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## SENATE

STANDING COMMITTEE ON FINANCE AND PUBLIC  
ADMINISTRATION

**Reference: Human Services (Enhanced Service Delivery) Bill 2007**

TUESDAY, 6 MARCH 2007

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

**Tuesday, 6 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:** Senator Fierravanti-Wells, Fifield, Forshaw, Lundy, Mason, Moore, Nettle, Stott Despoja 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 8.44 am**

**MCKAY, Mrs Robyn, Acting Deputy Secretary, Department of Families, Community Services and Indigenous Affairs**

**YATES, Mr Bernie, Deputy Secretary, Department of Families, Community Services and Indigenous Affairs**

**CHAIR (Senator Mason)**—This hearing is for the committee's inquiry into 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. The committee has received 59 submissions for this inquiry and published all of them, except for those where the authors have specifically requested confidentiality. Is it the wish of the committee that the remaining submissions, except where confidentiality is requested, be published?

**Senator LUNDY**—Yes.

**CHAIR**—There being no objections, it is ordered. 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 proceedings are not unnecessarily delayed, I will not read through the procedural orders for committee hearings and the protection of witnesses. Suffice it to say that copies of these can be obtained from the secretariat officers in the room today if people are interested.

I welcome officers from the Office of Indigenous Policy Coordination and I apologise to both of you for our late start today. Would either of you like to make an opening statement?

**Mr Yates**—Good morning. No, we do not have an opening statement.

**CHAIR**—Just questions?

**Mr Yates**—That is correct.

**Senator LUNDY**—I also apologise for the late start and for being unavoidably delayed. What involvement have you had, if any, in the design of the access card, its purpose and use, in particular from the perspective of proof of identity procedures?

**Mr Yates**—I have oversight responsibility for the Office of Indigenous Policy Coordination, or OIPC. OIPC is now an integral part of FaCSIA and as such the secretary and deputy secretary, in this case my colleague Robyn McKay, are both represented on the relevant secretary and deputy secretary committees that are supporting the development and progress of the card. As such, they ensure coordination across the organisation and input into thinking and feedback on its development, which will include Indigenous issues.

**Senator LUNDY**—From the oversight committee what sort of input has the office been able to provide? I am looking for the policy related issues specific to the Indigenous experience. How have you expressed that to the committee and had input into the access card?

**Mr Yates**—You are aware that there was a whole-of-government submission presented on behalf of all departments, which included our department. It does not have extensive treatment at this stage of Indigenous issues, in part because it is an issue of the stage whereby those matters come to the fore. The submission did touch on the issue of voluntary

registration. It also touched on vulnerable groups and the registration process, and the importance of using good practice in terms of reaching relevant groups when it comes to the registration process. It is fair to say that OIPC's involvement, and indeed some aspects of the department's broader role, in guiding the future development of the card and its implementation is where our role will be most significant, particularly around the registration process. There are a lot of issues there, particularly in remote Australia, where Indigenous clients will be affected.

**Senator LUNDY**—My understanding is that there have been a lot of problems with the use of Medicare cards within Indigenous communities—not so much in urban areas but in remote and isolated areas. What strategies do you have in mind or have you identified to ensure that there are not the same kinds of problems that there are with the Medicare card? This is a question that goes to the heart of that registration process. How will you facilitate registration by Indigenous communities, particularly those who have not traditionally had a strong use of the Medicare card service in the past?

**Mr Yates**—Obviously we want to build on the practice that has been developed by agencies such as Centrelink and Medicare, who have been progressively improving their ways and means of ensuring good connection with Indigenous people, particularly in remote areas. Their networks will be an important input into getting good connections with Indigenous people. Obviously our network of Indigenous coordination centres could potentially play a support role as well. Over time in remote areas we have had a range of specialist Indigenous officers and visiting services aiming to ensure good connections with Indigenous people, including Indigenous service officers, community agents, which Centrelink uses quite extensively, remote area service centres and remote visiting teams. We will be using those sorts of strategies to the full and, if we identify any gaps, there may need to be some further initiatives. That is part of the scoping exercise of how we ensure as robust a registration process as we possibly can. This is a very critical issue but it is not a new issue for agencies looking to ensure that the footprint of service and connection with Indigenous people is as comprehensive as possible.

**Senator LUNDY**—Do you envisage that you will be able to use ICCs as registration centres for the access card?

**Mr Yates**—That has not been considered as yet. We would be happy to work with the Department of Human Services in developing an effective connection. Those offices at the moment are not shopfronts in the sense of delivering specific services in the way that Centrelink does. Nonetheless, they are important offices in remoter parts of the country that could play a useful support role and a guiding role to visiting agents or remote services to assist them in making effective contact.

