It does not apply to state and territory bodies such as road authorities or contracted service providers to states and territories, such as transport authorities. It does not apply to all of the private sector. In my submission, the bill should not proceed until all of the legislation underpinning the scheme has been introduced. Only then can an informed assessment of the scheme be made. If it does proceed then at least the commencement clause should be amended to expressly link the commencement of this bill with related bills.

CHAIR—Before I invite questions from my colleagues, can I just remind my colleagues again about timing. I thanked you for your cooperation last Friday, but perhaps we could keep questions and answers direct, if that is okay. The government has said there are two principal reasons for introducing this bill—first of all, to stop fraud or to fight fraud; and, secondly, to facilitate access to welfare. They are the two principal arguments the government has raised, including in the explanatory memorandum. If we go to the card itself, one of the arguments is that smartcard technology is good because information does not need to be on the card; it can be on the chip. Do you think that the government would be hindered in facilitating access to welfare or fighting fraud if there were not a photograph and a universal personal identifying number or digitised signature on the card?

Ms Versey—With regard to a photograph, no, I do not think so, because people are going to need to have readers in any event. So, in my submission, a photograph could be on the chip and those who need to be able to identify the person by looking at the photograph and looking at the person who is presenting the card should be able to do so through a reader.

CHAIR—So welfare benefits would not be paid in any case unless there is a reader available.

Ms Versey—That is right, because the card needs to be read for the welfare benefits. As I understand the scheme, anyone who is providing benefits is going to need a reader in any event. So logically, if they have to have a reader, you have a reader that can read the photograph or can bring up the photograph as the check. Once you remove a photograph off the card, you greatly reduce it being used as an identity card, if that is what the government wishes to prevent. With regard to the unique identifier, one of my concerns was that there seemed to be some suggestion in the explanatory memorandum that this would be used over the telephone to identify someone so that the cardholder—

CHAIR—Or over the internet as well.

Ms Versey—Yes, so the cardholder needed to be able to read their own number off the card itself. I had some real concerns about that because I would have thought that, if someone is

ringing up or accessing the internet and is able to do so, or can obtain information simply by quoting a number, that is a real security risk. If an unauthorised person has got hold of the card but can access information simply by reading the number, that is very poor security. A person should in any event have to provide much more identifying information to be able to get information over the phone or on the internet. So I do not think that that assists in any sort of security arrangement by having the unique identifier on the card.

CHAIR—Professor Fels’s task force did equivocate but came down in the end in favour of a photograph being on the surface of the card. In essence, he argued that it would be convenient for users. What do you say to that?

Ms Versey—It may be convenient to users. I suppose it is the whole issue as to whether one wants to encourage the use of this card by choice basically as an identifying card or identity card. Of course, that raises the whole—

CHAIR—That is a different issue, isn’t it?

Ms Versey—That is a different issue, but that is really what it is all about.

CHAIR—You cannot confuse the issues.

Ms Versey—No. But it is convenient to the user if they have a photograph given the pressure on people to produce an identity card with a photograph on it. If you go to the airport to pick up your electronic ticket, you have to produce a drivers licence or your passport. If you go into the post office to post a parcel overseas, you have to produce some photographic evidence of your identity. If it is the case that it is envisaged that this will be used—and it clearly is—by choice as another form of identity, then obviously it is of consumer convenience to have the photograph on the card.

CHAIR—So you are saying it is a de facto identity card?

Ms Versey—Yes. It is promoted as such through choice and consent—expressly so, really.

CHAIR—Putting aside those issues about the card and the information on the card for a second, in your submission you also go to some lengths to describe the very broad discretion of the secretary of the department and the fact that that is not subject to legislative review.

Ms Versey—Yes.

CHAIR—Why is that so concerning? It is administratively convenient, isn’t it?

Ms Versey—A lot of things can be brought in under the label of administrative convenience. I think with a scheme which is as sensitive as this, one should be very careful how much discretion you give to a bureaucrat—and I mean no disrespect to the secretary—without proper legislative oversight. You should be keeping it tightly controlled as to what information is required from people and what goes on the register.

CHAIR—So at the very least it should be subject to legislative scrutiny. Is that your point?

Ms Versey—Yes, that is my point. At the very least it should be subject to legislative scrutiny. Wide discretions may not necessarily be abused but can be interpreted very widely.

CHAIR—This is my last issue because I know my colleagues have many questions. My colleagues, among many other issues in Sydney on Friday, raised the issue of the proof of identity documents being kept on the register.

Ms Versey—Yes.

CHAIR—You flagged that. What are your specific concerns about that?

Ms Versey—My specific concerns are that you will now have a register where identity documents, such as birth certificates, are now copied onto the register. This makes it a very rich source for those that want to indulge in identity theft or want to take over identities, which means that you have—

CHAIR—So it creates opportunities for identity theft?

Ms Versey—It creates opportunities and it makes those that have access to and control of the register vulnerable. It makes the register vulnerable. The less you have on the register the better. If you have a source where you not only have all this personal written information but also actually have copies of the identifying documents themselves, then you have the whole person's identity all in one place. There is always danger when you put everything in one place. Even though it may seem terribly convenient and a good idea, if you collect personal information and put it all in one place, then it makes it much easier for those that wish to steal identities to do so.

CHAIR—Would you be happier if, when proving your identity, a person applying for the card showed the information to an officer but it was not copied or scanned?

Ms Versey—Yes. There seems to me to be no reason why it should be copied or scanned if the person doing the interview sees the documents and is satisfied, and then ticks a box to say that they have seen the documents and are satisfied they are genuine. I know this ties into the document validation service that is being proposed. There is no explanation as to why the documents have to be copied onto the register.

CHAIR—My friend Senator Watson has just whispered, 'What is the maximum amount of information?'

Ms Versey—I have not really turned my mind to the maximum amount of information on the register. I have expressed my concerns in some areas in my submission. If you want me to give that more thought I could take it on notice, but I think my concerns are expressed in my submission.

CHAIR—You say it is an identity card—you actually say that, don't you? You say: 'This is an identity card.'

Ms Versey—Well, it is a de facto identity card. It is meant to be. It is meant to identify people who are presenting to obtain concessions. There is no doubt about that.

CHAIR—But that is not the problem, is it? The issue is whether it can be used for other purposes.

Ms Versey—That is right.

CHAIR—That is the point.

Ms Versey—The point is whether it becomes a national identity card for everyone apart from the people presenting to obtain their concessions.

Senator FORSHAW—I have two quick issues. Thank you for your submission and particularly the fact that you have been through the bill and have identified issues with respect to the various clauses and paragraphs, which was most helpful. You mentioned in your opening statement—and it runs through your submission as well—this difficulty that we do not have the parallel proposed legislation going to whether there is going to be a right of appeal and so on. I take the point that you are saying it should either be delayed until the full package is available or the commencement date is delayed. But having regard to the fact that the government seems very keen to push on and push this through the Senate, do you have any proposals—you could take this on notice or maybe you have submitted this to Professor Fels's inquiry—about the sort of scheme that should be in the legislation to provide some sort of appeal or system of checks and balances against discretionary decisions by the secretary or refusal to provide a card but not give reasons and so on?

Ms Versey—I have not got it in detail, but what I would say is this: where the secretary has power to, for instance, decide a person has not properly proved their identity or to suspend or cancel the card—which would have very serious consequences on a person who does not get their access card, especially if they need it for a number of concessions—there must be some sort of right of review and appeal to the secretary's decision that is accessible to people. If a secretary has the power to make the sorts of decisions that can radically affect someone's life there should be oversight of that and an appeal mechanism against it.

Senator FORSHAW—One of the things that concerns me about that is that at the moment under the current system if you want to get a Medicare, pensioner or veterans card there is a system—whether it is a good one or a bad one—in place that gives the applicant the right to appeal an unfavourable decision. I am struggling to understand how the new system with his card will operate where you have another layer. You have a secretary who presumably has the ultimate right.

Ms Versey—That is what we do not know at the moment and that is what I am saying: the legislation needs to include a system whereby people can appeal against the secretary's decision. I cannot give you details of what sort of system it should be apart from it needing to be accessible. It perhaps needs to be outside of the bureaucracy so that you have a layer above the bureaucracy, given that we have the secretary making the decisions, and a system where a person has a right to be heard.

The other area that I am concerned about is the mandatory information on the register. In particular, I am concerned about the residential address. It seems that the secretary's power not to put the residential address on is very limited. I think that (a) it should be discretionary and (b) if there is a refusal not to put it on the register, there should be an appeal against that. In our office we have had one case where a person's residential address, which was held in the government's database, was disclosed—after the woman had changed that address and her name—to her estranged husband, who was violent. This had, potentially, very serious consequences. There are those sorts of issues regarding discretion about what to put on or not put on the register and there being a right of appeal if the person's application not to have information on the register is refused.

Senator FORSHAW—On the second matter, very quickly, it seems to me that there is a catch 22 in a lot of this where the government says that this one card will replace up to 17 cards. But we know for most people it will be one—Medicare—and maybe a couple of others, such as a veterans card or a Centrelink related card. One of the things that happens with, say, the veterans card or the seniors card is that they are used—and I think quite legitimately—in the private sector for those persons to obtain a discount or a lower charge on services. It may not necessarily be a government service. With the card that we have been shown, the access card, that sort of information is not actually on the face of the card—

Ms Versey—That is right.

Senator FORSHAW—so there is the potential, if you like, for persons to lose the opportunity to access benefits that they may have now. A simple one might be to go to McDonald's and get a free cup of coffee or something.

Ms Versey—That was the point I made. Of course, I think it is voluntary for veterans to have their status on the card. But that was a point I made. This means that there will have to be readers of the chip all over the place. If that system is to continue, there will have to be readers in all sorts of places where concessions are granted. The state government provides—

Senator FORSHAW—Sorry to interrupt—or that you may need some second identification system.

Ms Versey—Yes.

Senator FORSHAW—You have your access card but you have a readily identifiable entitlement to some other benefits, because you are not going to have these readers right for the private sector, surely.

Ms Versey—I suppose that begs the question as to whether there should really be only one card.

Senator FORSHAW—Okay. I will leave it at that. Thank you.

Senator STOTT DESPOJA—Thank you for your excellent submission. I just wanted to pick up a specific point you raised in response to Senator Forshaw—again, I apologise if you have covered this: the issue of suppression of address and the very valid points that you raised; the fact that no-one is exempt apart from witness protection program people. Do you have an example that we could use for suppression of address? I understand that in New Zealand domestic violence legislation there are mechanisms that they have employed. Is there something you can give us to help us in possibly redrafting these bills?

Ms Versey—We were involved in amendments to the Victorian state Business Licensing Authority Act 1998. They set up a scheme where, if you were to be placed on the business licence register, which of course is a public register, you could apply to have residential address excluded from the register by the registrar and if the registrar refused your application then there was a right of appeal to the Victorian Civil and Administrative Tribunal. That is one example of a scheme where the person controlling the register can make the initial decision and, if there is a refusal, there is a right of appeal.

Senator STOTT DESPOJA—Thank you. In your submission, as I am sure you have today, you have talked about the issue of access. I have concerns not just with the issue of

unauthorised access. My first question is: do you think we should explicitly prohibit in the legislation unauthorised access? Is that something that is missing in the bill from your perspective?

Ms Versey—Yes. I do not think the bill does expressly prohibit unauthorised access, but I think what is completely missing from the bill is the protections around the information. It does not expressly prohibit unauthorised access, data sharing or data matching and that is needed in the bill. Yes, I would say that there must be express prohibitions in the bill.

Senator STOTT DESPOJA—Conversely, my second question, which is probably predictable in following on from that, is about the fact that there is no explicit listing of who can access the register.

Ms Versey—Exactly.

Senator STOTT DESPOJA—Is there something that you would recommend in relation to—

Ms Versey—I would certainly recommend that you expressly say who has access to the register so it is clear and transparent in the legislation as to who has access. For example, if it is intended that federal police should have access to the register for law enforcement purposes, the bill should say so.

Senator STOTT DESPOJA—Other witnesses have asked and some other people have said there should be an additional clause or schedule. You are not fussed about the process by which that happens as long as—

Ms Versey—It is in the legislation.

Senator STOTT DESPOJA—Just in relation to an explicit legislative revenue mechanism, is there something you would recommend to us, particularly when it comes to reviewing some of those administrative decisions? I note that throughout your submission you have drawn our attention to the wide-ranging discretionary powers that rest with the minister and, more particularly, the secretary of the department. Is the review of administrative decisions something we should be placing in the bill?

Ms Versey—I certainly think that review of administrative decisions needs to be placed in the bill. I do not have an actual model for you. I can take that on notice and attempt one, but it is probably something that is in the draft. I am sure there are plenty of examples of administrative review models. I can certainly take that on notice if the committee would like some examples.

Senator STOTT DESPOJA—That would be great. I think we would value that. Thank you.

Senator LUNDY—I would like to follow up on one point about discretion. In your submission you reference clause 30, which authorises the minister to issue policy statements setting out the Australian government's policy in relation to the administration of the bill. You go on to note that the breadth of discretion proposed to be given to the secretary combined with that creates a whole new realm of non-legislative change. Can you expand upon that and give some examples about how that power could be used and how dramatically it could change the application of the access card in Australian society?

Ms Versey—I need to refresh myself on that matter.

Senator LUNDY—It goes to the point of broad discretion. It has been noted by other submitters that this authorisation to the minister to issue policy statements setting out the Australian government's policy being included in the bill is strange because of course they can always do that through their role in the parliament. Why is that specifically in the bill and what implications does it have?

Ms Versey—It did seem an odd inclusion in the bill to give the minister this power to make policy statements. I do not think the explanatory memoranda in any way explained why it was there. Given that the scheme is presented as government policy that it is not an identity card but simply to enhance access to services and reduce fraud, it is difficult to see why the minister needs to have an express power to make policy statements which may actually take the scheme wider than the present government's stated policy.

Senator LUNDY—Without legislative amendments.

Ms Versey—Yes, without express legislative amendment. That was my concern. Similarly, when you have discretions of the secretary, it means that you do not have that legislative oversight. It is such an enormous scheme that I think giving discretions without legislative oversight causes concern.

Ms Fisher—Can I add something to that?

Ms Versey—Yes, please do.

Ms Fisher—One of the things that might be considered by the committee in relation to those guidelines is that I think it evidences the inherent tension between 'Is the card an access card?' and 'Is it an identity card?' because, if the identity guidelines establish a very robust level of identity that needs to be proved, either on an interim status or as a full status, which has now been introduced into the bill but was not in the exposure draft, then it raises the intent of the card to be more of an identity card rather than an access card, because there should be simply enough identity to establish your eligibility to access—

CHAIR—Sorry, could you explain that again, Ms Fisher? I am listening.

Ms Fisher—There is a tension in the bill, I think, about what the purpose of the card is. Is it to be a robust alternative form of ID to your 100-points check? Can you present the one card, or do you present a wallet of cards? So I think there is a tension: do we promote that, do we go off the back of the access card to provide this optional alternative to proving your identity, or do we simply want it to evidence your entitlement to access services? How robust does identity need to be to access services?

CHAIR—If it is the former, the government has not said that. The government has simply said it is to facilitate access to welfare and to fight fraud. If that is part of the agenda, I wish the government would say so.

Ms Fisher—It does mention it in the explanatory memo, when it explains why we are having this new interim full status for registration. There is a reference to the gold standard for proving identity. It does make one wonder why.

CHAIR—It may be convenient, but that is a different issue. Issues keep merging.

Ms Fisher—Exactly. There is a tension.

CHAIR—Yes, if it is convenient, that is fine, but that is not why I am told the card is being brought in. It may be a consequence if people want to use it that way—I understand that—but that is not why it is being brought in.

Senator STOTT DESPOJA—What is clause 33(a)?

Ms Fisher—If you want it to be an access card then make it an access card. Why ask too much from the card, unless you want it to be a convenient form of ID?

CHAIR—Yes. Sorry, Senator Lundy.

Senator LUNDY—That is okay. I think this really does go to the heart of it, because the witness appears to be contending that—it is the duck thing—it looks like an identity card, based on what is required to establish it, albeit that that is not the government's stated policy intention. I think that is pretty much the heart of what we are going to be debating in the parliament.

I have two other questions. You have already responded to Senator Stott Despoja's questions about authorised access, but I am interested to know if you are able to find anything in the bill that specifically prohibits compilation and/or distribution of the registration database. I would like to refer to the compilation and distribution—in fact, sale—of the ABN database following the introduction of the GST, when all of the corporate ABN numbers, the company ABN numbers, were in fact sold to Dun and Bradstreet. That practice quickly stopped when it was raised in parliament—in fact, in Senate estimates. I was involved in that. So what is there in this proposed act to prevent compilation and/or distribution either in an authorised or an unauthorised fashion of this new database?

Ms Versey—There is nothing express in the legislation. At the moment, all that would apply would be the federal Privacy Act, but that has many exemptions, as I have said, and it is a very generic act. But what is missing from the legislation is express prohibitions on compiling and exchanging information.

Senator LUNDY—And is there anything, to your knowledge, that would prohibit or prevent the compilation and distribution of this database within the Commonwealth—that is, to other agencies—for perhaps data-matching purposes but also, I guess my point is, not just checking individual records but compilation and allowing that database to be cross-checked, if you like? I do not know the precise words.

Ms Versey—Again, only the federal Privacy Act would apply. It is not within the bill itself. That is our point: it is not incorporated in the legislation.

Ms Fisher—I would add that I think it is not prohibited when you are dealing with other laws that have a demand power. For instance, one question worth exploring—and I do not profess to be an expert on this—is the powers under the census act to access information in administering the census. So, where other laws provide an authority to access information held by government or elsewhere, that is a potential draw upon the register.

Senator LUNDY—So, by virtue of the presence of those demand powers and the absence of any explicit prohibitions, we can pretty much draw the conclusion that this database would be compiled electronically and distributed for those demand-style purposes.

Ms Fisher—It is certainly vulnerable to that.

Ms Versey—Bearing in mind that the federal Privacy Act expressly allows disclosure that is authorised by law.

Senator LUNDY—Yes. I want to go to the issue of the Crown being exempt from prosecution—Crown immunity protecting Commonwealth agencies from being prosecuted for misusing the information. You reference part 1, division 5, clause 35. Can you just expand on that and the indications of that if the database were to be distributed and misused?

Ms Versey—I suppose we have raised the issue because I do not myself understand how it is going to impact on it, because the bill creates criminal offences and then provides Crown immunity. I have to confess that I am not clear how the two sit together, because there is no point creating criminal offences if the Crown has immunity from criminal prosecution. I am saying it needs to be explained how that works together and whether that renders the criminal offences provisions inoperable in relation to the Crown.

Ms Fisher—It also suggests that perhaps criminal law is not the only place you look to for breaches. Maybe civil redress should be worked into the bill.

Senator LUNDY—There was discussion at our previous hearings about compensation and some sort of repatriation. I want to take that issue a step further. We had a private company which has experience in the area of IT outsourcing. They self-identified as submitting a tender for the systems integration for this particular project. I asked them about the transference of liability to a contractor in that environment, and they were not able really to explain in detail and did not want to reference the tender documentation. Can you shed any light on the extent to which a contractor would be liable for such breaches, if in fact their contract said they should not do it? I guess my fear is that it would ultimately end up in litigation and the one with the deepest pockets would win. If you can shed some light on that transference of liability in the presence of a major contract governing the management of this data, that would be helpful to the committee.

Ms Versey—I think there are real concerns about contracted service providers. It probably needs to be expressly addressed in the legislation to ensure there is liability. The federal Privacy Act does provide for government not to be able to exclude liability on themselves if their contracted service providers breach the Privacy Act, as does the Victorian privacy act. That also provides that contracted service providers to government can be made directly liable through contract or the outsourcing agent remains liable for the contracted service providers' actions. We have found great difficulties in that because, first of all, if the liability passes to the contractor you have to be able to demonstrate that there is an enforceable contract between the outsourcer and the contracted service provider, and that causes all sorts of problems. So my view is that, if you have a situation where there is a contracted service provider to government, then government should remain responsible for the actions of its contracted service providers. If it has a contract and can seek indemnity, then so be it, but the initial liability should remain with the outsourcer, and that should be expressed in the legislation.

Senator LUNDY—In the legislation?

Ms Versey—I think that it should be expressed the legislation.

Senator LUNDY—At the moment, it is not.

Ms Versey—It is silent, yes.

Senator LUNDY—It has been practice in the past for it to be a feature of the contract, but we are unable also at this stage to be able to view those aspects of the contract, so we have no way to test where liability resides. My final question is about interoperability. We heard at the hearing on Friday that in fact the government's motivation for choosing the standard for the smartcard that they chose was its interoperability features. Do you have any knowledge of or can you identify anywhere in the act that specifies that the smartcard standard is such that it allows it to be interoperable with the existing databases of Centrelink, the Health Insurance Commission and other databases? Is there any technical information about it?

Ms Versey—I do not have the technical information. I can take the question on notice if you would like me to, because I cannot comment on that at this stage.

Senator LUNDY—I am not sure if the information is available. I am asking most witnesses to see if they can shed any light on it, because I presume it is a feature of the contract, but to me it is an essential tenet in what will constitute the scope and potential of this particular database.

Ms Fisher—The interoperability question goes a bit beyond the participating agencies' data sets as well if you are looking at the customer controlled area and the potential for drivers licences to be brought on board. That is something I understand they are in discussion with Queensland about—to ensure that it is interoperable so that it can actually work in that way.

Senator LUNDY—So it is not just about the Commonwealth agencies.

Ms Fisher—I would expect that that would be part of the customer controlled area, but I do not have the information.

Senator LUNDY—And what about private sector functionality?

Ms Fisher—For the banks, clearly you need to get to an ATM to get emergency payments, so there must be some sense of interoperability to be able to use an ATM to access payments. So that is private sector.

Senator LUNDY—Okay. So where are we likely to get some of the answers to those questions?

Ms Fisher—I would suggest the Office of Access Card should have answers to that.

Senator LUNDY—Thank you very much.

CHAIR—Tomorrow afternoon, Senator Lundy, will be your opportunity to ask them.

Senator FIERRAVANTI-WELLS—Ms Fisher, taking you back to a comment you made, were you saying that if something has a photograph on it then that is it, it is an ID card, and you cannot see a circumstance where access cards could legitimately have photographs on them?

Ms Fisher—If the intent of the access card is to access benefits and services, and those benefits and services are by agencies who already have a reader which has a chip, the chip

itself has the photograph on it. Why do you need it on the surface of the card unless it is to promote the convenient use of the card as an identity card? I have not received or read any information that suggests why it is not adequate to leave the photo on the chip and not on the card, aside from the 'convenient form of ID' argument.

Senator FIERRAVANTI-WELLS—Do you have some experience of what is happening overseas in this area?

Ms Fisher—In the UK?

Senator FIERRAVANTI-WELLS—Or in other countries.

Ms Fisher—We will probably take that on notice, but we do have discussions with other privacy commissioners in the region, including Hong Kong, who have an identity card in place, about the use of the Hong Kong card in the private sector and across other areas. I think Korea has briefed us about their use of their identity card.

Senator FIERRAVANTI-WELLS—My question is about access cards with photographs on them, not ID cards. You have made the distinction. I am asking you your experience with them. Clearly you have concerns about an access card with a photograph on it. I am asking you what your experience is and what your observations are in relation to other countries that have access cards with photographs on them as opposed to identity cards.

Ms Fisher—For me, one of the most powerful examples is in the UK where they initially started the identity card as an entitlement card, and by the end of it they called it an identity card because that is what it was. If there is additional information or questions you have, I would be—

Senator FIERRAVANTI-WELLS—So we should object to it simply because one jurisdiction particularly for its own set of circumstances—

Ms Fisher—I am just calling it what it is.

Senator FIERRAVANTI-WELLS—We are calling it an access card. It is an access card.

Ms Fisher—But you are saying it is not an identity card. I suppose it is for the government to decide: do we call it an identity card, because that is what it is on the face of it and that is what is being promoted?

Senator FIERRAVANTI-WELLS—It is an access card which requires a photograph on it. That is what it is.

Ms Fisher—The question remains for government.

Senator FIERRAVANTI-WELLS—It is the general hype that is calling it an identity card and that is portraying it as an identity card. That is not what the government is intending.

Ms Fisher—If parliament and the government do not want it to be an identity card, what harm is there in removing the photograph? That is the question that I think the Senate needs to debate.

Senator NETTLE—There are two areas of your submission that I want to ask you to expand on. On page 11, you talk about people giving their consent for their details or

information for their access card. You talk about this idea of 'coerced consent'. Could you expand a little bit more about how you envisage that that may work in relation to this card?

Ms Versey—Having worked in many areas of the law for a long time, I am conscious that consent is a very difficult area. The law talks about true consent being informed, voluntary, et cetera. But much consent actually is not really consent at all, and it gets more difficult the more vulnerable and the less educated people are. People assume that because a government body is asking them for something, it is required. I can give you an example. Every year or two years, Australia Post send out a massive survey asking for all sorts of personal information. It is completely voluntary; you are entering a competition if you fill it out. But I can assure you that every time it goes out, our inquiry lines are full of people who believe that it is compulsory because a government organisation has asked them for the information and they believe they have to fill it in. That is one example where, even though it is apparently completely by consent and voluntary, people do not understand that and believe that they are obliged to produce the information.

The other side of the coin is that you can coerce people into giving their consent through, say, benefits. For example, let's say that the Queensland government wants to put its drivers licence onto your part of the card. Because they do not want to run two systems, it is much more convenient and financially viable for them to have it on your part of the card. But it is supposed to be your choice—you consent to whatever goes on that card. Then they make it financially beneficial for you to have your drivers licence on the card. They give you incentives to do it, or it becomes much more convenient to do it. So you can either produce your card as a form of identity, say, or you have this terrible and difficult process to go through to show your identity. Those are examples of what I mean by 'coerced consent'. You may not be expressly asked or forced to do it—or even impliedly forced to do it—but the alternative may be too arduous, so it is much more convenient to do it, even if you do not particularly want to.

Senator NETTLE—When your office has received concerns from people—as, for instance, with the Australia Post example—who say, 'We thought it was compulsory', do the people who contact your office with those sorts of concerns fall into a particular category? For example, later today we are hearing from the Federation of Ethnic Communities Councils. I would imagine that that is one group of people. But I am wondering if it is specifically limited to people from non-English-speaking backgrounds, or is it across the board in the sorts of complaints that you get?

Ms Versey—To some extent it is across the board, but a lot of elderly people assume that anything that government asks for they have to do, even though it is by consent.

Senator NETTLE—Thank you. The other issue I wanted to ask you about is on page 3 of your submission. You give what I think is a very useful example for the committee, where the government has talked about 'If you change your address you only need to inform one person.' I am sure all of us have our own stories about circumstances where there are inaccuracies and errors. You highlight what I think is really an important point in terms of the implications of that. I do not know if you are in a position to answer this question, but I wanted to ask how frequently in your work you come across this type of scenario and the sorts of implications it has for people?

Ms Versey—It certainly arises from time to time where information gets plugged in, and it is not even in this sort of situation where there are a lot of agencies involved; sometimes it is purely that the wrong information gets sent off. One example is drivers licence information, which can now be changed online—the wrong information is put into the system and then suddenly a person is in WA driving around after their drivers licence has been cancelled because their reminder went off to the wrong address and they did not realise that they no longer had a drivers licence. Sometimes the wrong information somehow ends up in the wrong place even though the person is adamant that they have not changed their address. That is one example. We do get a lot of examples where wrong information gets put against the wrong person and then causes problems.

What I am saying is that, if the wrong information gets spread across a lot of participating agencies, that compounds the problem. Sometimes, again, there is safety in a person not just putting information into one place, because it compounds errors. That is often a problem. It is the problem with data sharing and data matching—if there is an error it gets compounded.

Senator STOTT DESPOJA—Are you willing to take a couple of written questions on notice?

Ms Versey—I am able to, yes.

Senator STOTT DESPOJA—On record, in your submission you refer to the current inadequacies in the Privacy Act. One of the arguments that has been put to us by the former minister and the government has been that the privacy protections currently in our laws will be adequate. I am specifically concerned about, in the case of a victim whose information is breached or accessed without their consent, firstly, whether or not they will be informed—and my understanding is that they cannot be under the current privacy laws—and, secondly, whether or not there is room for redress.

Ms Versey—Yes, we will do that on notice.

CHAIR—Ms Versey and Ms Fisher, thank you very much for your assistance this morning.

[10.03 am]

SHARP, Mr David, Legal Coordinator, Access Card No Way Campaign

WARNER, Mr Timothy, Convenor, Access Card No Way Campaign

CHAIR—Welcome. Before I invite my colleagues to ask questions, do either of you gentlemen wish to make an opening statement?

Mr Warner—Our first comment to the committee is on the government's submission. As noted in Professor Greenleaf's statement on Friday, the purpose of the department's submission is to create straw man arguments and to skate over the very thin ice of the real and enduring problems in the bill's intention and suggested arrangements. The items mentioned by Professor Greenleaf were that the submission claims to protect from copying the photo and information, when in fact electronic copying is the norm for intergovernmental activity, and that it claims that the Privacy Act is a substantial protection, when no determination has been made against a government agency in 20 years of supervision. After seeing the government's submission we were irresistibly drawn to another government document, which was much discussed in 1986 and 1987, from the Health Insurance Commission, as it then was. It reads:

It will be important to minimize any adverse public reaction to implementation of the system. One possibility would be to use a staged approach for implementation, whereby only less sensitive data are held in the system initially with the facility to input additional data at a later stage when public acceptance may be forthcoming more readily.

This, of course, is a memorandum aimed at implementing the Australia Card, but the proposers of the Australia Card would be proud of the immense latitude that has been granted the minister and his servant the secretary to widen the net of information as required. The famous last point 'administrative information as determined by the secretary'—a wider opportunity is hard to imagine. The caveat to the effect that the information should not identify the cardholder is totally vacuous—stating that a person does not like the government does not really identify the holder but it would be a profoundly worrying addition to a register. As organisations as diverse as the Privacy Foundation of Australia and the Festival of Light pointed out, you do not create this gargantuan machinery, force the registration of 16 million adults and then say, 'We are done now.'

Even if the legislation were cast iron in its guarantees within itself, which we do not believe, having this sort of power to interfere is like telling a drunk where the drinks cabinet is and then making them promise not to have a quick one. No government in history has behaved in the way the Department of Human Services is asking the Commonwealth to act in perpetuity.

We have spoken with members of the government and they ask for submissions to the committee to focus on the bill's mere failings in language. We are prepared to comment on some of these, but this is to ignore the central facts. The parliament and the people have not been presented with any reasoned financial case for approving this aggrandisement of government power. The KPMG report was filleted and refers to the scheme as originally placed before cabinet 12 months ago. No national security case has been made, although it has been muttered under the breath of many spokespeople and government supporters. Former British intelligence chief Stella Rimington has gone on record that identity is not the

issue with terrorists, it is identifying the danger. The Madrid bombers all had valid government ID on them.

As the campaign sees the situation, there are two rational courses open to the Senate given the evidence before it. You may adjourn debate until the government's own access card office inquiry under Professor Fels has completed its work, the minister delivers the second bill for the parliament's consideration and KPMG or a similar group is asked to provide an updated, unfiltered report to inform the national debate. With the evidence before it the parliament could then make an informed decision.

The second option is the one we would hope the Senate and in particular the coalition parties would take: to look at the bill and its likely consequences and simply admit it is wrong. It is ill-advised and certainly against those principles of limited, transparent and accountable government that are at the heart of the Anglo-Saxon political systems. It is certainly not what Sir Robert Menzies had in mind when the Liberal Party was founded and the post-war coalition formed. That concludes the verbal statement.

Senator FIFIELD—Could you give us an indication as to whom Access Card No Way represents—the range of people and organisations?

Mr Warner—It is largely Liberals. It has quite a few people from outside the Liberal group—some Greens, Democrats and a variety of other people who are either involved in political parties or not. I believe we now have volunteers across the entire breadth of Australia, certainly from every state and I think from every region. Our membership is getting towards 200. Members are specifically linked in to assist with the campaign and to give us feedback. There were about five or six founding members and they are intimately associated with the Adam Smith Club, which had a notable role in helping defeat the Australia Card in 1987 and might be described as classical liberal in orientation. That is who Access Card No Way is.

Senator FIFIELD—From the title of your organisation it is clear that you do not think the card should proceed at all.

Mr Warner—Item 2 that I mentioned is the preferred option.

Senator FIFIELD—In your submission you make suggestions as to how the card, in the event that it goes forward, could be improved. At the outset you referred to the submission from Liberty Victoria and comments by Michael Pearce SC that there are two clauses which, if amended, could make the card a fully fledged ID card.

Mr Warner—That was certainly what was in their submission.

Senator FIFIELD—Are you able to take us through—

Mr Warner—Take us further than that? No, I will leave it to them to discuss those particular points because, although I have brought our legal affairs adviser here, I think that this is, in that sense, a specialty area and I am not going to go into that. Whilst we are willing to have a generalised discussion about the KPMG report and various other things, I do not particularly want to get into it clause by clause. I was just putting that in as a specific point that I believed showed that there were failings in the wordings thereof.

Senator FIFIELD—Sure. Mr Pearce will be appearing this afternoon so we will certainly take that up with him.

Mr Warner—Then you will have it from his mouth.

Senator FIFIELD—On the second page of your submission, at point 3, you say that one of the stand-out principles of the card would be the denial of citizenship de facto to any person without an access card, and you refer to a number of entitlements and benefits. I put it to you that probably the more significant defining characteristics of citizenship would be, rather than particular program entitlements, the right to reside in the country, the right to hold a passport and the right to vote.

Mr Warner—Some of those are definitely true, but they go to the whole point of it being a de facto ID card where you do get people to register and you do have this lovely database, that is supposedly pure, showing who we are and who is really an Australian citizen. I could imagine the Australian Electoral Commission and the electoral affairs committee of parliament would immediately start saying, ‘Here is a carefully prepared database of people.’ The Australian Electoral Commission, as I am sure you are aware, has been looking for many years at the fact that it is difficult to keep the electoral register clean without actually imposing what they see as difficulties in registration and enrolment. Now if you were to simply say, ‘Where is your access card?’—well! We would have just gone and proved our citizenship requirements straight out of the box. So I see the de facto benefits of citizenship are definitely enumerated in this bill and I believe that it would be a very short hop, skip and jump to some very profound things—a passport and voting being two that would obviously become very juicy for the government or for the administrative departments to look at.

Senator FIFIELD—Considering that point: have you looked at any instances overseas where there has been a sort of access card that has been put to purposes different from those which were first intended or indeed has been put to purposes different from those envisaged for this access card?

Mr Warner—The most obvious one in terms of growth of its original intention would be the US Social Security card. It is becoming difficult to operate without it. It is not a formal ID system and they have got their new Real ID Act to try and cover the deficiencies of that when they are trying to form their ID system. But what was originally intended simply to be similar to our original tax file number system, just to give an employer the ability to identify who you are, has now become a very regular requirement on most government and private forms to prove who you are.

CHAIR—Just because it is the only national form of identity in the United States—isn’t that right? The only national form—

Mr Warner—‘National form of identity’? Yes, I would say that is correct.

Senator FIFIELD—Moving from the concept of a national card to the technology itself, the smartcard: are you aware of any instances overseas where that particular technology has been sought by government to be used for a different purpose?

Mr Warner—Certainly, from the way in which the French system has been moving, and the way in which the British system is intended—although it will be implemented as a full-

scale sort of ID system—I think both of those have elements of it. The problem is that the smartcard system in practice is less than 10 years old. Yes, the French were playing with it for commercial purposes 20 years ago, but the evidence is thin on the ground for smartcard technology. Identity cards and so on have obviously been running for the better part of a century. Smartcards are a bit newer.

Senator FIFIELD—Thank you, Mr Warner. It would be remiss of me not to draw the committee's attention to the fact that it is the chair's birthday today.

CHAIR—That means that nobody can play up.

Senator FORSHAW—Senator Fifield, can I ask how you obtained that information?

Senator FIFIELD—I have a database of birthdays.

CHAIR—On that note, I will hand over to Senator Brown.

Senator CAROL BROWN—We have the government-stated aim that this is an access card. Obviously, other people contend that it will move quickly to become an ID card. Certainly, it looks like it has been established in a way where it would easily move to that. Can you give me your view on the legislation? The government claims that there is a legislative defence against having the card being able to provide more functions and so on.

Mr Warner—There are a number of things. The stated purposes at the start of the act make wonderful, broad, sweeping assertions that it cannot be used. But the real problem with this bill is what it creates. Once you have registered the 16 million Australian adults and you have a database, you have a mechanism for using this and a departmental structure to run it. What you put in it becomes just a question of day-to-day choice.

For instance, even if you were to claim that the act in its present form actually stops people from putting extra information onto the card and the register—even if you were to make that claim, which I do not believe is correct—you would have a situation where at any time in future, should an election run in a particular direction which no-one thought it would—and I point to 2004, which was an interesting one, where suddenly the Senate had a particular complexion which no-one really thought about before—and suddenly a government—

Senator FIERRAVANTI-WELLS—It has happened before.

Mr Warner—Yes, it has happened before, in 1975, but that was expected.

Senator FIERRAVANTI-WELLS—This is the fourth time, Mr Warner, so I would not be being so sarcastic about that.

Mr Warner—I am not being sarcastic. I am pointing out that, even when the voters were not necessarily thinking that something was going to happen, it did happen. You can end up with a situation where a government can have the capacity to alter the legislation. Once the legislation is changed, the mechanism is there to implement a very nasty set of government measures. It is the actual mechanism that this bill is creating that Access Card No Way is against.

I will bring up a topic that was brought up with the first witnesses this morning. I believe there was a question of whether it was an ID card and that surely we have other information. The Medicare card was sent out in the mail. That was all that was required. I believe that you

were on either the electoral roll or a variety of other welfare databases, and they sent it out to you in the mail. If you were really keen on having a photo on this Medicare card so that you could stop people from falsely claiming using the Medicare card, you could ask people to send a passport photo in after you have asked them for it.

There is no requirement for this 'Let's have a 12-minute or 15-minute interview; let's have positive proof of ID; let's make sure that the nation is registered.' There is no necessity for that in order to actually run the Medicare system. To implement this scheme of registering the Australian population and then creating a special database with a smartcard is, to my mind, to hand over a very risky instrument in perpetuity. Quite frankly, I do not trust future governments to handle that well.

Senator CAROL BROWN—In your group's mind this access card, as it is designed, will be able to be enhanced?

Mr Warner—Yes, it has got all the room to be enhanced. It has got enormous data capabilities. Obviously, it must have that otherwise there would not be space for all this private information—e-purses and the various other things that are meant to be available. Obviously, there is much greater information on the card. But that is not the really serious issue. The question is the register once you have a card that links in with the register. New technologies are already available where you are talking about hand-held mobile phone links. You will be able to swipe the card, look at who the card relates to and probably read out information, with the proviso that the government of the day decides what information will come out on the reader. If someone has that information, I am afraid that is the sort of situation that I would find disturbing at best. It would be worrying.

CHAIR—Mr Warner, would you accept that the Medicare card needs to be replaced as its technology is ancient and it is amenable to fraud?

Mr Warner—Yes.

CHAIR—You mentioned in your opening statement national security issues and terrorism.

Mr Warner—The Prime Minister mentioned those in the party room, as reported in the *Australian* and on the ABC.

CHAIR—I would say this: that is not part of this committee's brief.

Mr Warner—I understand that.

CHAIR—We are looking at fighting fraud and facilitating welfare. Do you see my point? If we start going onto an issue of national security the entire debate will change. I am not saying you are right or wrong about your scepticism as to the utility of fighting terrorism with an ID card. That is a separate issue, and we are not here to discuss it. This committee is looking at these two issues: fighting fraud and—

Mr Warner—Yes, I understand.

CHAIR—Okay, as long as we are clear on that.

Senator STOTT DESPOJA—I am sure the committee will find on record comments by ministers—comments not leaked out of the party room—linking an ID card with thwarting terrorism back in 2005.

CHAIR—But that is not our brief, Senator. That is all I am saying.

Senator STOTT DESPOJA—Thanks, Chair. Mr Warner and Mr Sharp, you have said that you find aspects of this worrying. I want to know if people like you and me are paranoid. You have put in your submission that we have a number of clauses—clauses 6(2), 45, 46 and there is the word ‘not’ in clause 42—designed to protect. Doesn’t that make it pretty clear that the government does not want this to be an ID card? Why aren’t you satisfied with those clauses as they are currently written?

Mr Warner—I am not satisfied for two reasons. One is that the actual mechanisms within the act mean that a lot of day-to-day government activity will necessarily go straight through to the keeper; it will not be covered by those ‘nots’. It was mentioned earlier, in the previous presentation, that the Privacy Act does not protect a lot of this information. So there are the ‘nots’ in the act and there is the Privacy Act being called upon and yet all of this is actually not stopping the copying and sharing of information. It is not stopping the card being used by third parties, and there is the fact that it has all of the information—the signature, the photo and the number—on the front. It does not stop any of those things. You can have wonderful ‘nots’ in the act but that is not a practical end.

The other point is one that I gave a short time ago. It is simply that we are creating an enormous mechanism and we are making a very large investment in the honest intentions of all future Australian governments and all future Australian administrations. I am afraid I do not have such a sunny disposition as to think that all future Australian governments in perpetuity will be good guys or good girls.

Senator STOTT DESPOJA—I would like to be a Pollyanna on that one too, but maybe not today.

Mr Warner—As to your original question—are we paranoid?—I quote with approval the concept that a paranoid person is a person in possession of the facts.

Senator STOTT DESPOJA—It does not mean they ain’t after you! Thank you for bringing the register to our attention because I think there are concerns about the nature of the card. The register itself is theoretically a potential honey pot of centralised data. I am wondering who you would authorise, if anyone, to access the register. Would you specify in legislation who has authorised access?

Mr Warner—Yes, I would specify who has authorised access. I would be specifying as much as possible the audit regimes and various other things. I would be insisting that a third party group, preferably with some sort of judicial function, have an oversight over the control of the database. The idea that you can go home and, if you will pardon the slightly sexist expression, complain to mother-in-law about your wife is really what is happening here. You have the access card office within the Department of Human Services and, other than the straw man of the Privacy Commissioner, who does not go around telling us to do anything, there is no control over this. There is no external oversight which, to my mind, meets the whole concept of open and transparent government. When you are talking about something this powerful, I think that is essential.

Senator STOTT DESPOJA—Let us go to the issue of third party. For the record, I do not excuse sexist jokes or analogies but that is where the humourless feminist kicks in. You talk

about judicial oversight or a function like that. What about a public interest monitor or a well-resourced and stronger Privacy Commission? Is that something that would satisfy some of your concerns? How about review mechanisms—legislative review as well as the opportunity to review administrative mechanisms? I understand your case and your broader point and opposition to the card but I am trying to work out ways that, if it passes, we can make it better.

Mr Warner—I will use the same analogy I used for Professor Fels's committee when we made our submission to that. If a person comes along with a machete and cuts my arm off and then offers me a tourniquet, I will say yes to a tourniquet. That does not mean I am going to enjoy having my arm lopped off. Yes, an external privacy commission or external authority to monitor the access card would be an improvement on the access card as is presented in the bill at present, but that is not to say that I think that that is a solution. That is something of a band-aid but nevertheless it is an improvement.

Senator STOTT DESPOJA—I totally understand. Perhaps we should move away from the register and the bill as a whole to the card itself. You have heard much debate about the tensions between the access card and the provision of services versus the ID card. Would you be happier if, for example, the photograph and the electronic signature were removed from the card in terms of its superficial presentation? Would that go some way towards ameliorating some of your concerns?

Mr Warner—It is better, yes. There is no doubt about that. But it is not mother's milk. That is, again, an improvement. I do not doubt that it is an improvement. In fact, one particular member of the government who I have spoken to is very keen on a white card with just the logo on it effectively. I say that that is an improvement for protection from third party involvement. It stops it becoming a third party identity card. That is a good thing but, in the long term, the group that people should be afeared of—and I use that term very advisedly—is government. It is not the banks, it is not the local video store, it is none of those things; the government is the group that you really have to be concerned with, and they are going to have the readers. I see it is an improvement. I agree 100 per cent that it is an improvement.

Senator STOTT DESPOJA—Just finally, you mentioned the video stores and the banks. That is something that is difficult to get into in this committee because, as you know, there is not one word in the bill that deals with those third party responsibilities. Except there is, of course—

Mr Warner—Prohibition on demand.

Senator STOTT DESPOJA—Indeed. And there is clause 33(a), which allows for the individual section of the bill. I am wondering if you have any views on the fact that we have this one line that deals with information in your area of the chip. Do you have any understanding of what that means or potentially could mean?

Mr Warner—I will put on a slightly different hat here. I am a retailer and people come in and want to establish accounts with our business. The first thing we are going to be asking for is a set of ID. We will carefully choose our words. We will talk to our local solicitor and make sure we do not say, 'You have got to present your ID.' We will say, 'Let us see a set of ID,' and the first thing that people are going to pull out of their wallet will be the access card, in

the same way as now it is the Medicare card—that is one of the first things they pull out as their form of ID. The access card will be, except that now we are going to accept the access card as 100 points, basically. We are going to be able to say that that is that person, because it has their photo on it, it has a number, it has a signature. All of those things to my mind make an absolute mockery of ‘You can’t demand the card.’ You can get around that any number of ways. You can either use some very delicious wording provided by your local solicitor or you can even casually say, ‘We will take this list of things,’ and you can have access card at the top by itself or 25 different things: your power bill, your gas bill, your Medicare card—no Medicare card anymore—your drivers licence and so on, and the person will look at it and say, ‘I will show you my access card.’ I do not think much of that prohibition. It is dead in the water.

Senator STOTT DESPOJA—Thank you. Thank you, Chair. Now I am even more paranoid!

Senator LUNDY—I have a quick question to follow up. Again, reaching into your experience as a retailer on the issue of a reader of these cards, you have just given the example where all that information is on the card. You mentioned the readers in your opening statement. What do you anticipate will happen with the use of readers and how accessible do you envisage these readers will become? We saw evidence in Sydney that they are available off the shelf at the Hong Kong market, for example, so I guess I am expecting to be able to buy one.

Mr Warner—The former minister for human services at his November presentation proudly proclaimed they would be available for \$20 down at Dick Smith. So, yes, I fully expect them to be available.

Senator LUNDY—And you are not aware of anything in the legislation which will license readers, manage their distribution or anything like that?

Mr Warner—There is nothing in the legislation about that. In fact, it positively begs for private involvement in the private side of the chip.

Senator LUNDY—To follow on from that, what is your general understanding of the use of smartcards in the private sector or the sense of potential in the private sector of a smartcard circulating in society, given that none has yet, because there are clearly no commercial opportunities that would fund such a distribution, but what is the private sector sniffing around the smartcard for?

Mr Warner—There are an awful lot of companies with lots of ideas and dollar signs in their eyes. They vary between versions of the now ubiquitous USB stick, which most people have hanging off their key chain; they keep their little private files or even their emails running off it. Those sorts of things are becoming more and more common. There is a book—which I must admit I did not write down the exact details of but I am happy to pass on to the committee—from the Cato Institute in Washington, in which the author points out that it would be better to provide ID in a large number of different gradations and that in fact the private sector would be better off handling most of those gradations, because then you could have one that you did not mind if people knew—it just had your name on it and so on—effectively taking the place of the various things such as student cards and drivers licences,

and each of them have different levels of authority. But he talks specifically about the whole concept of electronic storage associated with it. I think that the access card's biggest problem is that it is trying to be an industrial strength ID card for a purpose that is not an ID card.

Certainly I am perfectly willing to admit that the bill in itself as set up is not designed to be an ID card. The fact that they have gone and used the architecture, method and various other things which are all what you would require of an ID card means that that private sector on the chip is going to become a very important identity protected mechanism for banks and various other things. That is, I think, another slippery slope which is outside the purview of the committee since we are going to be very narrow about what the committee is going to look at.

Senator LUNDY—That is a matter of opinion too.

Senator FORSHAW—You can try to amend the legislation, for instance, to remove the private sector aspect.

Mr Warner—Yes.

Senator LUNDY—I guess what I am getting at is whether in your view that private part of the chip going to give rise to all manner of commercial opportunities by virtue of its presence in the Australian market.

Mr Warner—Commercial opportunities, yes. Whether that is a good thing is moot—

Senator LUNDY—I am not casting a judgement.

Mr Warner—but it will be a commercial opportunity.

Senator LUNDY—I am just asking whether in your opinion it will.

Mr Warner—Yes. In the same way that I think there are vast commercial opportunities available to a whole lot of people in shady alleys as a result of this who will be selling lovely copies of the plastic of the ID, for example, to go down to your local video store, which will not have a reader, and show them a fake version of an ID card. There are great commercial opportunities that are going to grow with that.

Senator LUNDY—Thank you.

Senator NETTLE—I just wanted to ask one question and I apologise if you have answered it earlier. When you were talking to Senator Stott Despoja before, you said that your greatest concern was the potential for the government to match information and concerns around there. You made that distinction when you were talking about the private sector. I want to ask you what your greatest fear is in relation to this card, but I want to explain to you why I want to ask you that question. It is because there are some people in the community—and we know from polls that they are a minority of people in the community—who say, 'What have we got to fear? Why should we be nervous?' Given the approach that your group has taken to this issue, for the purpose of explaining to others, I suppose, how you come to your view, what is your greatest fear about this card?

Mr Warner—One particular answer to that—and it is not one that I think gets to the nub of the issue, but nevertheless it is wonderful for explanatory purposes—is to say, 'Why do you draw the bedroom curtains? What have you got to hide?' People require a private space and

that private space varies in size depending on exactly what is being discussed. For instance, something which has been dealt with in a number of submissions is the question of domestic relationships. What happens about the privacy of information when partnerships break up and it is in rancorous circumstances? All of a sudden the database would be a wonderful method for finding where your partner, who you believe has done you wrong, is currently residing. Why should that person be worried about their information being free?

The answer is that they have their own grounds which may well be positively grounded. They are in the best situation to determine whether that should be private, but government does not operate that way. We have to provide some blanket rules to government for that to operate because you cannot have someone going down to Centrelink and saying, 'You have to give me extra special care. I have to have my information protected because I think that my ex is going to wander around with a meat cleaver.' You cannot have that. You have to set up a high enough barrier to deal with most situations. That privacy is what is required. If the government is going to ask for this information, it has to have a reason. That is another problem with the way this architecture is being set up. It is asking for way too much information and demanding way too close a scrutiny of the person given the fact that most of the people are not on the social welfare register and are not asking for specific claims. They are Medicare recipients and the only thing they have to prove is that they are citizens. That is it—full stop, nothing else. You are asking them to go through this entire registration proceeding for no reason at all.

You have to have a barrier against this information because it belongs to that person. Each individual is entitled to have this information about themselves treated with respect; that is what it is about. If you do not treat the information with respect and keep it well, you are not doing the job. Although they talk about providing information voluntarily, it is being required by legislative fiat, because you are going to be denied all of your welfare and medical rights if you do not go through with this proceeding. You are handing over all of your information. I might point out that there is photocopying and the keeping of records on a semipermanent or permanent basis. Once identity has been proven, I do not see any reason why the information should be kept. That is gilding the lily in a very nasty fashion.

CHAIR—The photocopying and scanning of proof of identity documents by the secretary?

Mr Warner—Yes. Another thing, which has been raised previously, is that we are in a pre verified document system. But, allowing for the fact that the document still has to be verified, once it has been verified, why is it being kept in the system? Effectively, if a person of malevolent intent has a certain level of access they can go and create identities because everything will be there to create a false identity. The previous minister said, 'We will deal with that after people have had these problems.' I do not think it is good enough for the stable door to be closed after the horse has bolted. We are talking about the potential for serious disruption to people's lives as well as the potential for domestic violence, with the privacy aspects. I think we should be starting off with a gold-class standard. If we are going to have a gold-class ID standard, let us have gold-class privacy.

CHAIR—Mr Warner, on those issues of philosophy, you would agree, wouldn't you, that privacy is not an absolute. We are talking about matters of degree. Let us be honest, every time an Australian citizen claims social welfare they forfeit some privacy.

Mr Warner—You are required to pass across certain information, but that—

CHAIR—Let me finish the question. We agree that people forfeit some privacy, but isn't it about whether the government can fight fraud and facilitate welfare, as it says it will, without infringing on people's privacy to the degree outlined in this bill? This is not an absolute question of privacy versus the citizen. This is a far more complex equation.

Mr Warner—I understand that. The privacy aspect, as I see it, derives from a right in the person—that right is sometimes called freedom. If that right is parcelled off in small amounts in return for other things—

CHAIR—For societal benefit.

Mr Warner—yes—the problem is that we are being asked to give up a lot of freedom.

CHAIR—I understand what you are arguing.

Mr Warner—Quite frankly, the reason why I am sitting here and David is sitting here and this campaign exists is that there is a confluence of Medicare and the social welfare system. It is pretending that we have 16 million social welfare deadbeats and we are going to interview all of them and get them to prove who they are because we have a couple of thousand people wandering around doing naughty things with PBS, Medicare and, to a lesser extent, social welfare. I suspect that the social welfare problems are much smaller, because they already have a great deal of this information on the social welfare system. However, let us be perfectly frank—and I have spoken to quite a few people in the medical profession and so on: the bulk of the money you are going to pick up in Medicare, if you try to crack down on it, is going to be from the providers. It is not going to be the people who are wandering in with the wrong Medicare card; they are small bikkies. It is the pathologists and the doctors who are ripping off the system. In one afternoon, they can rip off the system in a way that one person would have great difficulty in doing.