**Senator LUNDY**—How well developed are those strategies to implement the access card? You mentioned that the ICCs may be considered. At what point will you determine how the OIPC interacts with human services for the purposes of the roll-out? At what point do you decide on that?

**Mr Yates**—You would be aware that the Fels task force is developing a paper on the registration process, and we also have an internal task force with representatives from

different agencies that are looking at the registration process. We have some lead time and we will be looking to input actively into that process so that, in shaping the strategy for the roll-out of registration, we look at all of the options that are available to maximise effective registration, particularly in remote Australia or for support to vulnerable groups. As I mentioned, there are already techniques for establishing proof of identity that recognise that vulnerable groups do not always have appropriate documentation to hand. We want to work through and, if you like, quality assure those processes that are already available and are utilised by agencies to ensure that we bring the best of that to bear. I am not able to talk about the specific timetable for those pieces of work by both the Fels task force and the internal task force, but they will be an active process over coming months. We know that there is now a real build-up of contacts with various Indigenous groups, such as Aboriginal medical services and the like, and that will need to be occurring over the coming months to ensure that we have the best advice and guidance from them, to ensure that we have a sound strategy for registration.

**Senator LUNDY**—I was going to ask you about the proof of identity. Before I ask that, do you have a budget or an indicative budget for the role that OIPC will be taking in the implementation of the access card, including a budget for marketing and promotion within Indigenous communities about the role and purpose of the access card?

**Mr Yates**—That is primarily the responsibility of the Department of Human Services in terms of communication strategy and the effective resourcing of that. OIPC's involvement is similar to that. It is drawn into a range of whole-of-government processes where its particular advice and input is sought, and we factor that into our work program. We do not have a stand-alone dedicated budget around that. We obviously identify people who are our key liaison points for the Office of Access Card and, as necessary, we will ensure that we have appropriate resources to support the next steps in the process.

**Senator LUNDY**—Are you confident that OIPC or indeed Indigenous people will have due attention paid to their needs as part of that rollout. How can you be confident of that if you do not have your own budget or you are not the office doing that work?

**Mr Yates**—Part of the new arrangements that have been introduced for a couple of years now is that Indigenous business is every mainstream department's business, and that includes the Department of Human Services. We do not have a dedicated agency that, as it were, shoulders the full responsibility for what happens with Indigenous people. We have a particular lead role in the whole-of-government arrangements that we now have in place, but our challenge is to ensure that our work with other agencies, such as the Department of Human Services, ensures a good robust approach. We will lend our support to that, including through our networks, working in tandem with organisations such as Centrelink and Medicare so that we have a strong approach to the whole registration arrangements.

**Senator LUNDY**—I will ask one more question along this line. To play devil's advocate, I am concerned that, because the government is advocating this as a voluntary card, they will focus all of their marketing and attention on the areas where it is most efficient to do so in order to optimise participation. Remote Indigenous communities are not likely to factor highly in such an analysis. What are you able to offer as the OIPC to ensure that Indigenous

communities will have proportionally more resources devoted to them—not least because of the problems in the past with the Medicare card?

**Mr Yates**—Firstly, around three-quarters of Indigenous Australians are in urban and regional centres.

**Senator LUNDY**—That is right.

**Mr Yates**—A little more than a quarter are in remote and very remote locations. We will be as concerned as any to ensure that the footprint of the access card is extended as comprehensively as possible, consistent with the objectives for the use of the card, before it is comprehensively rolled out. Obviously we have a particular responsibility to ensure that DHS is well guided in the contacts that it is making with relevant Indigenous organisations to inform its rollout strategy, and we will do that to the best of our ability.

**Mrs McKay**—It is important to recognise that, while the card is a voluntary card, it will be necessary to have one in order to access the services of the participating agencies and to access concessions. Given that it is an access card, people who are already accessing those services will be a very high priority to have registered. It is not intended that anyone would be denied access to services as a result of the access card unless they were proven to be fraudulently claiming.

**Senator LUNDY**—I appreciate that point and I thank you for making it, but I am asking the question in the context of my understanding that there have been issues with people in Indigenous communities not using their Medicare card and that has contributed to the costs of service delivery. I do not have details about that, but my point was that, if there is no evidence that the services are currently being used, this is potentially an opportunity to push the services out there. If there is a reasonable amount of investment to do so, you could try to help solve a problem. I am just testing with you to what degree you have your mind focussed on that agenda.

**Mr Yates**—That is a good point. A major thrust of the reforms in Indigenous affairs that are being pursued is to ensure that mainstream departments are extending the reach of their services and their connections to Indigenous Australians.