CHAIR—But, again, the issue is whether we need to create this artifice to fight that. You think no.

Mr Warner—Yes. How will the doctors be caught by this?

CHAIR—I understand that. I am not even disagreeing with you. I am just trying to put the question in a way that we can agree on the question.

Mr Warner—Yes, understood.

Senator CAROL BROWN—You talked about not being satisfied with the legislative mechanisms that are being proposed and you touched on some suggestions. Has your group looked at any ways you would be happy with to amend this legislation to stop this access card becoming a fully fledged ID card?

Mr Warner—That gets down to the tourniquet and machete argument.

Senator FORSHAW—I am interested in an answer to that because I was going to ask you that question too. We are a Senate committee, there will be a Senate debate and the amendments that may be moved could well be the tourniquet, so we need to know—

Mr Warner—Yes, understood, and one can but hope that there will be a crazy brave coalition senator who might see the light.

Senator FORSHAW—Well, let's still stay with the reality today, okay.

Mr Warner—The short answer is we decided that that was not where we were at, because we looked at the original submissions to Professor Fels's committee and we have been in contact with a number of the privacy groups and we could see that that was largely being dealt with on a competent basis by some people who are much better resourced and set up for that sort of thing than we are. Our viewpoint is that this debate should take place with the full information, which is recommendation 1 in our submission—that is, that without the KPMG report in full or a modern version thereof, without the task force replying back and without the second bill, so that we can see exactly where we are going with the bill, it is simply buying a ticket on a magical mystery tour. That I see as absolutely just common sense. I cannot see how the Senate or the coalition party room can see that you can move forward without those things.

As a philosophic position we also take the view that, as presented, it is going nowhere and that even if you had a wonderful financial case it is not really worth the bickies. But this is without the specific information for the Senate and the Australian people to look at. This is constantly hiding behind commercial-in-confidence and saying, 'We can't say how much we think the computer program is going to cost or the rollout is going to cost, because it might interfere with the tender process.' I thought that was what the budget process and various other things were about. The Australian people are meant to know where the money is going and how it is going to be spent in the future, not just post hoc. There I see the big problem. I could live in an Australia where we had rationally decided to have an Australia card or an access card; if it had come from a rational debate with full information I would say, 'Well, my fellow Australians don't hold the same opinion as I do but, *que sera, sera*, we'll live with it.' But this is not that. This is: 'Hey, here's a bit of legislation; let's put it through in a short time scale with minimum information and we'll hope for the best.' And that, I am afraid, simply just does not get my approval. It is way short of what I expect of the parliament and of the country.

CHAIR—We are nearly out of time. If there are no final quick questions from senators, I congratulate colleagues on their expedition this morning. Thank you for very much, Mr Warner and Mr Sharp, for assisting the committee in its inquiries this morning.

Proceedings suspended from 10.49 am to 11.05 am

MATTIAZZO, Ms Nadia, Executive Officer, Blind Citizens Australia

POWER, Mr John, National Policy Officer, Blind Citizens Australia

CHAIR—Welcome. Before I invite my colleagues to ask some questions, would you like to make an opening statement?

Ms Mattiazzo—Firstly, we would like to thank the committee for allowing us to present today. As you will no doubt be aware, this access card is of very great importance to Blind Citizens Australia. Blind Citizens Australia, or BCA, is the national peak advocacy body and representative body of blind or visually impaired people. Our mission is to achieve equity and equality by our empowerment, by promoting positive community attitudes and by striving for high-quality and accessible services which meet our needs. Nationally, we have around 3,000 individual members, and we have around 12 affiliate member organisations.

As the committee may or may not be aware, last year the Office of Access Card released an exposure draft, to which we forwarded a submission, and we have now forwarded a further submission today which we have sent via email. As well, we have provided some hard copies for members of the committee. I would like now to pass over to John Power, who will speak very briefly to that submission, and I may add comments where appropriate.

Mr Power—Just to reiterate what Nadia said, we thank the committee for allowing us to provide evidence here today, especially on such short notice. There are four points in our submission, which are relative to our original submission to the Office of Access Card draft exposure of the legislation. I will just run through each of these points. The first is information in accessible formats. This would be one of the most salient points in our work. Our call is that all public material relating to the access card, including promotional material, must be available in accessible formats for people who are blind or visually impaired, to ensure that they can participate on an equal basis with other citizens in Australia. In relation to the access card, BCA can lend its expertise on this. We have a current document that is available from our website. I have provided the link there. It is also available in hard copy. It is called *Getting the Message—Information in Accessible Formats: Who Needs It, and How to Provide It*. We ask the committee if they would like to refer to that document when considering these matters that were just raised.

The second point we would like to make is about the access card and personal identification. People probably are not aware that people who are blind or visually impaired do not have access to primary forms of identification on an equal level, as other Australians do. I guess a drivers licence would be the most common form of personal photo ID that is in force on a statutory basis. People who are blind or visually impaired cannot get access to this. This leaves them at a disadvantage. BCA has introduced, as of 1999, the BCA ID card. That is available to our full members. That means that they are legally blind as defined by the Social Security Act. This card has been very popular with our members. However, it is only worth 25 points when opening up a bank account or seeking other forms of finance or a business under the Financial Transaction Reports Act.

We see the access card as providing an opportunity to allow people who are blind or vision impaired to have, finally, a national form of photo ID that could be on the same level in terms

of points as, say, a passport, drivers licence or birth certificate. This would greatly increase the level of equity that people who are blind or visually impaired would have in the community in relation to primary forms of ID. So that is the second point that we would like to make. I do not know whether Nadia wants to add anything to that.

Ms Mattiazzo—Just to reiterate John's words, for me as a blind person obviously a drivers licence is not the ideal form of ID; therefore I do not really have a primary form of identification. I need to carry my passport around when I know that I will be requiring it. To have a national access card would, for me as an individual, be of great benefit, because it puts me on a level footing with every other sighted individual, I guess, throughout the nation.

Mr Power—BCA is currently speaking to government authorities and trying to get at least a Victorian statutory ID card introduced, similar to the New South Wales statutory ID card. Again, this would mean that we have to go around each state and territory to do this. The national exposure of the access card provides a really good opportunity to allow people who are blind or visually impaired to get on an equal basis in terms of photo ID.

The third point we want to make is about the registration and application process of obtaining the access card. This is relevant to the bill in part 2, division 2, 'Getting registered', and part 3, division 2, 'Getting an access card'. Our concern is that the provision for someone else to register and apply on another's behalf could mean that the Department of Human Services and other associated government agencies relevant to the processes of registration and application will not undertake the necessary adjustments to ensure that people who are blind or visually impaired can apply on an equal and independent basis, as with other Australians—that that proxy element leaves open a chance for government agencies to say, 'Well, can't you just get someone else to do it for you?'

Ms Mattiazzo—This is something that blind and vision impaired people need to deal with on a daily basis, from the local council level to departments such as Centrelink, for most things, I guess, unless you have computer access—and then not everything is accessible. If you need to change your address, if you need to register with Australia Post to change your address and divert your mail, there is a form to fill in. You need to have someone to do it. If you need to advise Centrelink of a change in your living situation, there is a form to fill in. It is not accessible. You have to get somebody else to fill it in. These are all issues that we come across as blind and vision impaired people every day. Basically it is really time—we feel that government needs to get on board and take into account the needs and the requirement for equality, equity and equal participation within the community for people who are blind and vision impaired.

Mr Power—Thanks, Nadia. In relation to that, we would just like to remind the committee, as outlined in our submission and also in our submission to the Office of Access Card, of the principles of the Commonwealth Disability Strategy, which are outlined there, which call for equity, inclusion, participation, access and accountability.

The fourth and final point we want to make is in relation to card design for people who are blind or vision impaired. The access card will need to be distinct in its size and shape and in its tactile and visual appearance to enable people who are blind or vision impaired to distinguish it from the mass of cards they carry in their daily lives. We are meeting this

Wednesday with the Office of Access Card to discuss this further, but we would like to make the point that we would like to see the specific requirements for people who are blind or vision impaired commonly embedded in the access card so that there is no distinguishing element between a person who is blind or vision impaired carrying the card and a sighted person carrying the card. To do otherwise would only increase the stigmatisation of the blind and vision impaired community and would contravene the Commonwealth Disability Strategy and anti-discrimination legislation.

Again, we see this as a real opportunity. If we had braille in, say, the top left-hand corner, that would make people aware of the blind or vision impaired community and aware of their needs. It would be a far more inclusive way of dealing with it than issuing those types of cards only to people who are blind or vision impaired. We see this card as an opportunity to bring about inclusion for the blind and vision impaired community. They are basically the four main points we have made in our submission, with relative recommendations, but before we conclude Nadia may want to add something.

Ms Mattiazzo—I do not have much to add, apart from saying that this is an issue that gives us, as a peak representative body, some positive light on access, and that we hope the committee will take into consideration the four recommendations we have made and implement them in the overall project.

CHAIR—Is it the wish of the committee that the submission be published?

Senator WATSON—Yes.

Senator FORSHAW—Yes.

CHAIR—Thank you. We will now have questions. Senate Lundy, would you like to kick off?

Senator LUNDY—In Sydney we heard evidence from an organisation for the vision impaired that the standard WC3 ought to apply to the technology used to read the cards and any associated information about the access card. Do you concur with that, and is that the kind of standard that would be required to assist vision impaired people if, for example, they had their own reader to check their own card or perhaps even other people's cards?

Ms Mattiazzo—Yes, the worldwide accessibility guidelines are something that we promote widely to private corporations and government departments when our input is sought, so we would encourage that. In relation to internet access—and I understand you are also talking about card readers; this is not in reference to the card readers—I make the point that the majority of blind or vision impaired people do not have and cannot afford the technology that is required to access web pages. It is all very expensive. You can buy a desktop computer for under \$1,000 but it will cost you over \$1,000, maybe \$1,500 or \$2,000, to get the appropriate voice program or screen enlargement software that will assist you to access the computer. So, whilst I see the benefits of that, especially with any web access that is required, it is not the only way that people can gain access to that kind of information.

Mr Power—BCA has a publication called 'Eight Steps to Web Accessibility', which is on our website as well. It would help reiterate some of those points.

Senator LUNDY—Thank you. You make a very strong point in your submission about the tactile nature of the card and its colour and presentation to assist vision impaired people, and you say that it should be universal rather than specific to people who have a disability associated with their sight. Can you expand on that point and explain why you have placed such strong emphasis on that point in your submission?

Mr Power—We provided evidence here to the Joint Standing Committee on Electoral Matters on the review of the 2004 federal election and we came up against a similar point in terms of accessible voting for people who are blind or visually impaired. We do not want them going to special centres or that type of thing. Again, it is this segregation and ‘best not seen’ type of thing. We would rather see people included in the community. Again, any form of computerised voting could be available to all people, not just the blind or visually impaired. We would like to see a similar situation with the access card. We find a lot of discrimination comes from naivety and a lack of knowledge and understanding. Once people are educated and know the issues relative to people who are blind or visually impaired, they are really keen to get on board and be a part of, I guess, our justice. If all the cards had embedded into them these qualities for people who are blind or visually impaired, then people would become more aware of the plight of people who are blind or visually impaired.

Ms Mattiazzo—It can also serve as an educational tool. It could be actually leading the field in terms of access for people. Corporations such as banks or other financial institutions may look at what this card offers for people with disabilities, and incorporate that kind of thing into their own ATM cards, credit cards and that kind of thing. In my wallet I have a number of those kinds of cards and when I am quickly trying to find one it is very difficult. I cannot quickly flick through and see which one is which colour. Usually they are different colours. I cannot access that, so it is very difficult. Usually what will happen, if I am with somebody or if I am in a shop, is that the person will say, ‘It’s just here.’ Again, they are accessing my personal card before I even know where to find it. So it is not equity at all.

Senator LUNDY—Just on that point and the possible physical shape or texture of the card: the smartcards, we have heard, are generally smooth; they do not even have embossed text on them in the way that Medicare-style cards or credit cards do. What are the physical characteristics that you think could be added to what we know is a pretty smooth plastic card that would assist blind people in particular? Obviously colours are a potential change, and we have heard that some colours are much better than others, but what about different edging or different textures or something that would not interfere with the functionality of it but would serve your purpose quite specifically? Have you got any ideas for the committee on how that could be incorporated?

Ms Mattiazzo—Our BCA identity card actually has a small section taken out of it in one of the top corners so that people can be aware that this is how you hold it up. It is in the top left-hand corner, I think. So when that mark is in the top left-hand corner you know that it is facing you. And it is a comparatively smooth card, the same as you would expect a smartcard to be. You could have something like a chunk taken out of one of the corners so that it is not totally the same shape all the way around, or have one corner more rounded. Again, braille or another tactile mark at the top of the card could be something else to think of. We would

presume that none of these details would interfere with the capacity of the smartcard or the technology that is involved in the smartcard at all.

Senator LUNDY—Are you aware of any smartcards in any markets that have that different kind of edging for this purpose, or even perhaps by accident, that have helped blind or vision impaired people?

Mr Power—I cannot think of a card where they have gone out their way to do it. There may be, just through accident, elements that people can use, but I cannot think of any private corporation or government authority that has actually gone out of its way to take that into consideration.

Senator LUNDY—Do you think that is just because they have not thought of it?

Mr Power—Absolutely.

Senator LUNDY—That seems to me like a reasonable innovation that would be so helpful to a growing number of members of our community.

Mr Power—It is just a matter of educating the community on these issues. BCA is not the richest organisation around. We do our best to try and educate the community as much as possible, because I think a lot of discrimination comes out of that.

Senator LUNDY—You have certainly helped educate us this morning; thank you.

Senator STOTT DESPOJA—I am curious about the comment that, Mr Power, you made about there being no distinguishing elements on the card. One of the proposals I heard at one stage, I think from the department—I will stand corrected—was that they were considering putting the word ‘blind’ on the access card as a form of identification. I asked Vision Australia about this in their evidence on Friday. They did not think that was necessarily a good suggestion. I am wondering if that was what you, Mr Power, were concerned about and, Ms Mattiazzo, whether you had any comments as well on that issue.

Mr Power—We would not be happy if there was an element there quite openly saying, ‘This is for a person who is blind or vision impaired’. Again, that would just create more stigma and separation. What we were trying to say is that any tactile elements, colour contrasts and so on should be applicable to all cards. It would be a way of including the blind and vision impaired community in such a national form of identification. But I think that specifically isolating them by putting ‘blind’ on the card would be going back to an earlier day that I hope we have gone well past. I do not know if Nadia would like to comment.

Ms Mattiazzo—I absolutely agree wholeheartedly with that. It would be like identifying people with red hair and having ‘redhead’ on the card. It is not at all an inclusive kind of project. It would be alienating and marginalising a community that is already fairly marginalised anyway. We would not be in favour of that all.

Senator STOTT DESPOJA—I suspect you are in a better position than I am to take this up with Human Services because you were saying that you are meeting with them this week.

Mr Power—Yes.

Senator STOTT DESPOJA—We are seeing them on Tuesday. I am curious as to the level of consultation that you have already experienced. Have you had many dealings with the

human services department about the access card, given that this government wants to pass this legislation within the next two weeks?

Mr Power—The contact we have had was, first, in making comments for the exposure draft of the bill. We made a comment in our submission that there was a very short time frame to get those comments in, and it was done over the Christmas period, if I remember rightly.

Senator STOTT DESPOJA—It was. The exposure draft was everyone's Christmas present!

Mr Power—So naturally we put that together pretty quickly and got that in. We made it very clear in that submission that we wanted information to be accessible to people who are blind or vision impaired. They did provide most of the documentation relative to those comments in PDF, and PDF is very inaccessible to screen readers. To their credit, they called us up, I think, within a couple of hours of making the submission and said, 'What should we do?' We provided advice on how to provide information that is accessible on the web.

After that, we did not hear much from them until last week, when they wanted to make an appointment for this Wednesday to discuss the design of the card and special features for people who are blind or vision impaired. Considering that they want to pass it in the next two weeks, I cannot imagine we will have more consultation.

Senator STOTT DESPOJA—It is the first tranche of the legislation—before my government and other colleagues remind me—but they are hoping to pass this bill by 30 March at the latest, so it is good to get some of these things out in the open. Could I ask you both a philosophical question. I think we are all a bit better educated, after Friday and today, about the lack of identity cards that are available across the board. You made the point about the points system in relation to cards. Would some of your concerns be satisfied by, hypothetically speaking, a voluntary national identity card? That is, one that all Australians could opt into or out of but which is not necessarily linked with any form of benefits or services? I think you can see what I am getting at. The debate today is a lot to do with the tension between the services and the access component of the card as opposed to the identity concerns.

I understand that you have realistic identity concerns: proving who you are in circumstances where you do not have a driver's licence. Is there some way around that? What is being created here seems to me to be an incredible database. In addition to the biometric aspect of it, you have got a card that is clearly an identity card as well as one that accesses services. It may sound convenient, but is there a better way of meeting your needs about a national ID card that is universal as opposed to this complex system?

CHAIR—Do you mean a voluntary form of ID that is not linked to any access to any welfare databases or any other databases?

Senator STOTT DESPOJA—That is right. Something that is readily accepted but where you do not have to be a specific member of the community; that is, you are not distinguished by a particular condition, or where you live, or what colour your hair is, or whatever—a national system that people can opt into that has validity, so if you are someone without a driver's licence, you have got other means of showing your identity.

Ms Mattiazzo—I would be in favour of that. For example, our identity card is also voluntary. We offer it to all our full members, but it is their choice as to whether they want to opt in or opt out. Blind people are used to carrying around some kind of photo ID anyway. We have the BCA ID card or our national blind persons travel pass, which has a photo in it. I do not think it would be an issue to have an opt-in just as an ID card. I think that would meet some of the requirements of the people who are blind or vision impaired within the community.

Senator STOTT DESPOJA—What about making that card more valuable in terms of the points that it attracts? Is that another way of doing it? I am not advocating a national ID card, but I am trying to work out how we meet your concerns. Some of the comments will be used by some, I am sure, to suggest that you are supportive of the whole concept—and, Mr Power, I am very conscious of the points you put on record and in your submission. I am trying to work out how we meet those needs without necessarily having to create this complex structure.

Ms Mattiazzo—Of course, the points are an issue. We would want something that has the same value as a primary form of identification. But the other thing that also is important, that we have discovered with our ID card, is the education of your local Telstra shop, your Centrelink office or wherever you go from the private sector to the government sector, so that this card is nationally accepted. We often have calls from people saying, 'I used this as a form of ID and they had no idea about it.' So we then have to educate whoever it was—and they are fine once they actually know about it. But then again the education process would need to be fairly intense, and I would want to see, somewhere in the list of what is acceptable as forms of identification, the inclusion of this card.

Mr Power—Natasha, just to give you an idea of how our office is currently running in relation to ID cards, we are using the very limited resources that we have got to lobby the Victorian government at the moment to introduce a photo ID card very similar to the New South Wales photo ID card which was introduced, I believe, either last year or the year before. It has the same point structure as a drivers licence and was introduced for that purpose: for non-drivers. It is governed by what I believe is called the photo ID card act of New South Wales. We would definitely favour a national one that is more benign than this and does not have so much information in it, for two reasons. The first is that it serves our purposes in terms of form of ID, and the second is that it is national. We do not have to go around to each state and territory trying to get these ID cards introduced mainly through their road traffic authorities or this type of thing. As you can imagine, with the limited resources that we have got, that puts a lot of stress on the office on top of everything else. If we had the government's support or the parliament's support for a national ID card in the form of helping people who are blind or vision impaired, that would be good. It would be voluntary, similar to the photo ID card in New South Wales—that is voluntary. You just pay a small fee. It means there is equity within New South Wales at the moment.

Senator STOTT DESPOJA—I am sure both governments have heard your message about resources now too, so that is on record.

CHAIR—There being no further questions, Ms Mattiazzo and Mr Power, I thank you very much for being with us this morning.

[11.37 am]

GRAHAM, Ms Irene Joy, Executive Director, Electronic Frontiers Australia Inc.

CHAIR—Welcome, Ms Graham. Before I invite my colleagues to ask you some questions, would you like to make an opening statement?

Ms Graham—Good morning, senators. Thank you. EFA has lodged a submission and there are about 26 dot points in our executive summary. My view this morning is that I would probably prefer not to spend a lot of the committee's time on an opening statement, because I imagine you have all at least attempted to glance at the submission.

CHAIR—We actually have not. We may have received the submission, but the senators do not have a copy of it.

Ms Graham—Right. So people may not be aware of our position at this stage.

CHAIR—So we will allow you on this occasion to dilate on the issue.

Ms Graham—Okay. I was just trying to save everyone time, because I am aware that you have limited time at the moment. EFA's position is that we are not opposed to the use of smartcards by government agencies. We are not opposed to the use of a smartcard for accessing government services. EFA are concerned about this particular system, and by that I mean not only the actual access card or smartcard but the combination of the smartcard plus the centralised database, which we are concerned will become a tracking system. It is the combination of the use of the smartcard technology and the centralised database. We are positive that the existing legislation is not adequate for protecting privacy and security for that matter, and we only have the first tranche of the legislation. One of the reasons that EFA is concerned about the use of smartcards as mandatory government cards is that the smartcard itself, together with a centralised database, is far more useful for encouraging and facilitating function creep than the types of cards that we have seen before.

While we are not opposed in principle to the use of smartcards, any implementation of a smartcard as a mandatory government card needs care. And I do understand that the access card is said to be voluntary, but if people who pay tax in order to receive Medicare benefits have to have one of these cards in order to keep getting Medicare benefits then that is not, in EFA's view, a voluntary card. If an individual who is paying tax in order to fund Medicare—and not only paying general tax but also paying a specific Medicare levy—is required to have this card then we do not regard this card as voluntary. Because it is in our view a mandatory card and there is the risk of the smartcard being used for more and more things—because of the functionality of the smartcard, together with the centralised database—we do not feel that this current scheme, with the amount of information that has been released by the government to date, is appropriately adapted for a legitimate end.

A lot of the points that we have raised in our submission go to issues that other people have already raised—even this morning. But we are also particularly concerned about the technological aspects of the system, and in particular things like the unique chip serial number that is going to be on the chip. There is no information in the bill or in the explanatory memorandum about what is going to be done to protect the use of this unique chip number.

CHAIR—That is not the unique identifying number?

Ms Graham—No, this is not the unique access card number; this is—

CHAIR—It is the chip number.

Ms Graham—the chip number, yes. This is briefly mentioned in the explanatory memorandum under the category of administrative and technical administration. It says that the secretary will have the discretion to add this information without it being a ministerial determination or a legislative instrument. The explanatory memorandum states that the types of technical and administrative information ‘includes chip serial number’. It does not say ‘unique’, but chip serial numbers are certainly unique. It also mentions audit logs. Our understanding of the current technology is that the unique chip serial number is burnt into the memory of the chip during manufacture at the chip manufacturing factory. It is not put on there by DHS; it is a serial number that is burnt into the memory of the chip. When I say that it is our understanding, it is not just our understanding; we know that that is how a chip serial number gets onto a chip. It is not put on there by, for example, DHS’s contractors when they are adding software to the chip.

The issue with it is that—and this part is our understanding; I cannot guarantee it at this point, but it is one issue that EFA thinks that this committee should be asking DHS about, for example—it is our understanding that this chip number can be read by any ISO compliant card reader. ISO is a set of international standards to do with chip interoperability et cetera. It is our understanding that any ISO compliant card reader can read the serial number of the chip. The legislation does not mention any protection whatsoever for this unique chip serial number. In our submission, we have quoted the website of a supplier of smartcard manufacturers that states what I just said about the unique chip serial number being readable by any ISO compliant card reader, so it is not just something that I am imagining or pulling out of the air; this is what some of the card reader manufacturers are stating. I cannot be sure that anything I read on some supplier’s website is accurate, but it lines up with much other information that we have previously read and researched about smartcard technology.

The concern is that we seem to have buried in the explanatory memorandum this little mention of the unique chip serial number being technical and administrative information but there appears to be massive potential for its use. Any business, any state government agency, even Centrelink agencies, that the cards are voluntarily handed to could effectively use this unique number for all of the data-matching and tracking purposes and so on with absolutely no provisions relating to their use because it is not mentioned anywhere in the bill. There is reference in the bill to criminal offences and these relate to the number of the access card but not of the unique chip. We are very concerned about what is meant by this chip serial number being just administrative information that will be stored in the register. That is one concern.

In the context of the technical and administrative information, we are concerned that audit logs are mentioned. The question is: what exactly is meant by audit logs? A great deal of information in the bill, and even more so in the explanatory memorandum, tends to suggest that the chip on the smartcard is not going to be used for the purposes that most people who know about the technology would expect the chip to be used for—that is, as a storage means that a card reader can read without it needing to be attached to a back-end database. A lot of

the information in the explanatory memorandum is tending to suggest that every time you go to the doctor and have to prove that you are entitled to access Medicare the card will have to be put into a card reader that is linked to the back-end database so as to check the currency of information.

It is looking like these audit logs are going to be a tracking device. Every time a person presents a card it is docked into a reader, so one can fairly easily gain a vision of all the times you use it on a bus to prove that you are entitled to a discount or you use it at the cinema or whatever to prove that you are entitled to a discount—and I am talking about people with age pension discounts et cetera. There is serious concern about what is being set up, either intentionally or completely unintentionally because it has not been thought of. Are we setting up something that will result in so-called audit logs that are a complete history of everywhere a person has been and where they have presented their card voluntarily? Obviously, if it is DHS they need to present their card there. What is meant by audit logs? Is this ultimately setting up a complete tracking and surveillance system? I am quite prepared to accept that possibly the government does not intend to do that, but it is a fact that we know the technology can do it. The information that the government has provided to date provides no indication of how that is intended to be prevented. You cannot help but be left with a perception that this is probably what the outcome will be.

In this brief summary I am principally focusing on technology. We have a lot of other concerns but, as they are similar to those that the Victorian Privacy Commissioner raised this morning, I will not repeat them. The other aspect about technology concerns card readers. We have heard comments that card readers will be available at the local shop for \$20, or that you can go into Australia Post at the moment with a credit card and Australia Post has the card readers that can read a smartcard. The problem is that in this committee's estimates hearings recently there was a discussion about the use of these cards to access concessions. My understanding from reading the transcript is that members of DHS were indicating that the proposal was that if you went to a cinema and wanted to prove that you were entitled to a concession they were hoping to have some kind of reader that would just be able to show 'C' for concession.

CHAIR—Not on the face of the card but on the chip?

Ms Graham—Yes. The representative from DHS was saying that you would dock the card in a reader at the cinema, ticket desk or wherever, and all that would be exposed from the chip on the card would be, for example, 'C' or some other indication of concession.

We cannot understand how this is remotely possible, currently, on the basis of the information that the government has disclosed about the technology and also with the way card readers operate. I will briefly try to explain this; it is also in our submission.