**Senator LUNDY**—Even if it is expensive, new and different?

**Mr Yates**—That is correct. Whether that is lifting remote area exemptions and providing participation opportunities into remote areas, then that is what the government is about. It is very much an environment in which the government is looking very hard at not just drawing an easy boundary around the application of mainstream programs but also pushing that right out. Often we need to be quite innovative in how we do that, but increasingly departments are finding creative ways to provide flexible services into remote Australia so that Indigenous people living there do not miss out.

**Senator LUNDY**—And I guess I am trying to extract evidence of that agenda from you. I cannot see too much.

**Mr Yates**—It will very much be the driver behind our participation in the interdepartmental dialogues with DHS, Medicare, Centrelink and the like to build on their very good work. They have quite extensive networks of activity and they have more exposure

in a lot of ways than our ICCs may have had because they reach into other areas as well. That will very much be the approach that we will be pursuing in those discussions.

**Senator LUNDY**—Just going on to the proof of identity documentation, we had some discussions with FECCA yesterday about the need for some flexibility because many Indigenous people do not have that formal documentation proving their identity. Can you give us an insight as to how that will be handled sensitively, effectively, efficiently and with due respect to Indigenous cultures of which pieces of paper are not traditionally a part?

**Mr Yates**—Again, that is not a new issue. Agencies have been developing sensible ways of ensuring proof can be established without recourse to what you might describe as the mainstream mechanisms for establishing identity. That includes recourse to significant people in the community who can be relied upon to recognise, establish and confirm the status of the individual. We expect those sorts of approaches will be part and parcel of rolling out the POI process. There will be flexibility in the approach. There will not be a 'one size fits all' approach. It will recognise that vulnerable groups often do not hold those sorts of records and that, even where they might have had some of those records, they may have been lost. There will be flexible approaches. The aim will be to maximise rollout consistent with ensuring due proof of identity and minimising any fraudulent use. The registration process will look to build on those flexible approaches that we are already using in remote Australia.

**Senator LUNDY**—What will your role be in advising on those types of flexible approaches?

**Mr Yates**—Our particular involvement will be to ensure cultural sensitivity and awareness of the operating environment and the constraints that people will be facing in working with the access card and the registration process in remoter areas. We are not the sole experts in this, but we will ensure that good standards are brought to bear in how those rollout strategies are designed, building on some quite sensible good practice which organisations like Centrelink and Medicare have already been applying. We will be part of the brainstorming, if you like, of how to continue to improve those processes for proof of identity.

**Senator STOTT DESPOJA**—Good morning; I apologise for a flight delay. Mr Yates, in relation to Medicare, I was talking to a number of medical groups about Indigenous Medicare cards and the fact that sometimes, when there are rolling or mobile medical units, doctors or medical staff will maintain a register of Medicare cards for Indigenous Australians. I apologise if this has been covered, but are you familiar with that practice and can you say whether or not you see that that may have implications in terms of an access card, particularly for Indigenous Australians perhaps in rural remote or regional parts of Australia?

**Mr Yates**—That question is probably best placed to Medicare because they will be able to give an authoritative reply about, one, if it happens and, if so, in what circumstances, and a considered judgment about whether that has relevance for the way the access card works. I do not think we could speak reliably around that.

**Senator STOTT DESPOJA**—I am not necessarily sure that they will know in all circumstances, either. I guess I was just curious from the Indigenous policy perspective. That is fine, thank you.

**Senator FORSHAW**—Some amendments were made to the Electoral Act in the last 12 months or so. I am sure the chair will be familiar with this, being a former member of the Joint Standing Committee on Electoral Matters. Some of those changes went to requiring enhanced proof of identity, particularly with respect to an application to enrol, changing enrolment or seeking to cast a vote on election day where there is some issue about whether or not the person is on the roll. Has there been any consideration as to those new aspects of the electoral act and the introduction of the access card—I do not know, and I will make inquiries later from other government departments—about whether or not an access card will be required to be produced for enrolment purposes as a proof of identity? We are all aware that there are particular issues relating to the enrolment of Indigenous Australians.

**Mr Yates**—I am not aware that there is any intention to use it for that purpose or, indeed, outside of the designated purposes that are outlined in the bill.

**Senator FORSHAW**—I am not sure if it is prohibited, that is all. I find this area a bit unclear as to what would be deemed to be a legitimate purpose, if you like, because the explanatory memorandum of the bill refers to the card being required when people seek to access benefits or services, and that may extend to something like enrolling to vote or seeking to cast a vote.

**Mrs McKay**—It is a question that properly should be directed to the Department of Human Services. It is my understanding that it will in fact be a breach of the legislation to require that a card be tendered for any other purpose than those specified in the legislation—that is, accessing the services of the participating agencies and accessing state concessions.

**Senator FORSHAW**—I appreciate that you are not in a position to answer. I am not trying to be smart or anything here, but it would seem to me that it might well become an issue because of the other concerns about the card's being used widespread as a form of identity. Thank you.