The current proposal appears to be that there will be only one personal identification number applicable to the chip, if the person chooses to have a PIN. This will apply to the Commonwealth area. The Commonwealth area will obviously be the area that also has any information about the chip in it.

There therefore appear to be two options. If you have a PIN on your chip then, when you are at the cinema and you want to prove that you are entitled to a concession, you will have to

enter your PIN to open up the Commonwealth area. Now what is going to stop all the information on the chip from being disclosed to the cinema person—as distinct from just, for example, the letter ‘C’?

The answer to this question is—and this is how smartcard technology works—that it depends on the smartcard reader that you are docking the card in. The card reader needs to have technology in it that uses various technological systems like cryptography and passwords so that effectively what happens when you put the card in the card reader is that the card says to the card reader: ‘Are you an authorised card reader? Can you prove that you have software in you that the government has provided that says, “I can tell you just this one piece of information that you want,” for example, C?’

So card readers that currently exist in Australia Post or in Dick Smith—if they even exist there or anywhere else—cannot be used in the way that the government or the DHS representatives are currently talking about because, at the very least, they are going to need special software in them to control access to the card. From there, you go into the question—

CHAIR—So, at the moment, it is one in, all in—is that what you are saying?

Ms Graham—Sorry?

CHAIR—It is one in, all in—in other words, if you have one of these things, there are no gradations of information to which you would be—

Ms Graham—exposed. Yes. At the moment, because there is only one PIN, once you enter your PIN, assuming you have chosen to have a pin—

CHAIR—It is all available?

Ms Graham—Everything is available or nothing is available. But I would go one step further on that. With the current card readers that are in Australia Post, if you put one of those access cards in there with a PIN, I do not know for sure whether they would be able to understand the PIN on an access card. They may need some special software to understand: ‘This is a government access card and this is how I access the PIN,’ or, ‘This is how the PIN gets transferred from the card reader to the card to open up the card.’

What I am trying to explain is this. With a PIN-protected access card, I am not sure whether the ordinary card readers would even be able to read it if you entered a PIN. I am not saying that that is not possible; I am just saying that I do not know enough about the card readers that are in Australia Post to know whether they will automatically operate with a PIN.

If the proposal is that certain entities—be they state government electricity commissions or the cinema that wants to give a discount—use this card, what I am 100 per cent sure about is that having a single PIN will not enable an ordinary card reader used by any business that goes and spends \$20 in a shop to access only the portion of the card that it is entitled to. And there is nothing in the explanatory memorandum or the bill or any document that the government has released to date that explains how they intend to do this.

The DHS representatives in estimates were basically saying, ‘Our design ideas are ...’. ‘Design idea’ was the exact wording in the *Hansard* transcript. It is a major concern to EFA that the government is asking the parliament to approve the first tranche of legislation before it is remotely possible for anybody with a basic understanding of the technology to see how

this card can operate to protect privacy and security the way the government is claiming. We have major concerns about a card being rolled out or being approved for further development when the government cannot even explain how they can ensure that, when a concession holder only wants to be able to prove to the bus driver or the cinema or the state government that they are entitled to a concession, all the rest of the information in the Commonwealth's area of the chip is not exposed. If they do have something more than a design idea about that, then what is the cost of the card readers that the businesses will have to have and how is the government-authorised software going to get onto the readers that are in all of these offices?

The final issue is, even if the government is going to issue the relevant software that communicates with the card chip, when you go into a cinema and you want to get a discount, say, and you dock your card into the reader, how do you know what software is in the reader and therefore how do you know what that person is going to be able to see when you enter your one Commonwealth PIN that theoretically opens up the Commonwealth area of the chip completely? The cardholder is entirely reliant on the software in the card reader not being malicious. For all you know, that business or whoever has got some other software on there that is not operating the way it ought to. Again, I am not saying that the technology cannot be made to work the way it ought to—I am quite sure smartcards are capable of doing this properly—but, with the lack of explanation by the government and the fact that we are being told that these are 'design ideas', there are a range of questions that need to be answered about how this is actually—

CHAIR—It is premature.

Ms Graham—feasible that makes it completely impossible for us to support passage of the current bill. We have great fear that it will turn out in further tranches of the legislation that: 'The design ideas did not actually turn out to be technically feasible just right now and so, as of April next year, we are going to start rolling out a card that actually does not have the privacy or security functions in it that we thought we would probably be able to have.' EFA thinks that this is a completely inappropriate means of informing the public and the parliament of the plans when expecting the parliament to pass legislation.

CHAIR—Ms Graham, thank you for your opening statement. Do you have any more?

Ms Graham—No, they are basically the three points that I wanted to raise about the technology itself. As I say, there are many other points, but they are things that certainly other speakers will have already talked about, whereas I do not think there are too many talking about the actual technology issues.

CHAIR—Indeed. Senator Forshaw has reminded me that we have just been handed your submission. Thank you for that. Unlike Senator Lundy, I have no technical expertise at all in this area, but bear with me for one quick question. You said that there could be an audit trail kept of where you have been and what concessions you have sought and so forth. Where is that audit trail kept? Is it on the chip?

Ms Graham—That is exactly the question. It could be kept on the chip or, if the smartcard readers are connected to the EFTPOS system, it could be stored on the register. The explanatory memorandum says that audit logs will be kept in the register.

CHAIR—So it is not kept on the chip, but it could be?

Ms Graham—It does not say it will be kept on the chip, but it could be. Our view is that if you are going to use a smartcard for an access card and it was going to be a ‘smart’ card then the capabilities of the chip are such that you do not need to be connected to a back-end database every time—or ever, for that matter—because the chip, of itself, is a minicomputer.

CHAIR—And that is sufficient?

Ms Graham—In our view, it is. In our view, it ought to be sufficient. If this chip is secure—and it is probably secured so that people cannot change information in the Commonwealth’s area—there should be no reason why you should not be able to show your card to, for example, the Medicare office or whatever and they put it in a card reader that is not attached to EFTPOS or their own back-end and it will display on the relevant screen that this is the person’s address that is not printed on the face of the card, and whatever other information is on the chip. There is absolutely no question that the information that is on the chip can be readily read by the use of a card reader connected to a computer with a computer screen. You do not have to have it connected to the EFTPOS system and be going and looking at what is in the database at the register.

Senator FORSHAW—It is more than that—it is going to have to be able to be read. I would have thought, say, within the Medicare system, there are entitlements which you accrue after so many services, particularly the safety net and the PBS system. At the moment those records are kept, say, by a pharmacy. The pharmacy may have it, because they are connected to the PBS.

Ms Graham—There may well be things that are being updated like that. We do not purport to be experts on all the specific warrants.

Senator FORSHAW—My point is that, at the moment, if those are able to be kept discretely, say, within Medicare or Health and Ageing or Veterans’ or whatever it may be, as I understand what you are getting at, that system is going to have to be available with this card, otherwise people will not be able to access the entitlements to reach the thresholds and all that. But because that information is all activated by the one card and the one chip, it then becomes potentially universally available rather than discretely available to each agency—

Ms Graham—Yes, that is certainly part of it—

Senator FORSHAW—which is a major issue.

Ms Graham—Yes, and that is certainly one of the issues that is of concern because of the potential for exposure of everything on the chip. But there is also the aspect that the chip itself could generally be used—for example, once a person has reached the safety net expenditure level or whatever that entitles them to the next amount of benefits, their smartcard chips ought to be able to be used in such a way that the chip can then be updated: ‘Right, you have reached that level, so for the rest of the year this is your benefit entitlement.’ So for the rest of the year your card should not have to be connected to the EFTPOS database every time you go into the chemist or the doctor’s surgery or whatever. But at the moment it is looking like it is going to have to be connected to the back-end every time.

Senator FORSHAW—For instance, with Centrelink you may track the movements or the changes in a person’s entitlements. As all senators know, we get lots of inquiries, particularly

from pensioners and people on other benefits, who are suddenly off the benefit, then they are back on it. That history, which presumably at the moment is within Centrelink, will be potentially available on the card.

Ms Graham—That is it. I do not doubt at all that there are good reasons why there would need to be updating of the chip for various purposes, but it is the concern that it is not only for use with DHS agencies. I believe people will use it voluntarily. If it is used at the cinema or on the bus, does this leave a trail in the government register that this person got on the bus on this day—

CHAIR—You call it back-end—

Ms Graham—That is right. At the end of the day, I suppose what I am really saying is that it seems to me that, for this system to work in a way that is secure and appropriately balances privacy concerns, basically there needs to be more than one PIN. Again you then get into a whole range of issues with people being able to remember the PIN. At the moment it does not make any sense as to how it can appropriately deal with privacy and security issues if there is only one PIN. That also applies to your area.

CHAIR—Ms Graham, we have a lot to get through, so can I again plead that people keep both their answers and questions as short as they can.

Senator LUNDY—I want to go back to the key point you are making, which is the difference between a design idea as it has been expressed in the explanatory memorandum and the technological design features about how this will work. We tried to ask questions of one of the organisations submitting a tender for the systems integration. They were not able to comment for commercial-in-confidence reasons, probity reasons and undertakings that they gave the government. Can you give us an insight into where we will be left as a committee if we cannot marry the design ideas of the government with the specific technical information that will give form to the design ideas in the technical design of the card and the back-end database? Where will we be left if we are unable to scrutinise or test the design ideas against the specific technical features about how this will operate?

Ms Graham—If I am understanding the question correctly, my view is that you are basically left in a position where you could not pass this bill without a major risk of the ultimate system being implemented in a manner that the committee would not have agreed to if they had had all of the facts before them in the first place. I think it is a serious concern that the suppliers of the technology are not able to say anything because of commercial-in-confidence. I think it is a major problem that even the details that are in the tenders are not available to the public and that they are under a non-disclosure agreement to even get the tender documents. You cannot even find out what the government is actually asking the suppliers to provide. The short answer is that smartcards can do practically anything, but without information from the government agency a committee cannot know what kind of system they would be approving.

Senator LUNDY—Thank you. I think that is a very important point. Just extrapolating along to your next point: the use of the term ‘audit log’ in the explanatory memorandum opens up a whole can of worms. It does imply, as you say, that there is some tracking capability linked to the central database. Just from your general knowledge of the use of

tracking and surveillance technologies and how they are used in various jurisdictions, could you speculate on the purpose of such tracking if that audit trail was available to the central database and was available for the purposes of specific scrutiny of data matching with other agencies and security agencies et cetera?

Ms Graham—There is a whole range of issues that data matching raises because of the ability to build profiles about people. There are different issues depending on whether the audit logs are only available to Centrelink or whether you would end up with audit logs accessible to business on the chip or whatever. It would take a long time to fully answer, but to just give one example: you could potentially end up with audit logs that showed that persons A, B and C all went to see a particular film at a particular cinema at the same time on the same day. You could also find that, for example, with a bookshop—though you probably do not get a discount in a bookshop; you might, I do not know. You are creating a situation where—

Senator LUNDY—If the bookshop offered one, that is a possibility.

Ms Graham—Yes. You have a potential for a tracking system, depending on what is disclosed in however the audit log is working, whether it is just giving the name of the business where the card was docked or whether it is providing any other information. One of our biggest concerns is about the potential to associate one person with another person because they were both in the same place at the same time. This becomes of major concern to us in the context of security and security agencies' access to information without a warrant, because there is a serious risk of these kinds of audit trails looking like somebody was probably with somebody at some time because they both used their access card to prove their identity at a particular point in time.

As I say, this is only about Commonwealth agencies' access. There are other issues in relation to business. But it is this kind of building up of a profile of where a person has been, what they have been doing and potentially who they have been associating with. Again, I would like to make clear that I am not saying that security agencies should never be able to know that, but it is my belief that, at the moment, security agencies will be able to access data on the register because there is no prohibition against that. It is no use the Federal Police or anybody saying, 'The Privacy Act applies; we have to comply with that,' because the specific exemption says: unless it is 'reasonably necessary for the enforcement of the law'.

CHAIR—Or otherwise authorised by law.

Ms Graham—Yes, required or authorised by law. I think it depends on the IPPs or the NPPs. There is slightly different wording, but the general gist of it is that you do not necessarily need a warrant. So at the very least we would be saying that, if there are going to be audit logs ending up on the register, our view is that no police and no government agencies, other than DHS, should be able to get access to any of that data without a warrant. It is because it is creating these profiles and so forth at the back end.

Senator LUNDY—I have a question about interoperability. We heard that the specific standard for this particular smartcard was chosen because of its interoperability features as opposed to some other attributes. Again, that implies a number of things. First, it implies that there will be a high level of interoperability within Commonwealth departments and agencies,

perhaps across to state departments and agencies. It also raises the spectre of interoperability within the private sector. We have been trying to get some technical knowledge from various witnesses. On this question of interoperability: if the metadata standards in use on the card and on the databases that the card is linked to were the same on the registration database as they were in the HIC database or the Centrelink database or the Tax database or whatever, would that allow both of those databases to be analysed and cross-referenced?

Ms Graham—I understand the question. My answer is that my understanding of what is meant by interoperability in relation to smartcards has nothing to do with the metadatabases. It is about the operating system on the chip. The chip itself is, in effect, a computer. It is like saying, ‘Do you have Windows on the chip?’—and you certainly do not, but on a computer you may have a Windows operating system or you may have a Linux operating system or you may have whatever other kind of operating system. As you probably know, some Windows software will not run on an operating system that has Linux installed on it. It is my understanding that, when they talk about interoperability standards, that is the kind of thing they are talking about. It is about whether this particular chip will have the correct operating system and other standards about security. It is not just the operating system; it is also the security features that are available for use in a smart chip that deal with things like under what circumstances the PIN will get disclosed and so forth—the actual security architecture.

There are a number of different kinds of systems that you can have on these chips at the moment. We are obviously going to have some application that is going to run the Commonwealth’s area with this information but, for example, if you wanted to put an e-purse on there—I do not think this is at all practical; it is just one of the things that is being talked about—you may have some supplier with an application for an e-purse that is of some compatibility standard that is not interoperable with the chip on the access card. So you could not put that product on it. My understanding is that what they are trying to do is to use one of the more common interoperability standards, but I have not even seen any information on what particular standard it is. All I keep seeing is ‘international standards’. I believe there are about four different sets of international standards for smartcards. I have no idea what that means, either.

Senator LUNDY—We did get some evidence for that on Friday, and we do have on the record the standard, which is a step. You have helped us considerably by just clarifying that there are two interoperability issues; one relating to the application that supports the chip and the other issue of the databases and the metadata—

Ms Graham—Whether it is in a compatible format that can be transferred from A to B. I believe that when they are talking about smartcard interoperability they are talking about the chip.

Senator LUNDY—The metadata issue is a separate issue?

Ms Graham—Yes, that is right.

Senator LUNDY—Going to the issue of the chip and the interoperability features, to have that standard means that every reader would have to be of that same standard so whatever goes onto the market in terms of a reader will have to comply with that standard.

Ms Graham—Yes, that is certainly my understanding, and I think I am pretty well informed. Maybe I am wrong; I do not think so.

Senator LUNDY—Let us use a Commonwealth agency as an example; say, Medicare. For them to be able to read the chip they would obviously need software that is able to access that particular application and that standard. What else in the suite of software and hardware would Medicare require to then link that particular reading of the card back to the database? What is involved in that process?

Ms Graham—I do not think I can help you very much with that. Very briefly, all that happens is that the card reader is connected to a computer, the computer picks up the fields on the chip off the card and they need whatever other software on the computer to reformat it into the format that flows into the database. There would be numerous ways of doing that.

Senator LUNDY—Okay; I will ask the department. You mentioned encryption. We have not been able to garner much evidence about the level of encryption of either the password protected areas of the chip or the general areas of the chip and whether or not readers have decryption features as part of what they do. For this information to be truly secure and not able to be lifted off the card and the encryption cracked, what level of encryption do you think is required to make sure that somebody cannot nick my card, stick it in a reader and access the private areas of that card?

Ms Graham—When you say the level of encryption, you are talking about technical levels, number of bits of encryption and so forth.

Senator LUNDY—That is right.

Ms Graham—I do not really want to make a comment on that at the moment because I have not looked at what the latest standards are. It is my understanding that, generally speaking, smartcards that are being developed with encryption facilities in them would already of themselves have the ability to use the latest American National Institute of Science and Technology, NIST, or whatever recommendations. At the moment I cannot remember what the latest is.

Senator NETTLE—Thank you very much for your evidence; it has been very helpful, particularly the technical detail. I do not know whether you have had an opportunity to look at the submission that the government made to this committee.

Ms Graham—I skimmed through it very briefly.

Senator NETTLE—I will draw your attention to some particular parts of it. There might be some things that you will need to take on notice and come back to us on. We will be asking questions of the department tomorrow. I refer to the question you raised about PINs as to whether there will be one or two. I asked the department about this on Friday because I read page 26 of their submission as being unclear as to whether it was intended that there be one or two. I asked them this on Friday—and I do not know if the *Hansard* of Friday's hearing is available—but their answer was not crystal clear. I took away the impression that they were implying that perhaps there could be, that you would have a PIN on your Commonwealth area and a PIN on your personal area. I want to draw that to your attention, and we will see if we can get some more clarity as to that tomorrow.

Ms Graham—Yes, that would certainly help.

Senator NETTLE—I have another issue. I will give you the page reference. On page 69 of the government submission they talk about—and this is in the section about what content is on the chip—the issue of logging transactions. This is in the area about content on the chip; I have not found it in content on the register. This is the section in the submission where they go through concerns that people have raised. In it they talk about transactions involving the card being securely logged. I want to draw that to your attention and ask if you could look at that.

Ms Graham—I am sure I have read that paragraph, which is one of the paragraphs that has further raised the concern about the potential for everything being logged.

Senator NETTLE—Yes, that is right. For me it is likewise. I have not yet had the opportunity to pursue that line of questioning.

The other thing that I want to draw to your attention is the issue of the concession card, and I was trying to find it in the *Hansard* of Senate estimates. It is my recollection of their answer about the concession card that if you dock in at the cinema any change in your concessional status—and I am particularly looking at this as if you are a young person; if you are a pensioner it is ongoing—there has got to be a link back to the register to make that change. My recollection of their answer is that that only gets changed when you go into the Centrelink office, so it is if you go into the Centrelink office to change and there is a change to your concessional status. I am unclear, and I do not know if you can help me with this, about that change. I presume the government answer would be that they would make that change then on your access card, and then it would be there if you go to the cinema. That seemed to be the answer that they were giving me at estimates. I do not want a scenario where you change your concession card status with Centrelink and it has got to be put on the register database and then you have to go back to Centrelink to get your card chinked and get your concession status on it before you can get a cheap ticket at the movies. That could take a while. Can you shed any light on that one for us?

Ms Graham—My recollection of those estimates—and I do not think I actually got quite the impression that you did although I grant that I found a lot of it to be quite confusing, so I may be wrong—is that it appeared to me that they were saying something to the effect that because a person might not have been back to Centrelink since their concession entitlement changed they might go to the cinema and the chip on their card might have out of date information on it. My impression is that the implication of what they were saying is that the cinema card reader would have to be connected to the EFTPOS database.

Senator WATSON—Would you take me through a situation that may apply in the health area. This is just for clarification. A person goes into a pharmacy for the purpose of getting a PBS prescription filled. I understand the pharmacy assistant will be able to advise that person if they have reached the limits of their entitlement or are so many dollars away from that entitlement. Could that same dispensary assistant then have information on other health related issues such as that the person visited the doctor twice last month for various purposes? Could it tell the assistant that the person also visited a physiotherapist because they had a crook knee, or information as to any of the other six allied health professionals?

Ms Graham—Again, it depends on how the chip is set up and where the logging—

Senator WATSON—I am not talking about Centrelink; I am just talking about health issues.

Ms Graham—Sorry, I understand. What I am really trying to say is that I do not know, because it is not clear to me what amount of logging is going to be done or where it is going to be stored. As we were saying before, records of what services have been accessed may be stored on the chip or the register or in both places.

Senator WATSON—If they are stored in the chip, wouldn't a health reader be able to access all those other sorts of things?

Ms Graham—That would certainly seem to be the case if it is stored in the Commonwealth area and there is only one PIN applicable to the area, because it would mean that when you were in the pharmacist to do whatever you were doing you would have to enter your PIN—

Senator WATSON—But you could not have, say, 10 PINs for the various uses of the card.

Ms Graham—I agree with that as well. That is one of the reasons why EFA cannot see how this whole proposal is fit for purpose, because we do not see any way that it can operate practically without all of these what we consider to be serious privacy issues about what is going to be exposed to whom. Fundamentally, the only way we can see that people would end up with certainty about who they were disclosing information to is basically to have a multitude of PINs. As you just said, that would be completely impractical. We agree that it would be completely impractical.

Senator STOTT DESPOJA—I have a couple of quick questions and then I am happy to put the rest on notice. You pre-empted a lot of mine through your executive summary and in your submission. Do you have a comment on the definition of chip in the bill that it is a microchip or any other device—

Ms Graham—We believe the bill should be changed to say that it can only be a contact chip, not a contactless chip. At the moment there would be the freedom to change it to a contactless chip, which means you are using radiofrequency, which means that your personal data is going across the air to the reader. That raises even more security issues. Certainly the bill at the moment would enable the chip to be changed to a contactless chip, and that is not on.

Senator STOTT DESPOJA—I noticed your comments about the definition as well, in particular the definition of an inappropriate name. Some of us have recognised that that includes those names that might be too long or that are against the public interest. A few of us are worried.

Senator FIERRAVANTI-WELLS—Not as much as me!

Senator STOTT DESPOJA—Indeed. Ms Graham, you mentioned the three states that had laws which meant that this would not comply. I was wondering if you wanted to elaborate on that or put anything more on record?

Ms Graham—Basically, the explanatory memorandum says that the inappropriate names definition that is in the bill comes out of the New South Wales legislation. That concerns not what names are allowed to be used but what names are allowed to be registered. I cannot remember exactly, but the definition in the New South Wales act has one or more dot points on the types of names that are prohibited from being registered in New South Wales. Those same dot points are not in the laws of three other states. So you have the potential in those three other states for people to have birth certificates with names that are perfectly able to be registered in those three states but which could not be registered in New South Wales. Because the Commonwealth law is going to pick up on the New South Wales definition, you have the potential to be banning names that exist on birth certificates in other states. So the EFA has made the point that, whilst we object to the whole legal name situation anyway and the new concept of a legal name, if the Commonwealth law is going to copy state laws then at the very least it has to use the least restrictive definition. Therefore, it cannot use the New South Wales definition because it could be banning names that exist. The only reason I say that it could be banning names that exist is because I do not know what names are on the registers in the other three states. Certainly it will ban names that are not banned in at least three other states.

Senator STOTT DESPOJA—You have proposed that an amendment be made to the definition of document. Do you want to elaborate on that?

Ms Graham—That definition of document in our view would enable the secretary to demand a person provide a document containing fingerprints or iris scans for the purpose of registering them and giving them an access card. We believe that the definition of document needs to be changed to specifically state that it does not include a document containing any biometric information other than facial data.

We think there is a huge hole there in conjunction with the minister's powers to change government policy, administrative guidelines and the whole broad range of the secretary's powers. As far as we can see, there is absolutely nothing there at the moment to stop the secretary from saying to a person: 'In order for me to be satisfied of your identity I need you to provide a document'—as defined in the bill—'with your fingerprints on it.' I think the bill would at the moment stop them from storing in the register, possibly, the document with the fingerprints, unless that is called administrative information, but it certainly does not prevent the secretary, of their own discretion, from deciding that they need a document with fingerprints or iris scans on it before they will register a person. Obviously, we have a problem with that, so we think the definition of 'document' has to exclude biometric information.

Senator STOTT DESPOJA—You would know my particular personal views on genetic privacy. I wonder whether this is going to extend to information about genetic testing, but that is probably a tangent too far away. The document verification service has been delayed until 2010.

Ms Graham—So I heard at estimates.

Senator STOTT DESPOJA—Do you have a comment on the implications of that?

Ms Graham—This system cannot work as described, in terms of preventing fraud et cetera, if the cards are going to be rolled out before the Commonwealth is capable of verifying the validity of core documents such as birth certificates, which the DVS is supposed to achieve. It seems remarkable that it is claimed that the access card will be robust proof of identity and that it is going to be rolled out two years before the Attorney-General's DVS is ready. We have been told for years that the DVS is needed so that we can check the validity of core documents.

CHAIR—The access card is only as good as the weakest link in the chain—the weakest document.

Ms Graham—Exactly. Obviously, the core identity document, the birth certificate, could well be the weakest link.

CHAIR—Thank you, Ms Graham.

[12.32 pm]

RICHERS, Mr Graham, Immediate Past National Chairman, Legacy

CHAIR—Welcome. Before inviting my colleagues to ask questions, I invite you to make an opening statement.

Mr Riches—Legacy is an organisation that was founded in 1923 and it is dedicated to caring for the families of deceased veterans, including approximately 112,000 elderly widows and 15,000 younger widows and dependants, including disabled dependants. In brief, Legacy is not against the concept of the access card but has some concern as to its practicalities. Whilst the issue of the access card has been considered by Legacy at the senior level nationally, at the grassroots level the issue has not been forced, for practical reasons. Whilst individual clubs have been made aware of the issue, it has not evoked any grassroots response to date. Nevertheless, at the senior level Legacy supports the concept of the access card as a measure to combat fraud against government welfare programs.

Legacy is primarily concerned about two aspects. The first is the practical aspect of the initial registration process—including who pays for any cost involved—given the advanced aged of most of our widows, with their related difficulties of infirmity such as poor eyesight and hearing—I suffer from that too—and comprehension due to dementia—I hope I do not suffer from that just yet. The second aspect is possible abuses of the system, including identity theft and unauthorised access to the information involving breaches of privacy.

Given that many war widows already have the gold card for health services, Legacy believes that any replacement card should be similarly identified as a gold access card. Legacy also believes that there needs to be free and prompt procedures for individuals to challenge any information held relating to the access card, perhaps with some form of information ombudsman. I repeat that Legacy is not against the concept of an access card, provided that issues such as those previously mentioned are resolved.

CHAIR—Thank you. What do you mean by an ‘information ombudsman’? What is your idea there?

Mr Riches—A person who has, like ombudsmen have at present, a general overriding power to investigate problems raised by individuals concerning the actions of government departments and public servants.

CHAIR—For example, if, under the legislation, a secretary of a department said to a Legacy widow, ‘These documents are not sufficient proof of identity,’ your answer to that would be for the person to go to an ombudsman.

Mr Riches—Yes.

CHAIR—I understand.

Mr Riches—The ombudsman would obviously have certain definitional powers, as currently applies to ombudsmen throughout the Commonwealth.

CHAIR—At the moment the committee is having some difficulty in grasping what will happen if a secretary were to say that proof of identity was not sufficient. This problem will

probably be ventilated in the future, with the second tranche of legislation. We will await that eagerly.

Senator NETTLE—Thank you very much for your submission. I appreciate your raising this issue, which I think is legitimate. It seems that people, particularly older Australians, will have difficulty going through the registration process. Have you had any opportunity to date to liaise with the government about this issue? Has the government consulted you about it? Clearly, you have had the opportunity to raise it in your submission to this committee. I do not know whether you have been involved in any other submissions to the government or whether the government has said to you, ‘How can we talk to you about the difficulty that war widows will have in this process?’ Have you had any interaction with the government on that?

Mr Riches—No, we have not.

Senator NETTLE—Is it something that you are seeking to do? It is a genuine concern that you have raised, and we have not heard it from others. I would certainly hope that the government would enter into some dialogue with you, because it may help to alleviate that. Have you sought to have interaction with government about this issue at this stage?

Mr Riches—At this stage we see the avenue as being basically through this committee.

Senator NETTLE—Okay.

Mr Riches—I think that is the answer, rather than our going direct to government at this stage and repeating what we would be saying here.

Senator NETTLE—Sure. I ask that because a number of the other witnesses—for example, organisations representing the vision-impaired—who have appeared before this committee have had the opportunity to have consultations and meetings with the department in the lead-up to the draft legislation for the access card. So I was wondering whether the government had also taken that approach with your organisations and had heard the concerns that you have raised here.

Mr Riches—If we had wanted to, I am sure that both the department and the government would have been quite willing to listen to our views in regard to this matter.

Senator NETTLE—Yes, I think so too.

Mr Riches—That has never been a problem.

Senator CAROL BROWN—You indicated that you had not had the opportunity to discuss the access card at the grassroots level. Will you be doing so before you enter into discussions with the Department of Veterans’ Affairs and any other relevant departments?

Mr Riches—One of our problems is the nature of Legacy; we are a very democratic and disparate organisation. We consist of 6,000 or 7,000 members, who belong to 49 clubs in Australia and one club in London. They meet irregularly, once each month or once every second month. Getting the issues out to them and getting responses back from them can take a long time. That is why sometimes we bite the bullet ourselves as their leadership and, in consultation at a senior level, develop a response accordingly rather than go out to all our members. Also, we have a national conference only every two years, and that too is a time-consuming process. We have not gone out to the members on this issue because of the

practicalities. The clubs have been made aware of this issue, and if there were a desire amongst the members to consider it we certainly would.

Senator CAROL BROWN—In your evidence you have said that it could be a confusing and distressing experience for many of the older widows. Has the coordinating council discussed ways to alleviate that?

Mr Riches—No. We have not discussed it in detail, and that is part of the problem. I do not think it is necessarily our job to come up with those sorts of answers; although having said that I am conscious of the fact that it is not very helpful in trying to resolve the problem. The short answer is that we have not considered that, but certainly it is something we certainly could.

Senator CAROL BROWN—Something that you hope the government will?

Mr Riches—If it were a problem for a widow, that would be something that would come back to her legatee contactor. Her legatee contactor would assist her in filling out the forms, contacting the family if necessary, or if needed taking her to the place from where the information is required. That is standard practice for legatee contactors anyway when they are helping out a widow on any problem. So I would expect it would be no different from that. On the specific question you asked, no we have not specifically gone out on that issue.

Senator CAROL BROWN—Your other concern is obviously the cost of obtaining documents to verify identity. Have you discussed that at the council level, and do you wish to make any suggestion?

Mr Riches—Because we do not know what the cost will be it is a bit hard to say. We have had experiences such as this when dealing with government on other issues, which we are talking to them about now. For people making application for a pension, the government has developed a whole-of-government approach based on information, I understand, from the Attorney-General's Department. That can require some quite often time-consuming and expensive exercises, relatively speaking—for example, getting marriage certificates. Marriage certificates provided by a church are not good enough because of the possibility of fraud. Birth certificates need originals, and sometimes they are not freely available. If you have to get them in a hurry it can cost \$70, but if you want to wait six weeks it is \$30. Who is going to pay for this? I suspect these sorts of issues will come up in relation to the access card too.

Senator WATSON—Congratulations on leading such a fine organisation, and thank you for your submission. In the second paragraph of your submission of 25 July, you say:

... Legacy is concerned that the registration process, requiring the production of original documents and the taking of photographs, could be a confusing and distressing experience for many of our older widows.

The majority of your people would have a gold card or something like that. Wouldn't it be taken for granted that that would be transferred to the new database, rather than having to go back and get, say, birth certificates, marriage certificates and all that sort of thing?

Mr Riches—One would certainly hope so.

Senator WATSON—You raised the question, I thought, from a practical point of view. For these elderly people, if the Department of Veterans' Affairs has got all this information, surely that would be good enough.

Senator FIERRAVANTI-WELLS—Do you have evidence to the contrary?

Mr Riches—Insofar as Veterans' Affairs is concerned, they would have all the information. I suppose the question then arises—

Senator WATSON—So that would automatically get transferred.

Mr Riches—where does it go from there?

Senator WATSON—I just think you might be raising concerns that might be ill founded. I think the practicalities in these sorts of cases would be that Veterans' Affairs, in your case, would have practically all the information necessary to obviate all the distress that you are worried about.

Mr Riches—Legacy's widows are not all war widows as such. Nor do all the widows necessarily have a gold card.

Senator WATSON—No, but the sort of information in, say, the department, related to those people. I just used the gold card as an example. It would be replicated in other sorts of information that they would have.

Mr Riches—Certainly. I would agree with that. Where the information is already there, then that would be fine. The issue then becomes: how much of that information that is held relative to the gold card, within that department, should then go into a card that has uses outside of just that purpose. That is something I cannot say at this stage—

Senator WATSON—You mentioned the distress associated with the registration. I am saying that most of that information, for 98 per cent of your people, really should be on file somewhere. I just wanted to allay some of the fears that you might have had, as implied in your second paragraph, that they would have to undergo this tortuous thing of producing identification.

Senator FORSHAW—You mention in your submission, at page 2: 'There are some potentially positive benefits to combining various Commonwealth health and social security entitlement cards.' The normal cards that members of your organisation would have would, I assume, be a Medicare card—

Mr Riches—I would expect so, yes.

Senator FORSHAW—What other cards? Maybe a seniors card?

Mr Riches—I would expect the bulk of them would have. I am surmising, but I think it is reasonable to assume they would have a Medicare card and—

Senator FORSHAW—And potentially some form of veterans card—

Mr Riches—Be it the gold card or the white card, yes.

Senator FORSHAW—Are there any others that you can think of?

Mr Riches—Not off hand. A lot of them do not drive.

Senator FORSHAW—I appreciate that. They might well have driven at some point in time.

Mr Riches—Certainly.

Senator FORSHAW—Do your members draw to your attention problems they have because they find it inconvenient or confusing to have, say, two or three separate cards for the different entitlements they receive? I note that in your submission you mention the issue that if you change your address you might have to do it two or three times. I appreciate that concern, but in general is there concern about having a multiplicity of cards, say these three cards?

Mr Riches—I do not believe that that is an issue. It certainly is not one that has arisen as far as I am aware. The real problem is the ‘paper warfare’, for want of a better term: the continual filling out of forms, the alterations to forms and the proof of identity requirements. All these types of things are the ones that I think—

Senator FORSHAW—That is where you are required to do it a number of times?

Mr Riches—That is the registration bit, and then of course if you are dealing with an elderly widow invariably a member of the family is there. Sometimes they can be helpful and sometimes they are not. Then there is obtaining the necessary documentation. For example, I am waiting on a widow to obtain an original birth certificate. That will take some weeks and some money at the present time before her application can go forward. All this takes time and money. It is that background—the registration problems—that we have in mind in terms of this.

Senator FORSHAW—I understand. The reason I asked the question I did is that one of the arguments put forward by the government in support of this proposal is that currently up to 17 cards—and it is acknowledged that there may only be one or two for the bulk of the population—could be replaced by a single access card. The argument goes that it is more convenient if you only need one card whether you are accessing Centrelink, Veterans’ Affairs, Medicare, PPS et cetera. But we have also heard the argument that that may have some problems to it because you are taking a lot of information that is integral to the operation of those different entitlements and services and combining it. It may in one sense streamline it but in another sense create a lot more complications, such as putting all that information together in one spot.

Senator LUNDY—What if you lost it?

Senator FORSHAW—As my colleague just said, what if you lost that one card?

Mr Riches—Then you are in trouble. Straightaway I can think of several cards that, for example, my mother has. These would be a Medicare card, a pensioner card, a hearing card, and so on.

Senator FORSHAW—She may also have a library card or a card for the local RSL or bowling club.

Mr Riches—When I open her wallet I find a whole string of cards. She is 99. Fortunately she has all her marbles—or she did half an hour ago—and I must say I find it confusing

looking at all those cards. So to that extent, yes, it would help, but your point is the other one: what happens if that card goes missing?

Senator FORSHAW—My point is twofold.

Mr Riches—Yes, it cuts both ways.

Senator FORSHAW—I am not trying to get you to agree with an assertion you do not agree with, but the other side of the argument is that having a minimal number of different cards has certain advantages. Each card is specific to the entitlement rather than being one combined card with a photograph on it as well, which then becomes an identity issue.

Mr Riches—Yes.

Senator STOTT DESPOJA—Mr Riches, I am conscious of Senator Watson's question to you about alternative forms of ID or how to make the process go quickly, but the reality is that the government says that in order to get an access card you have got to have your photograph taken, produce your signature and attend an interview. My understanding is that the government has allowed 10 to 12 minutes per person per interview. I am not sure how that works. I think your concerns are valid. I am just trying to work out ways of alleviating some of these hurdles or issues. Would removal of the photograph be one option that your members might support, for example? I am happy for you to take that on notice if you want to consult with your members.

Mr Riches—Again, I think photographs cut both ways. In one sense, they are handy for quick identification, but on the other hand quite often they are just given a cursory glance and there is opportunity to mislead in that regard. I think it is a case of, on balance, whether we should have them or not—and my belief is that it is probably preferable to have them, on balance.

CHAIR—Because it is a convenient form of identification?

Mr Riches—Correct. It is not perfect. What are therefore needed are safeguards against error in that regard and punishment for misuse.

CHAIR—Thank you. As there are no further questions, on behalf of the committee I thank you very much for your assistance.

Proceedings suspended from 12.56 pm to 2.00 pm

[2.00 pm]

BRAY, Mr Hedley Murray, Australia MedicAlert Foundation

CHAIR—Welcome. Before I invite my colleagues to ask you questions, would you like to make an opening statement?

Mr Bray—Yes, I would. My friends call me Murray. I am Chair of the Australia MedicAlert Foundation, a non-profit public benevolent institution under the tax act. It has been operating for 35 years. The board is volunteers and so am I. We have been in the business of dispensing emergency protection to Australians for all those 35 years. I was alarmed when I read the Prime Minister's communique that said that the access card would have health alerts on it. I noticed the appointment of Professor Fels so I wrote to him expressing my concerns. I think that paper may be with you, because before the first discussion group the task force said they would include it in that discussion paper. There is another discussion paper out now.

We have 260,000 to 300,000 members. We provide a service whereby in an emergency, when you cannot speak yourself, the MedicAlert system comes into effect. It is a four-part system, which is different to the access card health alerts intimated method of operating. We have an emblem, which is the primary source of identification when you cannot speak for yourself. On that, there is a telephone hotline, 24/7, that goes to an ambulance authority's emergency centre, where they dispatch ambulances throughout the state. That also has a particular personal number on it, and that number is the key where you get into the pertinent information on the back of the bracelet. Then there is the backup file, which contains the name of a doctor or medical practitioner, next of kin, further medications, allergies and further information that should be known in an emergency.

That system has been working for 35 years. It is one of 10 affiliates throughout the world. We are a non-profit Australian company limited by guarantee and a charity under the charities tax deductibility act. We conform to a standard delivery of emergency service. The telephone must not ring more than twice before it is answered by professionals who dispatch further information should there not be enough information on the back of the bracelet.

If I fall over in the street, you would know I have diabetes, but certainly with that access card you would not know. Ambulance people, or first responders, as we call them, such as policemen and the general public, are trained to know the bracelet because of the shape and the MedicAlert symbol on there, which is trademarked in 10 countries throughout the world.

CHAIR—What is on the back of it?

Mr Bray—It has a number. Do you want to see it, or will I read it out to you? It has my particular number.

CHAIR—Do you mind if we have a look at it?

Mr Bray—I would love you to.

CHAIR—We will have a look at it.

Senator FORSHAW—It might be good if you explain what is on it for the record.

Mr Bray—This system works because, when a person cannot speak for themselves, that alerts to problems and then, if that is not sufficient, it can go back to the data file. Any medical information on the file or on the emblem must be authenticated by a doctor. So we will not accept any application form—and there is one there—unless a medical practitioner signs the form that the information is correct. Then we issue the emblem and a wallet card, and the person is then put in our database. That database is accessible 24 hours per day. We are the only organisation that has a database behind our system. As a matter of fact, MedicAlert is the only non-profit that I know of in Australia doing this sort of business—being non-profit and having a database.

I notice the discussion papers from the task force refer to MedicAlert type systems. There is really only one MedicAlert system. I do not know of any real opposition or competition in Australia except perhaps SOS Talisman, which is a small, Swiss based commercial organisation distributing throughout the world an emblem or a locket where you can write in whatever you think is wrong yourself and you wear it, but there is no authentication and no backup. That is what I tried to explain to the task force. Without authentication, the health alert on the card can be so misleading that it can be dangerous. The point is that it is third-party access; it is not the person. There is a third party to look at the situation to see whether it is all right. It takes a heck of a lot of professional training and professional application to see that your file—when you have hundreds of thousands of members—is absolutely correct. And it just does not stay correct overnight; it has to be updated because people change their conditions and change their medications. So we have to update. The system must be one whereby updates can be made. Once a year we go out and say to all our members, ‘This is what appears on your file on the database. If there are any changes, please let us know. If there is a medical change, take it to your doctor and then we will record the change.’ Presently we are putting in a new \$1 million computer software set up that will allow members to update online. At the moment they can join online, but that again means that the system must, where there are medical reasons involved, go back to the doctor for authentication.

You can imagine the access card, with four million people, as we were told. The task force—Professor Puplick and one of the administrators—came into our office and spent several hours there and were most impressed. I think they would admit that they were most impressed at the professional way we go about this and the completeness of our records and the care. Although we have a charge for our services—basic as a \$55 joining fee and \$15 plus GST for annual membership—we do give benevolent memberships. In other words, being a non-profit, we give memberships for nothing. That is the way we are.

We have never sought government funding. We do not need it and we are not asking for it. We are very successful at operating our business. We have not put our charges up for seven or eight years that I can remember. My board is very professional. It is made up of doctors and commercial men like me. We have a very good business plan. It is a wonderful service for Australia. These people are protected and peace of mind is given to them.

CHAIR—That was excellent and really enlightening. Basically, you are arguing that the new access card, even if it includes on the chip some medical information, could give cardholders a false sense of security. Does your argument relate to emergencies in particular? Clearly the MedicAlert you have there is terrific in an emergency. Even someone like me,

who has no medical training, would be able to see it and say, 'Gee, this is a problem.' Certainly with a mobile phone or whatever, you could make contact with people quickly. But your point is that an access card is just about useless in an emergency unless you are carrying around a reader with you or something.

Mr Bray—That is right, where you have a reader. They are not lying in the street.

CHAIR—So you are saying that, in relation to medical information, the access card is only useful in limited circumstances and even then it has to be regularly updated.

Mr Bray—Exactly. It has to be authenticated regularly.

CHAIR—Thank you.

Senator FORSHAW—I have a couple of questions. Firstly, just so we get it on the record, I notice that the band that you have provided to us does not have a name on it of the individual but it has a number, which is presumably a registered number. Is there a reason why there is no name put on the band?

Mr Bray—Yes, privacy—absolutely.

Senator FORSHAW—People carry other forms of cards—licences and so on—which might have their name on them. Why have you chosen a system that does not have the person's name on it?

Mr Bray—Getting back to the database, you want to make sure that you are giving the information to the person that you are inquiring about. The call is answered by the South Australian ambulance trust authority, who are ISO, and they have methods of ensuring that the caller is authentic.

Senator FORSHAW—That is what I was wondering. Can you tell me how secure the database is? Who has access to this database? Where is it kept?

Mr Bray—That is a good question. The database was with the South Australian ambulance authority and, as from tomorrow—or this week—it will be under our sole operation. It was run with the South Australian ambulance trust authority and now it is our own particular private database in our own building, which is a first. We were with the ambulance people for 35 years; they started us up with St John.

Senator FORSHAW—Do you make information on that database available to any government organisations or agencies?

Mr Bray—Only first responders in a medical emergency—often policemen—where we approve it. This application form gives us authority to do that.

Senator FORSHAW—What if somebody is taken to an accident and emergency centre: can the hospital, the department of health in that state access—

Mr Bray—They are in a medical situation, but it must go through that hotline.

Senator FORSHAW—That is what I mean. They can ring up—

Mr Bray—Yes, that happens all the time. We get them in hospital and they say, 'We can't make any sense here; what does the record say?'

Senator FORSHAW—What about an organisation like Diabetes Australia?

Mr Bray—No commercial organisations. If it is medically based and there is a reason for it, yes.

Senator FORSHAW—So Diabetes Australia would be one which would have access?

Mr Bray—Yes. We have a close affinity with them. We call them ‘condition groups’. They send out in their magazines et cetera. We have a special deal with them. A diabetic gets a discount because it is a group thing—they enrol and they do a bit of work—and epilepsy and asthma associations too. We are endorsed by all the eminent health organisations.

Senator FORSHAW—Following on from Senator Mason’s questions, it seems to me that your concerns are twofold. One is what the value would be in having the sort of information on an access card such as the one proposed, because it would be pretty useless unless you can read it. Are you also concerned that information similar to what is in your database if stored on an access card could flow beyond relevant medical institutions to the public at large or commercial operators?

Mr Bray—Yes, and it impacts against our own, because ours is the real one that gives the service.

Senator FORSHAW—So are you concerned that it may mean that over time your association’s role would cease to exist or cease to be relevant?

Mr Bray—Without doubt, yes.

Senator LUNDY—I note that in your letter to Professor Fels you make six points about problems you see with the system. I am interested in this issue. If the responder does not have a reader at hand, they will not be able to read the card—for example, at a car accident out on a bush road. The reader system would mean that every ambulance officer would need to have a reader, but I am thinking more of first on the scene type of people, who would not have a reader—

Mr Bray—Absolutely.

Senator LUNDY—and how that would affect—

Mr Bray—A policeman probably would not have one. The first on the scene would not have one—it could be you or me. We, with the AMA, put out an emblem with a chip in it. It has seven A4 pages of information on it. First of all, we could not get readers, which is what we wanted. Then we could not issue them because people did not want them. The AMA could not sell the software to their doctors because the doctors were too busy or did not want to load it. So we have been at the chip point. The difference is that that chip did have one pertinent thing engraved on the back of it. Without the chip, the access card is useless in an emergency. It is just another store of information that gets repeated and it confuses the public. Who is going to read or answer the call when they cannot speak for themselves?

Senator LUNDY—Further to that point, there is the simplicity of having just text. We have heard of some information about health status being placed on the access card, but I do not think it is in the government’s proposal to have specific health status information on the actual surface of the card.

CHAIR—There is the option.

Senator LUNDY—Yes, and with the bracelet, the system that you have, because you can have text and it is opt-in anyway by its nature—

Mr Bray—That is right.

Senator LUNDY—I guess it would be voluntary.

Mr Bray—Exactly. They are talking of putting the information on the access card. You have to look at whether it has a medical thing on it or not and then you have to have a reader. As you said, at the scene of an accident it would be useless. The second discussion paper says there is a much more complicated situation with health alerts than when it was first envisaged because they have to be updated all the time. Imagine the millions of updates that have to be made when you have four million Australians on it. Then you cannot get immediate action because you have to go through the points. For instance, the card does not even have to be carried, so you may not have the card at all. Then if you do have the card, even if a health alert is on it, they may not have a reader.

This is the best service in the world, the best service in Australia. It is the only non-profit one and it is responsibly managed—that is proven. I am leading to the point that, if the government wants to have the best service, it should ask MedicAlert to handle the health alert part of the access card. That would take 97 staff and a few more million dollars, I suppose, but that is the only way. Without this, any card in the wallet is useless. Handbags get thrown away.

Senator LUNDY—Did the government or anyone from the Department of Human Services approach Medic Alert when these proposals were being developed?

Mr Bray—Only Professor Fels. Within three days he sent these ambassadors—I think that is the word. I do not think it is off the record but, walking out of our office, he said, ‘You’d better be prepared to handle four million members,’ because that is how many he reckoned would take health alerts.

Senator FORSHAW—I do not think that is off the record. Everything here is on the record.

Mr Bray—Yes. That backs up all the things I have said about privacy, authentication, pricing, non-profit, care and standards. We have 59 standards we operate to. I am talking as a volunteer. It has been going on for 35 years, endorsed by all the eminent medical associations. It runs without government funding, as I said. We want health alerts off the card, or else push it to us. Then we certainly would have to do a lot of negotiation.

Senator FIFIELD—Mr Bray, in your submission you say that there are 260,000 members of Medic Alert.

Mr Bray—Yes.

Senator FIFIELD—How has your membership gone since the organisation was established? Is that a record high?

Mr Bray—I could have paid you for this question. Yes, our membership is riding at about 14,000 a year, over 1,000 a month. A significant thing—I would have kicked myself if I had left and not told you this—is that 26 per cent of our new members writing every month are

under 18 and 19 per cent are under 12. You might think Medic Alert is for older people. That shows the care of parents for their children. Health problems are affecting younger people because of allergies—even peanuts are bad—and rising rates of asthma in children. With 26 per cent under 18, and with 18 to 19 per cent under 12, how does the access card go? You do not have a card unless you are 18 or over and you need a government payment, so how does it go looking after them?

Senator FIFIELD—Is 260,000 the highest the membership has been?

Mr Bray—You get to the point of attrition, but it has been rising more in the last three or four years.

Senator FIFIELD—Have you ever had more than 260,000 members?

Mr Bray—No.

Senator FIFIELD—What is the fee for the service that is provided?

Mr Bray—The base one is called the traditional and the stainless steel 304 is \$55. Then each year there is an annual fee, which you send out for updating; that is \$15. There is a silver one, sterling silver, and that is \$100. Gold filled is \$115. The one you just looked at was solid gold; it was presented to me for 25 years of being a volunteer. They are all decent looking. Some people wear them for jewellery. The point is that it is a trade marked emblem. We even have for the children a pretty aluminium dog tag, which still has the Medic Alert shape so people know it is medical.

Senator FIFIELD—Do you have a copy of that which you would be happy to table?

Mr Bray—I brought one.

Senator FIFIELD—Given that the Medic Alert service does cover many young people who are still in the care of their parents, if there were health information on the access card—a decision has not been taken on that as yet—wouldn't the two systems be complementary to some extent?

Mr Bray—You could say that but I think—and I put this in my submission to Professor Fels—that the impact would be that you would be torn. You would wonder: 'Which one do I use? Which one is the best?' and about the impact of just how clearly the one I have is a life-saving one. It would perhaps be muddled by just having health alerts on it. And, if it is not the best on it, why have it?

We are totally in favour, by the way, of the card—removing 17 cards and preventing fraud, in KPMG's assessment et cetera. Naturally, from my board's point of view, we all have to be in favour of it, but we are not of all this other information. It is a heck of a shock to see that a third of the card is devoted to other stuff. I could put my dog's name on it and that sort of thing, let alone health alerts.

Senator STOTT DESPOJA—My colleague made the point that the decision has not necessarily been made about health information, but a quick glance at the government's explanatory memorandum shows that it states very clearly:

It is expected that card owners will be able to customise their card to include additional information such as organ donor status or emergency contact details.

So clearly this is envisaged, whether it has been written in legislation or not. Like you, I am trying to work out what that means for other services, such as your own. Would you imagine that this would replace the Medic Alert system? If customers or citizens could customise their card to put in the same information that they perhaps could—

Mr Bray—First of all, either way, it will not have the emblem, the first protection, there. Then, the more you put on it—whether it is health alerts or anything—the more jumbled up the information will be and when the information comes up it will get to the point of: what do I want to get at? The clear, defined line of Medic Alert is that it is an emergency health thing. It stops emergencies being tragedies. It is straight out there and is for one single purpose. It is not giving Medibank, Medicare payments or Centrelink payments. It is just one thing to save lives. So why meddle in it? That is my point. I do not know whether I should say it, but it looks good for the government to say, ‘We’re going to put health alerts on it,’ but they have not thought it through. It will weaken a very good system.

Senator STOTT DESPOJA—I am also curious—and Senator Lundy brought this point up—about what happens in an emergency situation with this card. First of all: do ambulance and emergency officials have readers so that they can check someone’s status, ensuring that people get the right treatment? There is another issue—and I am not sure whether you have spoken about this with the task force. It is the protection of those details if people do put their personal health information on those cards and whether, when that has been accessed, emergency personnel can look at other information. I am not sure if any of that was made clear to you but not us.

Mr Bray—Yes. Anything put on by the person themselves is very suspect. The AMA has put a submission to the task force about when people do not know their own problems, meaning that they do not know whether they have an allergy or if it is a treatment thing; they do not know a lot about their own health, et cetera. Unless it is authenticated and the authentication process on the access card is going to be a real ripper and the—pardon my graphic Australian—updating is going to be a double ripper because there are a million changes all the time. This is getting into a gigabyte storer on the database.

Senator STOTT DESPOJA—I cannot improve on that. You will be quoted, I warn you.

Mr Bray—In the *Hansard*.

Senator NETTLE—Senator Lundy just mentioned a difficulty to me. The access card is not proposed to be available for children. We were just talking about children who are diabetics or—

Senator LUNDY—who have anaphylaxis.

Senator NETTLE—If the access card were to come into place, what implications would that have for your organisation? If that then saw your organisation have difficulty surviving—

Mr Bray—Are you saying if the access card came into place?

Senator NETTLE—Yes. All the criticisms that you have made I agree with. I think your organisation does a great job. The access card cannot cater for the needs of children in the way that your organisation does. So even if the access card came into play, your organisation would need to somehow be maintained because it is the only way for children—

Mr Bray—I agree. It would just make it more difficult because we would be saying, ‘This access card is going to do this but we can do that’. So we would be talking all the time about something that is still not as good. It will lapse. It does not have this emblem for a start.

Senator LUNDY—So the key question is: if the access card is introduced with the role of having health information on it and that being promoted, do you think that would affect the viability of your service and your organisation over time?

Mr Bray—I worry about it because the government is a giant against us, with funds unlimited, et cetera. As I said earlier, we have a very good business model and therefore we do not see government money and therefore we have reserves. We can pay for a \$1 million computer and change premises without a worry about doing it. But anything that makes it more costly to tell the people that this is the best service or to apply it properly is going to impact on us. There is no doubt about that. The greatest thing would be if the access card was issued with an emblem as well and it was covering what we did. I would say, ‘Board, your job is done. You’ve done it for 35 years, you’ve protected the Australian public, you’ve done a wonderful job. The government is now going to do it.’ I can go home and grow potatoes or something and they can do what they want to. That would be the greatest. But they are not doing that. So unfortunately we are still going to fight—I do not know for how long. To answer your question, it will detract from the efficient running of Medic Alert; it will make it more costly, without doubt.

CHAIR—There being no further questions, Mr Bray, I thank you on behalf of the committee for your attendance here today and thank you for your evidence.

[2.32 pm]

MESSIMERI-KIANIDIS, Ms Voula, Chair, Ethnic Communities Council of Victoria
van VLIET, Mr Peter, Executive Officer, Ethnic Communities Council of Victoria

CHAIR—Welcome. Before I invite my colleagues to ask some questions, would either of you like to make an opening statement?

Ms Messimeri-Kianidis—I will, to summarise some of the key concerns of the Federation of Ethnic Communities Councils of Australia, which is an umbrella body representing multicultural communities in Australia, affiliated by state and territory throughout the nation. Our concerns centre on the potential of the access card to be seen by the community at large as an identity card. I think that the fact that the photograph is being seen as part of that reinforces that belief within the people that we have talked to, our constituents.

The second issue we highlight is the very tempting function creep with such a card, the privacy considerations, and the fact that there will be such personal information, including photograph, digitised signature and so forth. We are concerned about security and privacy issues. We are happy to expand on that as we go on. Many people who were born in places other than Australia and who have migrated here as migrants, and particularly as refugees, have lived under very oppressive regimes that have unfortunately used private information for other than good. This information has often been used as a basis for persecuting individuals. Therefore, that particular consideration is one that we would like to explore quite significantly.

The other issue with that is that it needs to be stated that there are sensitivities around an access card, especially one that has a photograph. In some sections of the Muslim community women wear the hijab and that is one of the considerations that need to be looked at a little more carefully.

Certainly the card appears to be one of a voluntary nature; however, we question how voluntary it actually is. Like many other commentators, I would say that when a Medicare card, social security, childcare benefits and so forth are tied to it most of us would have to give way to receive those particular benefits. With that, we would be very concerned for those people who would not want to give private details and what would happen to their benefits.

One of the other matters that we want to pursue is that there will be a consideration for discretionary information and additional information to the card. We would urge that, if that is the case, a significant campaign be undertaken to ensure that communities that do not speak English very fluently understand that that is information that would be provided with their consent. We are quite concerned that they would feel that that is part of what they must provide.

We also see some benefits in relation to that discretionary consideration. I think Victoria just recently adopted an interpreting and translation symbol that looks like it is taking currency right across Australia and perhaps internationally. I think it is the first symbol of its kind. We feel that there might be some benefits in including such a symbol on an interpreter card for those people from a non-English speaking background who have difficulty in

accessing services. They are just some of the comments to start off with. We are obviously very happy to answer questions.

CHAIR—You raised initially in your presentation the photograph. Is your objection to the photograph being included on the chip or the surface of the card or both?

Ms Messimeri-Kianidis—To be fair, the feedback we have had from our constituency is that it has not been very clear that, no, we do not want the photograph. There are considerations in terms of the photograph being used at the front of the card.

CHAIR—On the surface?

Ms Messimeri-Kianidis—Exactly.

CHAIR—I understand. That has been a continuing issue throughout the progress of these hearings over the last couple of days, so I just raise that. You mention on page 6 of your submission that people from these communities post September 11 have concerns that an access card may be used by security services in broad profiling of ethnic groups. What do you mean by that?

Ms Messimeri-Kianidis—Certainly the Australian Muslim community has been feeling the pressure and the brunt of undue emphasis on their particular communities. We feel that, if there are no safeguards around the use of information on this card, those particular communities will end up being, unjustly, further profiled. Peter, do you want to add to that?

Mr van Vliet—There was a concern that the card could be used for ethnic profiling of particular groups. We note that, in the original draft of the bill, one of the details on the register was going to be country of birth. We were very concerned that that could have led to ethnic profiling and targeting of particular groups, not necessarily by this government but by a future, more nefarious government. There was always that option or potential, so we were very concerned.

We do note however that on the register there is still the distinction between permanent residents and citizens and that is of great concern to us as well. With the obvious increasing distinction between those groups of people and the government's proposal to raise the threshold for citizenship through higher-level English language testing, there is a concern that permanent residents could also be discriminated against eventually with regard to health and welfare benefits. That potential still exists to a lesser extent with the legislation in its current form.

CHAIR—I understand that. So basically your concern is ethnic profiling or screening perhaps based on information on the card.

Mr van Vliet—Yes.

Senator STOTT DESPOJA—Good afternoon. Can I ask about the definition of a name, particularly an inappropriate name? Does FECCA have a comment on the notion of an inappropriate name and the fact that that can include names that are obscene or offensive or names could not practicably be established by repute or usage because, for example, it is too long, it consists of or includes symbols with phonetic significance, it may be against the public interest or for some other reason? I wonder whether you have a comment.

Ms Messimeri-Kianidis—Are you referring to my name?

Senator STOTT DESPOJA—That is from one who has a long surname to another—although you definitely win. Has that issue been drawn to your attention?

Mr van Vliet—Yes. Obviously it is hugely important in ethnic communities that people with slightly different surnames, as both Voula and I have, have their names correctly recorded—if that is the intent of your question. For example, Qantas for some reason cannot put two words into a surname. If your question is whether there should be sensitivity in the way the card is designed—absolutely. But I think you were leading towards something more than that.

Senator STOTT DESPOJA—It is just the notion that names need to be standardised for the purposes of the card. Might that require a degree of sensitivity on a cultural basis?

Mr van Vliet—Absolutely. I think that people's names should be spelt out the way that they want them to be spelt out. If the card does not facilitate that, then a large chunk of the Australian community is going to be pretty unhappy.

Senator STOTT DESPOJA—One example that was put to me—just to get your ideas—was the idea of someone coming to Australia from a different country taking a standardised English or Anglicised name and then choosing to revert to their original name. Do we need to pay close attention to such things as name changes and issues of standardisation?

Ms Messimeri-Kianidis—My family and I came to Australia in 1969, when most people were actually abbreviating their names. It was during the seventies that people started to feel pretty proud about using their full name. I think one of the benefits of multiculturalism over the last 30 years has been that most of us now feel really proud to use our names in their full and sometimes unworkable glory. However, I think there would be quite a lot of people who would be quite perturbed to think that they would have to abbreviate or change their names in some way to adapt to an access card.

Senator STOTT DESPOJA—Something you raised in your submission here today I think is very interesting, and that is your comments about people who have perhaps lived under regimes or who have been in countries where there has been an identity card of some kind. I am not sure what your statistics say, but my dredging through ABS figures indicates that Australia has at least two million people who have lived in Europe during times of war and who have come to this country as part of a post-World War II migration and there are many other issues and political debates associated with that. What were you getting at in your submission today when you made that reference?

Ms Messimeri-Kianidis—Very simply that, with the introduction of a card, especially one that has so much personal information and the capacity to include further personal information, discretionary or not, in the future, we need to be aware that people have fled repressive regimes, they have been victims, their families and they themselves have been affected by those repressive regimes and they would be very fearful about what could happen to that information. Therefore it would seem to me that, if the access card goes ahead, part of what needs to happen is that there has to be quite massive community education, in languages other than English as well, to ensure that people understand and feel some sort of security around the fact that perhaps Australia is very different to their country of origin. We should

ensure that people have some sort of certainty and security, as I said, that that information is not going to be used for purposes other than what is intended and what is being stated.

Senator FIERRAVANTI-WELLS—I just want to pick up on that point. Bear in mind that a lot of the people, particularly the ones with the language background, emigrated out here 50 years ago or so. We are not talking about changes in their own countries as far as access cards or whatever that may exist there. I take your point, but I think that you have probably exaggerated the point a little bit.

Senator FORSHAW—I don't, but anyway.

Senator FIERRAVANTI-WELLS—Thank you, Senator Forshaw. I appreciate the cultural sensitivities, coming as I do from that sort of background, but I do not quite understand your point, Ms Messimeri-Kianides. I read between the lines of your concerns that some people, for various reasons, may not wish to conform or may wish exemptions. Is that what you are leading towards? If we have an access card, do you feel that some people should be exempted from certain compliance with that? Is that where you are leading?

Ms Messimeri-Kianidis—No. Very simply, I think that in rolling out a card of this sort one needs to be very much aware and measures need to be introduced to ensure people from non-English-speaking backgrounds have some of those fears that we have tabled allayed in approaching the card. We are not asking for exemptions. For women with the hijab for instance, we are asking for an approach that is sensitive to culture, rather than an exemption.

Senator FIERRAVANTI-WELLS—Are you aware of where these sorts of issues have been dealt with in other countries where access cards are in existence? I am sure that in countries where those issues do exist there is some form of access card. Are you aware of that?

Ms Messimeri-Kianidis—I am not personally aware of arrangements overseas, no.

Mr van Vliet—If your question is about photographing a human's face, most arrangements do provide for people's faces to be photographed, but I suppose a woman who is wearing a hijab might ask that her hair not be photographed, and I think that is reasonable.

Senator NETTLE—I might pick up on that point. Firstly let me say thank you for your submission. You have raised quite a lot of different areas and issues that we have not had the opportunity to explore yet. I appreciate that. I do not know if you have seen the proposal about how a headscarf or a hijab would be dealt with. The department has provided a copy of its intention in relation to women wearing the hijab. I will just show you that. I am sure we are all aware that different people have got different concerns. Everyone individually is going to respond differently to being asked to do that. I want to draw to your attention a part of the government's submission to this committee for your future reference, in case you want to comment on it later. On page 65 of their submission, they talk about when an exemption can be granted for having a photograph taken, and they give a number of examples, such as when somebody is too ill to attend an interview.

One of the examples that they give is that some people may find it emotionally distressing to have their photograph taken. They give the example of someone who is severely disfigured. I have asked the department whether a Muslim woman who wore a full veil and who said, 'I

consider it emotionally distressing to have my photograph taken,' would fit into that kind of exemption or not. The response that I got from the department was that it should not be read that there is a blanket open exemption that people can use to not have their photograph taken. You have already answered this partly, in response to Senator Fierravanti-Wells, but are you aware of any other scenarios—in Australia or elsewhere where there is a requirement for people to have their photograph taken—where there is the opportunity for people to seek an exemption on the grounds that it is emotionally distressing to have their photograph taken?

Ms Messimeri-Kianidis—I am not aware of any scenario like that.

Mr van Vliet—I am not aware of any scenario like that. Could I make the point that whilst we have Islamic groups as members, we do not speak exclusively on their behalf. In my consultations with Islamic communities, they have said that they think that a face photograph, providing that the hijab remains on the hair, is okay. But I really cannot claim to speak on their behalf on that issue.

Senator NETTLE—Are you able to let the committee know about what kinds of consultations you have had? I note in your submission that you offer to run consultations for the government. I do not know if the government has taken you up on that offer. Perhaps you could give us an idea of the sorts of fears that your members have expressed to you in any conversations that you have had with them. It just helps the committee to have an understanding of what kinds of concerns people have.

Mr van Vliet—With the kinds of consultations that we have conducted over the last few weeks in anticipation of this inquiry, the major concerns have been around security profiling and the potential for the card to be used by national security agencies to target particular ethnic groups. Obviously, with the country of birth removed from the register, that capacity is diminished somewhat; but from our perspective it is really important that the card is ring-fenced to ensure that people cannot access the details in the card—security agencies in particular—except in extreme circumstances.

I should mention that in my consultations there was not a unanimous view on the card in our communities. Some members of our communities were supportive of measures to minimise fraud of welfare payments. I think that migrant communities, particularly refugee communities, rely on welfare when they establish their lives in Australia, and they would be very keen to see welfare fraud minimised. But on the flip side of that coin, there are genuine concerns from people who have been traumatised through inappropriate use of cards that contain identity information. There were concerns expressed along those lines. The opinions of this card within our communities are as diverse as they are within other Australian communities.

Senator NETTLE—I have one more question, which goes to the issue of people in the communities that you represent thinking it is compulsory to get the card and to fill in all the details. This morning we heard from the Office of the Victorian Privacy Commissioner that they get similar complaints or phone calls. I just wondered again if you are able to provide the committee with any examples or experiences with other government voluntary-type surveys. I accept what you are saying, that it occurs, but I just wonder if it is possible to give the

committee some examples of people in the community and their concerns. It just helps the public debate.

Ms Messimeri-Kianidis—While I cannot think of any particular examples, perhaps I could highlight some of the issues around it in this way. Often people from non-English-speaking backgrounds will front up to various services; and unfortunately not all government services have access or readily use interpreters. Translated information may be available, but interpreters on a face-to-face basis are not used as often as they should. Therefore, people with limited English can be asked questions about information, including information on various cards or files that the non-English-speaking background person may not be fully cognisant of what is being required. We would really highlight interpreting and translation services in rolling out any use of such information with full translated information and with a signature, if you like, about releasing the additional information to go on a card.

Having said that, as Peter highlighted, there are always two sides to the story. We do appreciate also that, for a person who does not speak English very well, having life-saving information on a card can be a positive. So with parameters and with proper barriers, perhaps, that can also be on the flip side, as I said, quite a useful way of accessing information on health and so forth for non-English-speaking background people.

Senator NETTLE—I appreciate your comments about not speaking for the Muslim community. Unfortunately, we do not have any witnesses appearing before this committee that we can ask these questions of; I suppose that is why you are getting lots of them. One of the things that you raise in your submission is that within the Muslim community generally in Australia there is already a heightened sense of feeling targeted around security legislation. You may choose not to comment on this. If you add in an access card and people have inherent concerns about ID cards from their home countries, we do not want that to add to a growing level of concern that already exists within the Muslim community. Do you have the concern that bringing in an access card that people may or may not have different responses to could heighten the sense of victimisation that many people in the Muslim community already feel?

Mr van Vliet—In all honesty, I have not asked that question of Muslim community groups who are in our organisation so I really could not answer it.

Ms Messimeri-Kianidis—It is true to say, though, that the Muslim community in Australia has been feeling under siege. Regarding whether you can draw an axis between your comments and what I have just said, I really would not like to comment any further.

Senator LUNDY—I am interested in to what extent you can shed some light on the difficulties that members of our migrant community or refugees might have in producing the proof of identity documents required for the registration process and what additional complexities they face if confronted with that process.

Mr van Vliet—You have certainly alluded to a very critical issue for our communities, which is the proof of identification that will be required to get an access card. I think it is really important that there is flexibility in the provisions that come out of the administrative arrangements of this bill so that people from refugee backgrounds who do not have sufficient papers to achieve the cumulative number of points are given some flexibility. It would be a

tragedy if people lost access to health and welfare benefits because they did not have the papers to obtain access to a card.

Senator LUNDY—We are also concerned that the interim status will result in a different tier. I know those comments were made earlier. Can you tell the committee generally whether either specific groups of migrants or migrants generally have this kind of documentation available and how they manage their proof of identity?

Mr van Vliet—There is a huge issue with African migrants coming from refugee camps in Africa not having adequate travel papers, which causes all sorts of problems in terms of verifying their refugee status and then getting access to all the various documentation to live as a normal permanent resident or citizen. It is a problem and it needs to be addressed in the arrangements under the bill.

Senator LUNDY—Can you point to anything that you have seen in the explanatory memorandum or the bill that would make allowances for migrants or refugees in this situation?

Mr van Vliet—On my brief reading of the bill I could not see anything that went into great detail on that issue.

Senator LUNDY—Do you have any suggestions on how this would need to be managed if refugees or migrants were not to be discriminated against or have some additional complexity when and if the registration process proceeds?

Mr van Vliet—There just needs to be flexibility for that group of migrants to ensure that they do not lose access to health and welfare benefits.

Senator LUNDY—Does that mean fewer identification points?

Mr van Vliet—For people who can genuinely guarantee that they have had problems producing identification, absolutely.

Senator LUNDY—Thank you.

Senator FIERRAVANTI-WELLS—I have one question arising out of those comments. In a secular society, do you think that entrenching exceptions for, say, religious reasons will result in further highlighting community differences or divisions and perhaps enhancing further that sort of feeling—I think you said—of siege in the community that, say, groups like the Muslims feel?

Mr van Vliet—Sorry, we are not proposing any exemptions.

Ms Messimeri-Kianidis—Would you like to specify what—

Senator FIERRAVANTI-WELLS—We were just talking about the sorts of exemptions to, say, photographs or other aspects of the card for, say, religious reasons.

Ms Messimeri-Kianidis—I think that what—

Senator NETTLE—It is in the bill. That is what the exemption was.

Senator FIERRAVANTI-WELLS—No, I appreciate that. I just wanted to make clear that there is no inclination or request that they be put in as exemptions; you are simply saying that you think certain things should be taken into account.

Mr van Vliet—We were presented with a set of guidelines, which we did not indicate that we had a problem with, although we pointed out that we do not speak exclusively on behalf of the Muslim community in Australia. We are just saying that these are sensitivities that need to be taken into consideration; we are not here seeking exemptions.

Senator FIERRAVANTI-WELLS—Are you aware that some groups in the community may be doing that?

Ms Messimeri-Kianidis—We cannot comment on that.

Senator FIERRAVANTI-WELLS—Thank you.

Senator FORSHAW—One of the major reasons the government is putting forward the access card proposal is that it says it will enable up to 17 cards to be replaced by one. I think it acknowledges that it is unlikely that anybody would have 17 cards, and probably for the bulk of the population it might be one or maybe two—Medicare and maybe a seniors card or a veterans card. Do you have many complaints within your organisations coming from other groups within the ethnic communities around the states, the councils and so on, about a multiplicity of cards being a problem for people—in other words, that somehow the fact that they have a Medicare card and maybe a seniors card or a Centrelink card or whatever is a real problem of confusion?

Mr van Vliet—It has not been a major complaint that I can recall, in the time I have been in the organisation.

Ms Messimeri-Kianidis—No. In fact, most of the people who have fed into the consultation process did not see the fact that you have two or three different cards as a problem. I think a lot of the elderly cope fine with having designated cards, and they know to what use those cards are to be put. I think it is really professionals who have 17 cards and upwards, rather than people who are pretty reliant on income support. Usually you have two or three cards. It is not a consideration at that level from our constituents.

Senator FORSHAW—Thank you.

CHAIR—There being no further questions, I thank you both very much for attending this afternoon.

[3.03 pm]

BELL, Mr David Peter, Chief Executive Officer, Australian Bankers Association Inc.

BURKE, Mr Anthony John, Director, Australian Bankers Association Inc.

CHAIR—Thank you very much for being here this afternoon. Before I invite my colleagues to ask questions, would either of you like to make an opening statement?

Mr Bell—Thank you. ABA welcomes the opportunity to appear before the Senate Standing Committee on Finance and Public Administration. Banks are of course the major players in payment systems and distribution of financial services in Australia, and they support government service providers and their clients. The provision of financial services is highly regulated in Australia. One of the key requirements is that a bank must know the identity of the person with whom they are dealing. Identification obligations are key to the prevention of money laundering, terrorist financing and other serious financial crimes. Just like the AML legislation, the bill will have major impacts on banks' customers and on our members, which we would like to highlight briefly to you today.

Banks and other institutions in Australia now face even stronger obligations under the new Anti-Money Laundering and Counter-Terrorism Financing Act. The new obligations cover a much broader range of services, requiring, on the basis of an assessment of money-laundering risk, new identification for potentially a very large number of customers, as well as ongoing 'know your customer' activities for the maintenance and possible augmentation of this information. The importance of the AMLCTF Act will become relevant in just a moment.

The ABA's interest in the bill is very narrowly focused. If the customer chooses to offer an access card to satisfy the government's identification requirements under AMLCTF legislation, we would like to be able to accept it. There appear to be two possible obstacles in the bill to this occurring. Firstly, if the card is offered by a customer, a record of the access card needs to be taken as required by the AML legislation, as is the case for other documents produced for identification purposes. This results in a potential conflict between the AML legislation and the bill.

CHAIR—Mr Bell, I am sorry to interrupt your opening statement—and I do this guardedly—but, when you say 'a copy of the card', do you mean a copy of what is in the chip or a photocopy of the card itself?

Mr Bell—I am sorry; I missed that question.

CHAIR—You said there must be a record.

Mr Bell—A record of the card.

CHAIR—You said you needed to see a copy of that? Maybe I missed it. Could you just go back to the bit where you said that, and say it again. Maybe I am losing my concentration, Mr Bell, but could you please read that bit again.

Mr Bell—Yes, sure. What I said was—sorry, Tony; do you want to elaborate?

Mr Burke—Yes. It could be either a photocopy of the card, which is commonly the case for a driver's licence, or a record of the card, which could simply be taking the number of the card and recording that.

CHAIR—Okay. So it is not an electronic copy—

Mr Bell—No.

CHAIR—I just wanted to make that clear.

Senator FORSHAW—But, because it will have a photograph on it, it is—

CHAIR—We will get to that in a minute. I am sorry, Mr Bell.

Mr Bell—That is okay. This results in a potential conflict between the AML legislation and the bill. Clause 57 of the bill prohibits the unauthorised copying and making records of the access card number, photograph and signature. The government's response to this has been that the prohibition does not apply if the customer consents in writing to the recording. However, this requirement will result in more paperwork and time-consuming processes for bank customers. It will also cost more to implement a new business process to do this. We provided an amendment to the minister to resolve the record-keeping problem while ensuring that the key privacy aspects of the bill are maintained.

The second problem flows from offences in clauses 45(2) and 46(2) of the bill, which prohibit a statement that can be interpreted that a person is being asked to produce their access card for identification. Given that banks currently ask for other forms of identification as part of the 100-points check, customers may mistakenly think the same demand has been made for the access card when in fact banks have not done so. In fact, widespread exceptions to the access card will mean that individuals will have fewer documents in their wallets which might have been used for the 100-points check—that is, the probability of an access card being offered for proof of ID will increase as it is rolled out.

This was acknowledged by the government, which has now attempted to correct the problem in the explanatory memorandum. The EM now says that a person will only be taken to have required the production of an access card if they 'provide no other reasonable option for a card owner to prove they are who they say they are'. Our concern is that, by including these words in the EM, there is a risk that a court may not take these comments into account when interpreting the act. Our request is that words to a similar effect to those that have been put in the EM are put in the act.

Finally, we are concerned that the bill in its current form may place ordinary bank staff complying with AMLCTF regulation at risk of prosecution or other penalties. Thank you.

CHAIR—Your primary issue here is with ensuring the integrity of the access card as a form of identification.

Mr Bell—Our primary issue at this stage is the potential conflict between the AML legislation and the proposed bill.

CHAIR—In your submission, you talk about the objects and purposes of the act being potentially in conflict. I need your help here, because I am not sure why this necessarily conflicts. It reads:

(1) The objects of this Act are:

- (a) to reduce the complexity of accessing *Commonwealth benefits, particularly for those who are most in need of assistance; and
 - (b) to facilitate a more convenient, user-friendly and reliable method of accessing Commonwealth benefits; and
 - (c) to reduce fraud on the Commonwealth in relation to the provision of Commonwealth benefits; and
- and we have heard a lot about that—
- (d) to improve access to Australian Government relief in emergency situations; and
- the government has spoken about that, both in estimates and the other day in Sydney—
- (e) to permit access card owners to use their access cards for such other lawful purposes they choose.

It then says:

- (2) It is also an object of this Act that access cards are not to be used as, and do not become, national identity cards.

Then in 7 it goes on to say that the purpose of the act is to facilitate the provision of social welfare benefits. What do you see the conflict as being? What is the conflict between the objects and the purposes there?

Mr Burke—I think you are referring to an earlier submission on the exposure draft. Is that the case?

CHAIR—Yes.

Mr Burke—The potential inconsistency that we noticed there between objects and purposes has to a significant extent been rectified in the bill. The conflict to which Mr Bell was referring is between the AMLCTF legislation and the bill as it stands, and we think that that conflict still exists.

CHAIR—Now I am with you.

Senator LUNDY—I wanted to draw out a bit more information about this conflict of interest. You talk about the request of banks of a customer to provide 100 points check. The logical response of a customer is to say, ‘Will this do?’ What your submission says to me is that in that case you want to have it made very clear in the legislation that, when a customer responds to your request for 100 points of identity by offering the access card, that will render the banks completely clear of any breach, offence or liability under this act. Is that correct?

Mr Bell—That is correct—so long as the law has been followed. And the banks will follow the law.

Senator LUNDY—Yes. I am working on the basis of what you describe, which is your general request of a customer for those 100 points. That would work well. You say that if you moved the words from the explanatory memorandum into the bill that would make that quite explicit that you were not committing an offence.

Mr Bell—Yes.

Senator LUNDY—But what if the aspiration of this government with this access card was achieved and it did in fact replace all of those other primary sources of identification? Say we are in Queensland and it has replaced the driving licence as well. Would that insertion into the act also prevent the banks from committing an offence under the bill if that meant that I as your humble Queensland customer only had an access card?

Mr Bell—So long as the institution was following the law, yes.

Senator LUNDY—But your question is ‘give us 100 points’. By virtue of the system, the only 100 points I could give you is the access card, so you are in the same spot.

Mr Bell—There are many other forms of identification, such as passports, birth certificates and credit cards. You are saying that the driving licence may be replaced, but I do not know anything about that. There are many other forms of identification.

Senator LUNDY—I am speculating, really, but I am trying to make a point.

Mr Bell—Sure. In other words, there are many other forms of identification that could be used to arrive at 100 points, if that system remained in place.

Senator LUNDY—If that were the case, what is your understanding of how many identification points, if any, will be attributed to the access card, either on its own or in conjunction with other forms of ID?

Mr Burke—That has not been determined at this stage. There are two issues there. Firstly, the 100 points check itself is under review. It remains in force until the identification obligations under the new AMLCTF Act come fully into force. It may continue as is; it may be replaced. There has been talk of a wallet test, which would have a gold, silver or bronze—

Senator FORSHAW—A what?

Mr Burke—A wallet test, as in a back-pocket wallet. If that was to be the case then there is talk of there being a gold, silver or bronze standard of identification. But if the 100 points check were to continue it would be AUSTRAC, the AML regulator, who would determine the number of points. There has been no discussion, to my knowledge—

Senator LUNDY—When you say that is being reviewed, is AUSTRAC reviewing that 100 points check?

Mr Burke—AUSTRAC set the rules which give effect to the primary obligations in the legislation. There would need to be a rule which provided for a 100 points check or a wallet test or something else.

Senator LUNDY—So you anticipate that AUSTRAC would be the entity that would determine how many points, if any, will be attributed to the access card?

Mr Burke—Yes, as I understand it.

Senator FORSHAW—Can you remind me, because it is some time since I actually opened an account at a bank—I have got quite a few credit cards, mostly with little debts on them—

Senator LUNDY—Too much information!

Senator FORSHAW—That is right. I am just trying to remember how the 100 points system works. Do you have category A and category B? I think that applies for a passport—you must produce one of a certain range of documents, such as a birth certificate, and then there is a broader list of documents that may not be government issued documents. Can you remind me about that?

Mr Burke—It is quite a long list at the moment. There are documents which are produced for identification purposes. None of these are identity documents, by the way. A passport is not an identity document; a drivers licence is not an identity document. But those documents can be used for identification purposes.

CHAIR—The access card is not an identity document either.

Mr Burke—No, I am not saying that. We understand that.

Senator FORSHAW—I understand there is a range of documents. What I am trying to understand is what is the relative status, if you like, between things like passports, birth certificates et cetera. Am I correct that you must produce a document out of one group and one or two documents out of another? Just remind me about that.

Mr Burke—At the moment there is no single document which will provide 100 points. One would need a passport, which carries a high value, and another document to get to 100 points.

Senator FORSHAW—Yes, but it would be a passport—

Senator LUNDY—A birth certificate or a drivers licence.

Mr Bell—The question is: do you need a passport as well as something else? Do you need a drivers licence?

Mr Burke—There are two categories of document.

Senator FORSHAW—Yes. In other words, you cannot get it by having 10 credit cards, theoretically. The fact that you have got the 10 credit cards means you have already provided it, but you have got to have—

Mr Bell—A particular form of documents.

Senator FORSHAW—The relevance of this is that the access card, one would assume, would go into that group of documents which were given a much higher status than membership of, for example, the local leagues club.

Senator LUNDY—I think that is the point of contention: how many points will it be given under that system? I understand, from the evidence we have heard, that AUSTRAC will assign that point value for a 100 points check system—if any value at all.

Senator FORSHAW—What I am positing is that if the access card is going to be of some equivalent value to a passport or a birth certificate, which may not be readily obtainable, or a drivers licence—maybe of more value than a drivers licence—and if a person does not have a drivers licence or a passport and has trouble getting their original birth certificate then the document that is left is the access card. What you are putting to us is that if that is volunteered, as distinct from being requested, then you should be able to accept it and copy it without fear of breaching the act. The other question then is: would the industry want to be

able to list the access card—and I appreciate what you said about AUSTRAC reviewing all this—as one of the documents that could be provided, albeit voluntarily, to prove identity and gain points?

Mr Bell—Yes, if it is available—so long as the law is followed.

Senator FORSHAW—I understand that that is a crucial issue also because it goes to the primary object of the act. I cannot think of any legislation in which one of the objects is to not do something. The object of legislation is always to promote something or achieve something, not to negative it.

Senator LUNDY—Do you want to respond to that?

Mr Burke—Again, there has been no determination as to points. That could not be made because the value would depend on what information was on the card, and that has not been determined completely, either.

Senator FORSHAW—I can envisage it becoming a requirement to use an access card to get a passport because they are both documents issued by the government and they both go to identity. Ipso facto, you start to wonder why you should not be able to ask for an access card if you can ask for a passport. Anyhow, that is just a comment.

Senator LUNDY—Going back to the taking of copies of the access card: did I hear you correctly when you said that, if you photocopy it or physically record the number, that does not constitute an electronic replica or copy of the card?

Mr Burke—No, that would not involve accessing information electronically.

Senator LUNDY—Do you think it is an offence under the act to take a photocopy of the card?

Mr Burke—We believe so.

Senator LUNDY—So you want that fixed as well?

Mr Burke—Yes.

Senator LUNDY—That presumes that it is part of the points check or whatever takes place.

Mr Burke—Correct.

Senator LUNDY—You say that you do not want to see function creep so explicitly prohibited as to not allow some reasonable expansion of uses. That is certainly a point of contention in the political debate. Have you, as a commercial entity, or any of your members ever considered rolling out a smartcard for your customers for the purpose of a multitude of financial or other services?

Mr Burke—Are you asking whether the ABA has considered that?

Senator LUNDY—Any of your member organisations—any of the banks.

Mr Burke—Some banks have smartcards already—

Senator LUNDY—St George is one, I think.

Mr Burke—one of which was mentioned in the *Hansard* of the estimates hearing. Banks are rolling out smartcards over time, according to the needs and circumstances of their own customers. There is no industry standard on this. It has been driven by a range of needs, including customer demand for enhanced services, fraud prevention and the like.

Senator LUNDY—For the banks that have rolled out smartcards, are you aware of the standards that are used on those cards?

Mr Burke—I am afraid not.

Mr Bell—The point is that no industry standard applies.

Senator LUNDY—No, that is right.

Mr Bell—Each bank makes its commercial determination.

Senator LUNDY—We got some information about the standard that the Australian government has chosen for the smartcard. I am interested in the extent to which it consulted the banking industry about standards. It raises the prospect of interoperability between banking smartcards and this smartcard and the use of that private space for expanded commercial purposes et cetera. Perhaps you could take that on notice and get back to the committee.

Mr Burke—Is your question about the technical standards?

Senator LUNDY—Yes, and about whether any of your members have been approached by the government on the issue of the interoperability of smartcard systems. On the issue of function creep, there is quite a bit of commentary in your submission about not wanting that to be restricted. There is obviously political pressure on the government to restrict function creep. Is your point that we should not permit function creep to impinge on the commercial opportunities of the private section of the card, or is your point that you believe, as an organisation, that the functions should be expanded within the public domain? I have to say that it is the latter that is my interpretation of your submission. If so, why?

Mr Burke—Neither of those really. I understand why there would want to be a policy statement that there should be no function creep, and one would do that for all sorts of reasons, not just on the grounds of public policy; the cost would be another good reason. Our point was to say: let's not define function creep so strictly that it would prevent technical opportunities to the advantage of all.

Senator LUNDY—I would like to respond to that point that you have made by saying that a lot of the contention has been to permit function creep without parliamentary scrutiny or indeed the opportunity to amend the legislation via debate not just disallowance. So the legislation could always be amended.

We heard some evidence from Sony, I think, in Sydney, who talked about the expansion of that private use of the card and said that really all that was required in some circumstances was a commercial entity to purchase the application licence and the software necessary to allow people to put additional functionality on the card. Would that be something that the banking industry would be contemplating if this access card were rolled out? Would any of your members, to your knowledge, be interested to expand that private space on the card to deliver financial services through their institution?

Mr Burke—I have heard no discussion on that.

Senator LUNDY—But it would be possible.

Mr Burke—With the technology that you are suggesting? Possibly, but I do not have any knowledge of—

Senator LUNDY—I do not know if you can take that on notice. Maybe it is related to the standards and if the standards are similar. But my understanding of the technology and the private space on the card is that the proposal we have before us would permit a commercial entity to purchase the development application needed to add more functionality on the card. I guess I am looking for confirmation or not. I think it is a very important question for the private sector in contemplating this model and it has a big impact on our considerations about this model.

Mr Burke—Yes.

Senator STOTT DESPOJA—Good afternoon, gentlemen. I am just reading through the comments about protection of privacy that you have made in your submission. You acknowledge that the commissioner will be releasing both an issues paper and a discussion paper during the next 12 months but, given the reporting date for the ALRC privacy inquiry, it is unlikely that any of the recommendations can be incorporated into planning for the access card. So your recommendation is that consideration be given to extending the registration process for the card until after 1 July 2008. That would obviously satisfy some of your concerns in relation to incorporating privacy and security issues. Is that a sufficient time line?

Mr Burke—Yes.

Senator STOTT DESPOJA—You have addressed the issues of points identification. I was going to ask about that, given that it does look like the government is phasing it out. I was wondering what impact it would have on the banking sector, but I think you have given us some ideas on that. The next thing I want to ask about is the idea that the government has talked about of providing emergency relief and payments through the card. You make a really interesting point in here about the fact that you acknowledge that there is merit in such an initiative but there is also a risk of potential fraud and money laundering if the person committing the crime has been able to get through the registration process without adequate checking. Do you want to elaborate on that? Also, I want to know what your views are in relation to the delay until 2010 in the document verification service starting up. Does that give you some concerns about verifying documentation that would actually ensure that people get into the register in a way that is proper?

Mr Burke—In relation to emergency payments, it had been our understanding that post that submission, which was from July last year, there would be consultation on the detail of an emergency payments mechanism. That has not occurred at this stage. All we know is that there is an intention to do it. So I have to say that our thinking has not really matured at this stage on how it might work, what the risks might be and how they might be overcome. I think we at that stage signalled our interest in such consultation, but that has not yet occurred.

In relation to the registration process and the DVS, we are on the record as saying that we welcome the DVS and we would further welcome an opportunity as part of the private sector

to engage with the DVS. As to timing, I have not seen an announcement on that recently. As to how that might affect the registration process, it would be difficult for me to speculate on.

Senator STOTT DESPOJA—I think it came to light in the estimates process that we were looking at a delay until 2010. That is my understanding. Going back to the issue of the personal space on the card, I am a little obsessed with this clause 33A, which is legislated for in this particular bill but with no detail. It is just allowed for and then there is nothing. I am just wondering if the ABA has a position on whether, if we took that section out and dealt with it in more detail, say, at the second tranche of legislation, that is something you would have a problem with. We could legislate essentially for the card in its current form, with the information areas, but we would actually delete that section that deals with the individual section. I will give it to you so that you know I am not intending to mislead. Clause 33A says:

The *information in the *chip in your access card consists of 2 parts:

(a) information in your area of the chip;

And, of course, (b) goes onto the Commonwealth area. If we deleted that section, would that be problematic?

Mr Burke—ABA does not really have a position on that. Our interests at the moment are fairly narrow in respect to the bill. As I was saying a little earlier in answer to a question, there has been no ABA discussion on private space and what to do with it.

Senator STOTT DESPOJA—I think Senator Lundy pre-empted my questions in that area. Are you willing to take questions on notice? I might just write a couple down in relation to some of the fraud offences provisions and see if you have any views on them.

Mr Burke—Certainly.

Senator STOTT DESPOJA—That is helpful. Thank you.

Senator NETTLE—My first question relates to the emergency payments proposal in the access card. The government is saying that you can use this access card at an ATM to get your emergency payment when there has been a cyclone. That is all presuming, of course, that the ATMs and the electricity are working and that you have the card and it did not get washed away or whatever. I do not know what level of consultation is already going on between the government and the banks on that process. Have you been involved in a process of consultation around that?

Mr Burke—No. I understand that there is going to be some consultation. I have had advice on that from the government's advisers. There has been no consultation with the ABA. We think that it is an idea that has some merit, as we said in our earlier submission. It emerged out of the Cyclone Larry problems. It is a good idea but we think there is still a range of issues to be sorted through from a policy and operational point of view. There has been no discussion to date.

CHAIR—On page 3 you seem a bit sceptical of its utility. On page 3 you say—

Mr Burke—Is this the submission from July last year?

CHAIR—No, it is the March submission. On page 3 you say:

The Government has indicated it sees value in the Access Card being available to assist with the payment of emergency relief.

You also say:

Whilst there is merit in such an initiative, there is also a risk of potential fraud and money laundering ...

Mr Burke—The point is that those issues will have to be worked through. They are not insurmountable. We are not sceptical about it; we are just saying that those issues have to be worked through.

CHAIR—You are not sceptical about it?

Mr Burke—I am not.

Senator NETTLE—I appreciate that the ABA has not been involved in any consultation. Are you aware of whether the bank has been doing that individually with the government?

Mr Burke—I do not believe so.

Senator NETTLE—I read through your comment on the exposure draft to the bill in which you have a recommendation that relates to the emergency payments. It is recommendation 5 in that submission and it says:

The ABA recommends that there be further information and consultation on the issue of emergency payments, noting that industry involvement will be critical in ensuring an efficient and smooth implementation of any Government proposal.

I understand what you are saying there, but would you elaborate for us on what kind of industry involvement. Are you confining that comment to the emergency payments? For example, the architect of the legislation from the Office of Access Card has been speaking at conferences, where she is purported to have said—and this was not her view—that it was about finding a way to have a cashless society and that it was also about what retail opportunities were available to private business through the access card. I am trying to work out what you want consultation and discussion to occur around. I am trying to work out whether your recommendations on the exposure draft about industry involvement in the access card relate just to the emergency payments section or whether they are broader than that?

Mr Burke—It is both, really. The emergency payments part of the submission is simply to note that there has been discussion about this emergency payment but we are yet to have consultation on the detail. That needs to happen if emergency payments are to occur.

Senator NETTLE—So do your comments relate only to emergency payments?

Mr Burke—Yes.

Senator NETTLE—The government's submission provided to the Senate talks about what it calls an 'emergency payment number' that is to be recorded on the chip and in the register in order to facilitate and direct the payment of funds. The submission then goes on to say that this is not a personal account number. I have been struggling to understand how this would work. As you have said that there is no consultation going on, perhaps you cannot help me with this question. You do not put the bank account number on it but, if you are going to get the money from the ATM, presumably you have to have some connection for that person to

get the money. I do not know whether this is a technical question or something you are not able to answer yet because you do not know: can you explain to me how this system could work in relation to getting money from an ATM without the government having some link between your access card and your personal bank account details?

Mr Burke—I am not sure that we can help you today because, again, there just has not been the consultation on that level of detail. I think it would be inappropriate for me to speculate on how that might work until we have had that opportunity.

Senator NETTLE—I accept what you say, that there has not been any government consultation on it, but is there any advice of a technical nature that you are able to give us in relation to this—even just whether it is possible?

Mr Bell—I know what you are saying, Senator. I think what you need to do is have a conversation with someone who is a technical expert on how banking facilities work—in other words, if you stick your card into the ATM how do you get your money out, what are the signals that go around the system that allow you to get your money out. We are not technically qualified to answer that.

Senator NETTLE—We have the department before us tomorrow, and I will pursue this matter further with them. I would like to flag now that if I am unable to get anywhere with them I might want to come back to you and ask whether you could find us that information.

Mr Bell—We would be happy to find you someone who could tell you how all the signalling works between the switches and so on.

Senator NETTLE—Yes; I just want to know whether it is possible, not necessarily for the access card but whether it is possible to do that without the government having that link.

Mr Burke—David and I could explain, and a technical expert could explain how it might work, but the crucial issue is the determination of how it should work, and that is really not for us to speculate.

Mr Bell—We could explain how the banks' system works, but as to how any access card might interoperate with it, if that were to happen, would be in the realm of speculation.

Senator NETTLE—A lot of this bill is in the realm of speculation for us because we do not have the detail there that we are being asked to explore, and that is the playing field we are on, unfortunately. We are being asked to pass legislation without these details, and I am trying to find out information from anywhere and everywhere so that I can gain some understanding of what is being proposed. I am not trying to make you speculate, but I am being forced to speculate.

Mr Bell—Sure.

Senator NETTLE—The other question I want to ask you is about the concerns that you have raised about what you describe as inconsistencies that exist within the bill and the explanatory memorandum. I accept what you are saying about wanting to make sure that the law as it is written is clear, but my question is a broader one: is what you are asking in fact to make it easier for businesses to use the access card as an ID card?

Mr Bell—No. What we are saying is that the effect of the conflict that applies between the bill and the current AML act will make it more difficult for customers—and, incidentally, more expensive for banks. There are real issues of utility for customers if that happens. That is what we are saying.

Senator NETTLE—I understand the AML legislation and I understand the inconsistencies that you are pointing to. I can see why from your perspective you want to sort this out, because you do not want banks to be prosecuted through people giving their access card as identification. I accept what you are saying in terms of the technical detail of it. My question is a broader one: by resolving the technical detail, is your overall objective about allowing the banks to use the access card as an ID card and not be prosecuted for it? Or, perhaps if we take out the word ‘ID card’, to use the access card as a form of identification and not be prosecuted for it? Is that the big picture?

Mr Bell—If the parliament passes legislation and customers wish to offer the card as a form of identification for the 100 points checked, it will make it easier all round.

CHAIR—But, if the card does not have a photo, does not have a signature, does not have a number on it, it would not be that much use for the banks, would it?

Mr Bell—Presumably then AUSTRAC, in allocating the points to it, would reduce the number of points

CHAIR—As I mentioned, we are not here to produce a form of identity for the private sector; we are here to facilitate access to welfare. You understand that?

Mr Burke—We understand that.

Mr Bell—Yes.

Senator FORSHAW—Does the association have a view about whether or not there should be a second part of the card that can take this private information—if I can call it that—whatever it is? There are options for people to put on all sorts of things, such as medical history and so on. Do you have a view about that?

Mr Bell—I do not think we do, do we?

Mr Burke—No, we do not have a view on that at all.

Senator FORSHAW—Because that information could also presumably relate to the banking industry or financial material.

Mr Bell—That has not emerged in discussions with our members, no. We do not have a view on that.

CHAIR—There being no further questions, gentlemen, I thank you very much for your help. You have been very helpful to the committee this afternoon and we appreciate it.

[3.44 pm]

O'ROURKE, Ms Anne, Vice-President, Liberty Victoria

PEARCE, Mr Michael, SC, Vice-President, Liberty Victoria

CHAIR—I welcome our final witnesses for the day. It is good to see you both. Before I invite my colleagues to ask you questions, would you like to make an opening statement?

Mr Pearce—Thank you. We put out a press release yesterday about the hearing and our appearance today. Rather than take up time citing what is in the press release, could it be formally tabled or appended to our written submission?

CHAIR—Does the committee wish to receive this press release as evidence? There being no objection, it is so ordered.

Mr Pearce—We want to focus on what we consider to be the fundamental issue of this legislation, and that is the question of whether the access card, as it is proposed in this bill, will become a national ID card. Liberty Victoria says the answer to the question is unequivocally yes, and it says so for a number of reasons. The first is that the very purpose of the card is to provide an enhanced and secure identification tool. According to the previous minister, Mr Hockey, it will be an even better identification tool than the passport currently is. This access card will then go into contemporary Australia society, and that society is characterised by these features: it is highly security conscious at the moment and people every day, for numerous everyday functions, are required to provide identification. It is Liberty's view that releasing an ID tool with these capabilities into a society with those features will be a bit like releasing the cane toad into tropical Australia.

CHAIR—Some Queenslanders have no problems with cane toads, Mr Pearce, but carry on!

Mr Pearce—We assume most people are opposed to them, but we know some people do like them. We think the access card is going to prove to be a similar pest. We think it will inevitably evolve into a national ID card. We think the criminal sanctions prohibiting its use as such and prohibiting people from requiring production of the card will be ineffective. If they are, in fact, applied there will be strong pressure for their repeal because they will be draconian and unfair. With a small number of amendments to this legislation should it be enacted, the de facto ID card will quickly become a de jure ID card. To maintain that this will not happen we think is a bit like King Canute commanding the tide not to rise. Those are our fundamental propositions for the committee to consider. We would like to make a number of points on the government's submission. We will do so now if appropriate or after questioning, as the committee wishes.

CHAIR—I think to do so now would be of assistance, if that is all right. Do you have something else to give us, Mr Pearce?

Mr Pearce—No. I have the government's submission here. I note too that the Office of Access Card is getting two bites at the cherry here—they are the first and last witnesses to this inquiry. That seems to be symptomatic of the form of consultation that the government says it is engaged in here.

CHAIR—I should correct that: that was the committee's decision—or probably the chair's. Time is always so pressing that we thought we would start off with them and then perhaps let them address the questions and concerns that were raised in the preceding 2½ days. I would not want the department to suffer that blow; I do not mind suffering the blow myself.

Mr Pearce—I withdraw that then, but I maintain our fundamental objection to the contention by the government in section 1.3 on page 4 of its submission that there has been a 'highly consultative approach'. The government consulted no-one about whether or not to introduce this card. It has consulted a number of people about how it should introduce the card, about the detail of the card and about issues at the margin, but it consulted no-one about whether or not the card should be introduced. It is plain from this submission that the government has made up its mind. Section 2.1 on page 9 makes that very clear. As I am sure senators know, contracts are about to be awarded pursuant to tenders, and there seems even to be a veiled threat to this committee not to delay the passage of the bill. How you respond to that sort of comment from the government is a matter for you as senators and as a committee, but it is symptomatic of the so-called consultative approach by the government.

I would like to make a few more comments on the offence provisions. These are at pages 43 and 44, clauses 45 and 46. What the government says about the requirement of mental intent is that these are not strict liability offences and, in the very narrow legal sense, that is probably correct. There will be a requirement for a mental intent for these offences, but the intent requirement will be the intent to require production of the access card. There is no intent requirement in the sense that you need not know that you are committing an offence. The only intent you need is the intent to require production of the card and you may be totally ignorant of clauses 45 and 46, assuming they are enacted, and in other senses entirely innocent and unaware that you are breaking the law. And it is therefore, in our view, quite misleading for the government to say, as it does on page 44, that you can only face a jail term if you have intentionally broken the law or deliberately broken the law.

We are reluctant to get drawn into debates about the detail of this bill because we oppose the bill outright, but there is one point of detail which arises on page 62 in section 7.4 of the government's submission regarding people under 18. It appears that there will be a government policy that people over 15 may register. If the legislation does go ahead we think that should be in the legislation itself.

Finally, I would like to make an observation on section 8.3, the content of the register, on page 69. There it is said that there will be no centralised database holding all of an individual's health, veterans and social services information in one place; existing agency records will remain with the relevant agency where they are now. But of course this government does not, and cannot, give a guarantee that that will not happen in the future. And what we will have in the future is a single comprehensive national database, without parallel, combined with an identification tool with security and other features without parallel.

The inevitable consequence of these two factors will be that Australian society will be more susceptible to control, regulation and monitoring by the government than it is at the moment, and in Liberty Victoria's view it is unreal to think otherwise. Ms O'Rourke now has some further comments.

Ms O'Rourke—I only want to add a couple of comments to what Michael has outlined, and one is on page 11: 'Matters not in the first bill.' Most importantly, it is the reviews and appeals; privacy protections; effective oversight and governance of the access card system; and protection of information. So, it appears that, in the first bill, we are having the system set up and access made available but any of the things that in fact protect people's information, or allow them to make an appeal, or effective governance of the system, are being left to a later stage. And it seems absurd to us that you would, in one bill, provide all this open access and have no guarantees and leave that to a later bill.

We have a concern about the government doing that because, in an earlier privacy matter which concerned employees' records, the government actually argued that they should be exempt from privacy legislation. After quite a number of complaints, one coming from the European Union, the government said they would review privacy and employee records.

They put out a discussion paper in February 2004. Submissions closed in April 2004. The government argued that privacy of employee records should be left to industrial relations legislation. Well, we have had a complete rewrite of industrial relations legislation and not a word about protection of employee records. It is now three years later and there has not even been a report on all the submissions that were made on privacy protection in relation to employee records. So we have had them exempted from privacy protection, and a promise that they will be eventually covered, and, three years later: nothing.

As Michael said, we oppose the bill outright but, should it go through, we think having one bill that gives access and then waiting for a later stage to have all the protections and penalties put in is going to leave this open to abuse. Given the government's record on other privacy protections, we are a little bit worried about just when the government will put the second bill through and whether it will have adequate protections. Page 12 of the government submission says:

Some of these matters (such as appeals) are being considered by the Taskforce, and the Government's position on these issues will not be determined until after the Taskforce presents its further reports to the Australian Government ...

So the government has not even made up its mind whether there will be a review or appeal process for citizens or in fact what the other protections in the bill will be. We just think it is absurd to put out half a bill when you have not even worked out yourself what sorts of protections and so on should be in the other half of the bill. This is a completely on-the-run process.

CHAIR—The committee cannot do its job unless it sees the proposals in relation to the second half of the bill—that is your point, isn't it?

Ms O'Rourke—Not only can the committee not do its job—and it seems to me to be absurd that you have a task force up and running and a committee process—you have got the government bringing through one half of the bill and even putting out tenders to it when the process is not even finished. How can a committee make a conclusion that this bill has adequate protections, reviews and so on when the second part of the bill has not even been drafted? This, to us, seems like a totally absurd process.

When you read through the government submission, the government has not made the case that there is any urgency to having this access card implemented. There are a few things in it, such as: 'will combat identity fraud'. When you go to page 3 where that little bit appears, there is a reference to KPMG, but as far as I know not all of their report has been released to the public, so we do not know exactly what that evidence is. Then it has a reference to Mick Keelty. There is no footnote and no suggestion that there was any evidence that supports the assertion that this will combat identity fraud.

In fact, at the Australian smartcard summit on 29 June 2005, the Attorney-General said that a national ID card 'could increase the risk of fraud because only one document would need to be counterfeited to establish identity'. This was supported by the Commissioner of Taxation, who warned that the access card proposal, if implemented, was likely to lead to a rise in identity theft. It is just naive to assume that from the moment that this was proposed there was not already an industry being put in place to produce its own identity cards. If the government can make it, criminals can also copy it. So it does not actually support the case that it will combat identity fraud. The submission does not actually bring it up, but earlier they did talk about terrorism. There are also comments from the police that question that assertion. So those are a number of other issues.

There is also our concern about it becoming a national ID card. That was actually confirmed by the appearance by the Bankers Association. The government all through its submission is saying: 'This is not an ID card. This will be restricted to welfare services and health services.' And yet the previous witnesses, the Bankers Association, were arguing precisely for them to be allowed to use it for the purposes of identification. So they were already arguing for function creep. It is not only our concern but I think exactly what they were arguing proves our point. If the Australian Bankers Association is exempted and allowed to use the card for ID, then other sectors will say, 'Well, why not me, if they can use it?'

Although we are against this totally, if it does come in it should, at the very least, be restricted. We do not believe it should go to any private sector body. This contains information on citizens, and any information on citizens should be owned by citizens and they should have a say about where it goes to. It is proposed only for government services and should not, under any circumstances, go to the private sector.

The only comment I would make is confirming what Michael has already pointed out. The consultation process—this is a habit of this government through many submissions—has been really inadequate. Four weeks over Christmas, when people are away, is almost treating the public with contempt. We want to put on the record that the public consultation processes and Senate inquiries should, at the very least, go for two months.

CHAIR—Thank you, Ms O'Rourke and Mr Pearce. I have just a couple of quick questions. I was looking at the submission before, and it looks very much in the form of a legal opinion. If we go to paragraph 17 and then paragraphs 21 and 22, you argue that clauses 45 and 46, while there are severe penalties—those are the offence provisions—in fact are very unlikely to be enforced. Why is that?

Mr Pearce—Senator, you are legislators. You are at one end of the legislative process. I am a practising lawyer and I have practised law for 25 years. I am at the other end. I deal with

the finished product of what you produce. Over 25 years you get a bit of a feel for which laws are going to work and which laws are not going to work. I have a very strong feel that clauses 45 and 46 will not be enforced. They are too unfair. They are too draconian.

Imagine a typical situation: you are a bouncer employed by a nightclub. You have been through the registration process, you have been through all this rigmarole, you have produced your documentation, and you have got your own card. So you know what has been involved in the production, for each citizen, of a card like this. Let's imagine too that the nightclub that you work for is under some warnings for letting in under-age drinkers. One more offence and it might lose its licence. You have had a rev-up from your boss and you have got to be very careful about who you let in and very careful about checking people's age. You are standing there, someone comes up, you say, 'ID, please.' They say, 'I've got an access card and I've got a student card.' You say, 'Show me your access card.' You face five years jail for that.

I find it incredible to think that a law like that would be enforced. It is too unfair and it is too draconian. It is a result of political expediency only. The penalties that are involved, and the criminalisation of that conduct bear no relationship to the wrong that is being done in a case like that. That is where this sort of thing will arise all the time, every day—thousands if not millions of times across this country. People quite innocently, like that bouncer, will say, 'Show me your access card,' and they will face five years jail. That is a very bad law, and laws like that tend not to be enforced. If they are enforced, there is huge pressure to repeal them.

CHAIR—There also could be problems of proof—

Mr Pearce—Of course there will. Especially when you look at clause 46, where it is a matter of whether or not you were reasonably led to believe that you were required to produce your access card. There will be evidence on both sides, nods and winks: 'You don't have to give me your access card, but if you do not give me your access card, your chances of getting in are much less.' It would be good for lawyers, no doubt, but not very good for the public, in my view.

CHAIR—You mentioned the cane toad and King Canute. Can we just assume for a second, for argument's sake, that there is fraud. The technology surrounding the Medicare card is quite old, and perhaps a system linking all these different welfare benefits might be of assistance. It could be more convenient, and perhaps it might cut welfare fraud. I think there is a fair argument for that.

Mr Pearce—There are two separate issues here: one is the question of linking the different health benefits and the entitlements to those health benefits, and the other is the enhanced security in using the new technology. In relation to the first issue, I am certainly not persuaded that there is any need to do that. I can see the argument for convenience of doing it; however, much is said about the fact that there are 17 cards, but nobody would carry 17 cards. I have two cards. I have a Medicare card and an organ donor card. It is hard to imagine anyone having more than three or four cards. So that issue of convenience and the need to cut down that sort of duplication is grossly overstated. It is an overstatement by the government. The second issue is about using the better technology that is available. That can be done within the existing framework. It seems to me that there are some features—

CHAIR—Let us get to that; it is a fair point. If we had an access card which did not have a photograph, a digitalised signature or a unique identifying number, would that alleviate some of your concerns?

Mr Pearce—It would. It would be far less likely to evolve into a national ID card; there is no doubt about that. Whether it would stay that way, of course, is another question. The problem with introducing the single card is a problem of function creep and a problem of saying: ‘If I only had my photo on it I could get this, that or the other. If only I had the signature on it, I could use it to open a bank account.’

CHAIR—This is a merging of issues. We are talking about access to welfare and combating fraud and, it seems, thrown on top of that is the idea that it would be more convenient for people to have another ID card. But they are actually separate issues. We have heard blind people saying, ‘It would handy for us to have an ID card.’ It may well be. To me that seems to be a separate policy issue. Maybe the government has to do something for blind people who need another form of ID. That might be quite right. But the idea that you develop this entire infrastructure because it might be convenient for people to have another form of ID does not quite bounce with me.

Mr Pearce—I agree with you. I think we are in heated agreement on that.

CHAIR—They are separate issues.

Mr Pearce—Yes.

CHAIR—They are not the same issue.

Mr Pearce—Sorry. Perhaps I have misunderstood you. Our concern is that one will lead to the other. If you set up this infrastructure and you then have the ability to securely fraud-proof people’s identity, or at least do it better than what we currently do, the likelihood is that that will lead to an ID card. You create this tool and it is adapted so well to the purpose of being an ID card that it becomes an ID card.

CHAIR—It is very tempting for everyone. Ms O’Rourke, I think you said that it would be tempting for the bankers and others.

Mr Pearce—We talked about the bouncer. Put yourself in the banks’ position. They are subject to extremely stringent requirements of the anti-money-laundering legislation passed by this parliament which requires them to know their customer, to be very sure about the identity of their customer, before they open an account with them and enter into almost any of a large number of transactions with them. Bear in mind, too, that it is not going to stop at banks; it does not stop at banks now. There is another tranche of the legislation coming through, and it which will extend all the way down to your hairdresser. You are going to have to produce ID to your hairdresser, just about, when that legislation goes through. If you are a banker, you have to be satisfied of a person’s ID. The government then produces this ID card. Why shouldn’t the banker be able to say, ‘If you want to open an account with me, give me that card.’ It seems quite inconsistent that on the one hand the government is producing this card, this ID tool, but on the other hand it is saying to people like bankers, ‘No, sorry, you can’t require it of people.’

Ms O'Rourke—That could have long-term social impacts that are not factored in now. If you do get that function creep where it is easier for people to use the card—and that happens throughout society for the reasons that Michael has just outlined—it turns into that 'if you had nothing to hide, you would produce it' kind of argument for people who do not want to be looked upon with suspicion. This is the problem with these sorts of schemes. It is not about whether you have nothing to hide; it is actually about feelings of autonomy and control over what you do with your own personal information.

A lot of people like to feel that they have some sense of autonomy and control over information about themselves. If you are the sort of person for whom that is important, then if the majority in society start using this thing and you do not, you can be looked upon in a suspicious light. So it does have the potential to force people who do not wish to use it into using it. Initially it starts out as being noncompulsory but then it forces them into using it in the long term.

CHAIR—It will only be compulsory to access Medicare and other government services—

Ms O'Rourke—Effectively, this is compulsory, because most people use Medicare. There is one other point, too. When talking about welfare fraud—and you look through the government's submission and there is mention of welfare fraud—I have not seen figures on welfare fraud but, while I know there is welfare fraud, quite often it is exaggerated for political purposes. One of the unhealthy aspects of this whole debate is that it actually targets people on welfare—the unemployed and pensioners—as somehow being suspicious. It is as if you cannot trust these people with taxpayers' money so you have got to keep an eye on them. Yet quite often we have fraudulent behaviour going on at the other end of the scale in much greater proportion. There is a bit of scapegoating in this debate—

CHAIR—I think that we are moving outside our brief.

Mr Pearce—But it is pertinent, I think. Most Medicare fraud is committed by doctors not by patients.

Ms O'Rourke—That is right.

CHAIR—We have had evidence in fact that this process will have an effect on providers as well as recipients of health care.

Ms O'Rourke—The social aspects are just as important as the economic—

CHAIR—Yes, that is a fair point.

Senator STOTT DESPOJA—I think the social aspects are somehow mixed up with the idea of fraud—

Ms O'Rourke—No, pensioners and people who are not popular, who are not seen as being productive for the economy. It is very easy to target vulnerable people who are not doing something wrong.

Senator STOTT DESPOJA—Thank you for your submission. I just want to pick up on the point where you are referring to function creep being a possible by-product. Isn't it the case, though, that the other aspect or consequence of a centralised database is a very real security and privacy issue? Is that something that you have got a comment on?

Mr Pearce—Once you crack that security, it is really cracked. That is the problem. You are putting all your eggs in one basket. I think that somebody somewhere else said about this that you are putting all your identification eggs in one basket here. That is all very well as long as that basket is secure from fraud, but when you crack that one basket you are away—

Senator STOTT DESPOJA—There is an analogy—cracking an egg. That is all good—

Mr Pearce—Sorry, I am mixing metaphors all over the place.

Ms O'Rourke—It was the Attorney-General who made the point.

Mr Pearce—Was it? I knew it was from a higher authority.

Senator STOTT DESPOJA—I appreciate your comments on the process because I think this is a realistic issue. The fact is that by this time tomorrow we will have another minister—the third minister in three months—on this issue. Are you aware that this legislation is supposed to go through by the end of March?

Mr Pearce—It has passed the House, as I understand it. Let us be quite clear, that is the veiled threat of the government submission to you and senators, isn't it: fall in line or else?

Senator STOTT DESPOJA—I do not think that it is a threat; I think that it is a promise, Mr Pearce. Nonetheless, we shall see.

Mr Pearce—A threat combined with a promise. We think that is deplorable. This is legislation which could have very profound and far-reaching consequences for Australian society. I do not think that anybody looking with an open mind at this could reach any other conclusion, and yet to crack the whip over legislation of this kind and force it through for commercial considerations, because contracts are being let, is deplorable, I think.

Senator STOTT DESPOJA—Do you have any comment on the public accountability or review mechanisms that could be built into this legislation? I understand your bottom line in relation to the bill is to oppose it, but obviously I am looking for anything that will ameliorate the worst aspects of this legislation.

Ms O'Rourke—There is nothing planned there at the moment. Should something like this come in, it should have really strict limits applied to how and when it can be used. There should be strict privacy regulations or provisions in the bill because it is proposed that the system is a central database. Because it contains personal information, there should not be self-regulation codes. There need to be strict privacy provisions. Our privacy law as it stands now is pretty weak compared to, say, that of the European Union. Those need to be in place, not just proposed at a later stage. In fact, I do not think the bill should even be put up until senators and parliamentarians have at least seen what provisions are proposed to oversee the system for accountability.

In Europe, citizens have a right to see what information about them is held. They also have a right, if some of that information is wrong, to have it altered. Also, if any information is gathered for a specific purpose, it has to be destroyed after a certain amount of time. If the bill does go through, you need strict oversight on it. Citizens need access to their own information. They need to be able to see what government holds on them. It needs to be recognised that it is not government information; it belongs to citizens. There also need to be strict penalties if information is misused. Apart from that, I cannot think of—

Mr Pearce—I think the question raises an issue that is dealt with in our written submissions which we have not referred to orally—that is, our concern about the large number of discretions that are invested by the legislation.

Senator STOTT DESPOJA—I was going to ask specifically about the proportionate nature of the discretions of—

Mr Pearce—the secretary and—

Senator STOTT DESPOJA—the minister.

Mr Pearce—By our account, there are 29 separate discretions invested in the minister. That is counting those that he can exercise by direction to the secretary. We think that is an extremely undesirable form of legislation and, if the legislation is to proceed, many of these matters that are left to the discretion of the minister or the secretary ought to be set out in the legislation itself.

Senator STOTT DESPOJA—What about the absence of legal expressions such as ‘relevant’, ‘reasonableness’ and ‘necessary’? Is that something that we should be building into the legislation as well, partly to counter some of those disproportionate discretionary powers?

Mr Pearce—There is the principle for an administrative officer exercising a discretionary power to do it reasonably, and it can be challenged if it is done unreasonably. It is still a very high test, so I would accept the suggestion that, if some of those things are retained as discretions, they ought to be limited in that fashion.

Senator STOTT DESPOJA—I am very concerned about not just unauthorised access, which is of course not expressly prohibited, but also the issue of authorised access. Do you have a view on how you would specify authorised access to the register in this bill?

Ms O’Rourke—One of the concerns we would have over the long term does not come up in the government submission. It specifies in the government submission that it is really just for welfare and health services, but there are hints in the submission where you can see that over the long term there is the possibility of access for other agencies. One that concerns us with a card like this with personal information on it is AFP access. That might not be proposed now but there is a quote in the submission from Bill Kelty. The government said it is going to be limited but on the consultation page it says that meetings with the financial services sector have included the Australian Bankers Association, the Smartcard Users Forum and the Australian Payments Clearing Association.

This submission goes to great lengths to say this is only for health and welfare. When I read this, I was thinking, ‘Why did they have consultations with the private sector if it is limited just to these government services?’ There are some references to combating fraud and that kind of thing, and the Bankers Association referred to money laundering. So you can see that, over the long term, police services could be authorised to have access to the card. That would concern us—this might be getting outside of this area a bit, but it is another one of those political and social implications—particularly where there is a climate of fear of terrorism, Muslims and this kind of thing. Once you connect some of these various concerns, with this kind of card there is a huge possibility that dissidents can be targeted—people who have not done anything wrong or committed any crimes but are just highly critical of the

government. So there is a concern that it will not stay in the limited area of welfare and health services. When the government talks about crime and various other things, there is a hint of the future purposes of this card. So we are really concerned about the fact that, over time, other agencies will be authorised to use the card.

Mr Pearce—If I have understood the legislation correctly, there ought to be no need for access to the register at all, except for the purpose of amending an entry in it, because all the details that are needed for the provision of Commonwealth services or benefits are contained on the card itself. I cannot see why anyone would need access to the register, except to update it.

Senator STOTT DESPOJA—Ms O'Rourke made the point that, under our privacy laws, you have the opportunity to access information that is held about you and to have it corrected et cetera. Obviously, under the IPPs under the Privacy Act, that does not apply to people being informed about privacy breaches, hence my concern about access to the register and whether that is being monitored or not. And then there is the question of what recourse an individual has, let alone whether or not they are informed about the document being copied and information being sought, read, browsed through or whatever it may be. To me, that is one of the major concerns with this bill. I will put some more questions on notice if that is okay.

Mr Pearce—This is why we say there ought not to be a register—so that does not happen. We keep coming back to that fundamental question.

Senator FIERRAVANTI-WELLS—Mr Pearce, you said you had been a lawyer for 25 years, and you made some comments about fraud. I inferred from your comments a certain sort of excuse for your clients in terms of fraud. Can you explain what you meant?

Mr Pearce—Not all laws work—much as legislators like to think that they do. Many laws end up being repealed and many laws are just ignored. There are numerous instances of that. I have a very good example. People may not be aware that, under the relevant legislation in New South Wales it is, *prima facie*, illegal to require someone to produce their driver's licence for identification. That, I can see, has been drawn to the committee's attention. That is a law that is never enforced because it is so highly inconvenient and seeks to penalise behaviour that is rational and harmless. That is my reaction to clauses 45 and 46; the behaviour they seek to penalise is rational behaviour.

In putting this identification tool out there, it is natural that people would want to have access to it if they are required to verify somebody's identity. In almost all circumstances, that is harmless behaviour. There might be exceptional cases where somebody requires you to produce an access card so that they can download, without permission, information from the card. But, those exceptional cases aside, if somebody were to require you to produce an access card for ID, that, in any moral sense, is harmless behaviour. Laws like that tend not to work. It is a good thing that they do not work. It says a lot about the strength of democracy and the rule of law in our society that those sorts of laws do not work.

Senator FIERRAVANTI-WELLS—I guess I am coming at it from a different perspective. I too was a lawyer; I was a government lawyer so I saw my fair share of fraud against the Commonwealth. I think that needs to be balanced against what the objective is here: we are talking about fraud against the Commonwealth and we are talking about an

access card where the objective is confined to very specific concerns that the Commonwealth has. I hear what you say, but you are just starting from the point of total objection; I sense a great negativity in what you are talking about.

Mr Pearce—I have tried to articulate the basis for that objection.

Senator FIERRAVANTI-WELLS—So you are totally against this card, are you?

Mr Pearce—Yes. We are against this legislation. We do not think it should proceed.

Senator FIERRAVANTI-WELLS—If you are against it, do you accept that there is fraud against the Commonwealth?

Mr Pearce—Undoubtedly there is, but it is always a balancing exercise. Let's say it costs the Commonwealth \$3 billion a year. The debate we have not had, and the debate we want to have and that ought to be had in the parliament and in the public domain is whether that is a reasonable price to pay for living in a free society. Do we want to have a national and comprehensive register, with the possibility of it being linked to your personal information about health, financial transactions et cetera? Do we want to have a compulsory identification card, like most European societies have? Is it worth \$3 billion—that is the maximum amount that has been put on it; I think the more realistic estimate is a billion dollars—for that? That is the debate we think ought to be had.

Senator FIERRAVANTI-WELLS—From your perspective, clearly, Mr Pearce: hang the fraud and hang the cost to the Commonwealth.

Mr Pearce—No. We do not say, 'Hang the fraud'. We say there are many things that—

Senator FIERRAVANTI-WELLS—I just do not understand. You accept that the Medicare card has to be revised in some way.

Mr Pearce—That seems quite reasonable to me.

Senator FIERRAVANTI-WELLS—You have come along here and you have posed a whole series of objections and problems. Do you have any solutions?

Mr Pearce—It is not our job to provide those solutions. We are the council for civil liberties and we are concerned about raising civil liberties issues. We are not the council for fraud on the Commonwealth. It is not our job to fix fraud on the Commonwealth, but it is our job to tell people who try to do that where we think they are going too far in infringing our civil liberties. That is all we are trying to do here.

Senator FIERRAVANTI-WELLS—I do read that you are happy for billions of dollars worth of taxpayers' money to be wasted but you are not happy that things—

Mr Pearce—That is a complete distortion of what I said.

Senator FIERRAVANTI-WELLS—I will read the transcript.

Ms O'Rourke—What Michael is saying is that we oppose the—

Senator FIERRAVANTI-WELLS—Thank you, but I can read the transcript, Ms O'Rourke.

Senator NETTLE—I want to ask about two aspects of your submission, and then I have a further question that I would like you to take on notice. One issue that you raise, which we

have not heard raised by others, is name ownership. I read your submission with interest because, as I say, others have not raised that concern. I want to give you the opportunity to add anything to your comments.

Mr Pearce—We have referred to the position under legislation in Victoria and New South Wales, which is in paragraph 39 of our written submission. I have not checked but I expect the position to be the same in other states—that is, as I understand it, that the position we have under the common law is that there is a system of registration of names at birth and a system for registering any change of name which will make it easy for you to prove your name if you have changed it, in case you need to. It remains the position under the common law in all Australian states, and certainly in Victoria and New South Wales, that you own your own name and that you can call yourself whatever you want. I could here and now change my name to ‘Mickey Mouse bin Laden’ and that would be my name because that is my right. Under the common law I own it; I would have a lot of trouble proving myself and I probably would not be able to book a seat on Qantas and things like that, but that is the legal position.

That will strictly remain the legal position, but as we see it the practical position will change quite radically under this legislation because, if the access card becomes the main means of proving your identity in Australia, as we predict, the name on that card will become your name for all intents and purposes. We think that, effectively, people will lose ownership of their names, which they hold under the common law via this legislation.

Senator NETTLE—Can you see a danger that it may present difficulties in that people may have different names registered on different pieces of information? We have not heard from the department about what is going to be the limit on the number of characters for your name on front of the card—

Mr Pearce—The legislation says that if your name is too long it will be abbreviated.

Senator NETTLE—Some people have long names and difficulties are created for them if they are allowed to put the full version on their passport but not on the access card. There may be some difficulties for them down the track. Is that something you would envisage?

Mr Pearce—I think that is another practical difficulty that would arise.

Ms O’Rourke—You already get that. There are the characters that run in every election—Prime Minister John Piss-the Family-Court-and-Legal-Aid. That is their official legal name and even their electricity bills and so on come in those names. So you already have that—

Mr Pearce—The secretary will have a discretion to refuse to register that name, so the ability to change your name in that fashion will disappear, I expect you will find.

Senator NETTLE—The other issue you raise in your submission is about domestic violence. In paragraph 37 of your submission you talk about that.

Mr Pearce—This ties in with what Senator Stott Despoja raised earlier about the security of the database. As long as the database is secure it ought not matter, but if the security of the database is compromised and you are a person—and it is usually a woman—who has been subjected to domestic violence, your security may well then be compromised in the period during which you are waiting for the exercise of a bureaucratic discretion to have certain

details removed from the database. I think that there have been other groups who have raised that issue and we support what they say about that.

Senator NETTLE—Yes, there are other groups that have raised domestic violence but the question of waiting for the bureaucratic decision was the part that I do not think we have seen raised by others. The final issue that I want to raise with you is one you mentioned about access to the database for the AFP. In the Senate estimates that this committee held some weeks ago the Department of Human Services indicated that ASIO and AFP would have access to the database and they outlined the circumstances, which were that they would generally require a search warrant, but that there may be other circumstances such as threat to life, threat to injure, missing persons investigation—quite an extensive list—in which they may be able to have that access without a search warrant. We are going to talk to those witnesses tomorrow because we are still exploring the circumstances whereby the search warrant cannot have the name of an individual because it is part of the investigation that you do not have that name. I am happy for you to take that one on notice but you did indicate that you had some concerns if the AFP had access to it. I just want to indicate that to you—and perhaps later I can point out the parts of the *Hansard* where that is—so that if you want to address your concerns you are able to on the basis of now having that information.

The other point is that because of the crown exception that exists in this legislation for public servants, not just of the Commonwealth but also of the state, to require people to produce an access card, the state police may have some interaction, though not necessarily with the database, themselves. The Department of Human Services are saying that they trawled through the database with the CCTV footage to find who it was at the protest. I do not know how much of that you were aware of before and I do not want to put you on the spot now, but I did want to flag with you the opportunity if you want to respond to those comments.

Ms O'Rourke—It has been one of our concerns. If those agencies cannot do it and then you have got another department looking through, it is compounding the problem rather than lessening it. We would be very concerned if ASIO and bodies like that had access to it. We have now got a situation where, under something like over 20 bits of antiterrorist legislation, security forces have extended powers and there are situations where people who are targeted are not even told what it is that they are under investigation for. They cannot tell anybody else, under threat of penalties. So to make that situation worse by having ASIO and AFP allowed access to that information would concern us very greatly and, yes, we would like to comment on that at a future date.

Mr Pearce—But for now I would repeat what I said in answer to Senator Stott Despoja: I see no reason for anyone to have access to this register, except for the purpose of updating it.

Senator NETTLE—That is a good point. Thank you.

Senator MOORE—My question is to do with consultation. A couple of times in your verbal submission and in your written submission you talk about your concerns with the consultation. I am very keen to find out exactly what involvement groups like yours with a standing interest have had. The second part is more the wider community awareness. If someone was going to be looking at developing legislation along this line with the kinds of

issues that are in the common knowledge, it would seem to me that groups like yours would be one of the groups that people would be seeking to be involved in the feedback. That would be my presumption. In terms of your own experience in this process, can you let us know what involvement you have actually had?

Mr Pearce—None at all up until the announcement that the access card would be introduced—none at all. It took us by surprise, as it took everyone else by surprise. We were consulted by Professor Fels and his committee. A meeting was held—I cannot give you the precise date, but sometime in the second half of last year—with Professor Fels and Professor Puplick. I attended. Brian Walters, the then president of Liberty, attended that meeting. I put to Professor Fels the direct question: was it within his terms of reference to recommend that this card ought not to proceed or were his terms of reference confined to making recommendations about how to implement the card? He said the answer was the latter, that he had no power to recommend to the government that the card ought not proceed and that he was confined in his terms of reference to making recommendations about how to implement the card. That is contrary to something the former minister, Mr Hockey, said. Mr Hockey made a public statement which implied if it did not expressly say that there has been widespread consultation about whether or not to introduce this card. I dispute that and dispute that hotly. Since that consultation with Professor Fels, we have made a submission to him and we have now made this submission, but we have not otherwise been consulted.

Senator MOORE—And they are specific questions that you raise in your submission. It is not a general comment. You put your position quite clearly at the start, but then you actually list specific issues with the legislation and the exposure draft about which you are concerned. You have had no feedback on those?

Mr Pearce—No.

Senator MOORE—My second point is a more general one. It is one I have been struggling with for a few months on this issue. I am asking you because of your experience in the field. It is the general lack of community awareness, concern and engagement in this process. That links also to the role of the media in this way. A few people in evidence have made quite clear contrasts between this experience and that of the Australia Card, when there was widespread community involvement and expression of concern or support. In the end it was the community that overturned the process. My own observation of what has happened in the last few months does not reflect anywhere near the kind of engagement with this one. I would like to know for the record whether you have any opinion about that as to why, how, am I wrong? What do you think?

Mr Pearce—Firstly, I was out of the country during the Australia Card episode, so I do not know much about what happened there. Secondly, it may not be too late for a public movement to emerge to oppose this as it did in relation to the Australia Card. You will remember the legislation passed and it was at the very end of the process that that legislation was knocked out by a technicality, so I have not given up hope on the possibility. But it may be that the public has become inured to these sorts of erosions of their civil liberties and it may be that that is to some extent understandable in the light of the security climate in which we have been living over the last few years. In answer to that I would say that that is not something the government should take advantage of. That is a reason the government should

tread more carefully in this area rather than more heavily, because the public has become so inured to these sorts of erosions of their privacy.

CHAIR—The government has not mentioned that. It has said that it is embarking on this legislation to facilitate welfare and to fight fraud. You might argue that it is a legitimate debate to talk about national security—I think it is. But the point is that the government has not gone down that road. You see the point?

Mr Pearce—There have been a couple of comments.

CHAIR—But you see the point, don't you? They cannot rely on that. I am not accepting any evidence on national security because the government has said it is irrelevant. But it does not necessarily work against your case.

Mr Pearce—It means that the government's spin is working—that is what it means.

CHAIR—That is a different issue.

Mr Pearce—No, it is the very issue—

CHAIR—It has precluded—

Mr Pearce—They have created a smokescreen.

CHAIR—itself from looking at it.

Mr Pearce—I think that they have created a smokescreen behind which they are bringing in what will be a national identification card. It may be unwitting; I do not want to be too unkind. As we say, the cane toad was brought in with the best of intentions to deal with a serious problem and to save a lot of money.

Senator MOORE—I am very worried about this analogy of the cane toad!

Mr Pearce—If I had known that there were going to be so many Queenslanders on this committee I might not have used it! It may be brought in with the best of intentions, but what we are concerned about is what the effect will be. When you look objectively at the circumstances that exist today and that will be created by this legislation, you are going to end up with a national ID card, and we think that the government should face up to that. That is the debate that we should be having: do you want to bring in a national ID card? To say, 'Well, it hasn't been presented to the public in that fashion,' suggests that the government has gone about it in a very clever way.

Senator MOORE—Ms O'Rourke, did you want to add something? You were around in that era.

Ms O'Rourke—I was. In fact, it was Liberty that started that campaign. When it initially started there was not a lot of support for our campaign. We started one to protect the Auditor-General in Victoria and we were at forums where there were six people. At a certain point, it hit a threshold and the halls that we were holding the forums in were not big enough for the numbers of people. Why that happened at that particular point, I am not sure. Maybe the public debate got to a level at which people understood what it was about.

CHAIR—We are enjoying your reminiscing but I am wondering if—

Ms O'Rourke—But the other thing is that we also had a lot of support from the Liberal Party at that time. They were against the Australia Card.

Mr Pearce—Including the present Prime Minister.

Ms O'Rourke—Yes. That was one issue. But the environment is a little bit different now. When this was initially proposed, terrorism was in the debate. That has been taken out, but that was initially there, and we have got that climate. So that may have something to do with it. Like Michael said—and I tend to share his view—the last forum in Melbourne was well attended and this could be one of those issues that gets bigger and becomes an issue leading up to a federal election.

Senator MOORE—Thank you very much.

Senator STOTT DESPOJA—I want to remind people that the Democrats cut their teeth on that campaign as well, and we will be in this one, too.

CHAIR—Ms O'Rourke and Mr Pearce, thank you very much for your attendance today.

Committee adjourned at 4.43 pm