**Senator NETTLE**—I want to ask about the issue of the low confidence proof of identity flag that is proposed for the access card, whereby people who did not have the correct documentation to prove their identity would have a flag on their record in the register to say that their status or identity was not full but was interim until they were able to prove. This is something I imagine a number of vulnerable people in the community, including Indigenous people, for a whole variety of different reasons, might have. Have you been involved in any discussions or consultations with Indigenous Australians about how this flagging on their government records that we cannot quite prove who this person is would impact on their ability to access services?

**Mr Yates**—I think the assurance is there that, where they are currently receiving benefits or services, the fact that there may be some incomplete information reflected in that flag will not impact on their continued receipt of services. I do not have a close knowledge of this, but it is an administrative flag that, where one can build that complete picture over time, that is where we want to get to. It is essentially for that purpose. But it will not impact on a person's continued access to the benefits and services that they have received, and I guess that is the critical thing.

**Senator NETTLE**—Sure, thank you. Have you been involved in consultations with Indigenous Australians about the access card?

**Mr Yates**—Not to this point, although the Office of Access Card is talking with us about relevant organisations that they should be looking to connect with as part of their consultations over the period ahead.

**Senator NETTLE**—I wanted to go on and say, okay, apart from the getting access to services issue, have any concerns been raised by the Indigenous communities about this idea of having a low confidence about their identity? Perhaps if you have not had any consultations with Indigenous Australians you are not able to answer that one.

**Mr Yates**—No, I think it is early days on that one.

**Senator NETTLE**—In relation to the participating agencies in the access card and those people who have access, I have not found where it is, but are you expecting to be one such agency? You are not included in the list of agencies participating in the bill, so do you anticipate that you will be, or am I wrong about that?

**Mrs McKay**—No, FaCSIA is not a participating agency. We are a policy department. A number of our payments are administered by Centrelink. We have a strong interest in it, but Centrelink is the main participating agency from our point of view. The other participating agencies are those in the Human Services portfolio and the Department of Veterans Affairs.

**Senator NETTLE**—I did have a question I wanted to ask each department, but it may not be relevant to you. We had some evidence yesterday about the fact that the government has been promoting the idea that if you change your address you only need to tell one agency, and then everybody is told. One witness yesterday raised the following issue. What if the one agency you tell mis-enters the data and what does it do if that is spread amongst all the government departments? I do not know if that question relates to you in terms of the kind of data you are holding; I suspect not. But if it is relevant, what is the frequency of errors that you have experienced from data mis-entry?

**Mrs McKay**—It is not our department that experiences it. It is the participating agencies who would experience that. It is a question that you really need to address to the Human Services portfolio when you are discussing it with them.

**Senator NETTLE**—I do not want to just ask the Human Services portfolio, because this proposal links the information provided by a whole lot of different departments. So, in order for me to get a comprehensive sense of the potential for data entry mismanagement, I need to ask each department so I can understand the interactions. But if it is not relevant for you, that is fine. Thank you.

**CHAIR**—There being no further questions, Mrs McKay and Mr Yates, thank you very much. Again, sorry for our late commencement.

[9.15 am]

**DRENNAN, Federal Agent Peter, Acting Deputy Commissioner, Australian Federal Police**

**HANKS, Ms Verity, Senior Legislation Officer, Australian Federal Police**

**JOHNSON, Federal Agent Ray, Manager, Special Operations, Australian Federal Police**

**O'SULLIVAN, Mr Paul, Director-General, Australian Security Intelligence Organisation**

**CHAIR**—Good morning. Before I invite my colleagues to ask questions, does anyone have an opening statement to make?

**Federal Agent Drennan**—Yes, if I may. Thank you for the opportunity to make a brief opening statement on behalf of the Australian Federal Police, as the AFP has not made a written submission to the Senate inquiry. The AFP acknowledges that the introduction of the access card is designed primarily to deliver greater customer convenience and improved efficiencies within government administration. We also recognise, however, that the access card will reduce the incidence of fraud on the Commonwealth and combat criminal offences facilitated by identity crime. The access card will play an important role in combating fraud facilitated by identity crime by providing greater certainty about any one individual's entitlement to receive Commonwealth benefits. The AFP supports the introduction of the access card as a mechanism to create a greater level of surety around a person's entitlement to receive Commonwealth public revenue and consequently reduce the incidence of fraud against the Commonwealth.

The AFP also anticipates the access card will result in a reduction in the use of existing Commonwealth benefit cards in the facilitation of crime. For example, the current Medicare card is easy to counterfeit and reproduce owing to the absence of rudimentary security features such as a photographs, signatures and other technological protections to ensure the integrity of the card's information and security. Operational policing experience has identified widespread exploitation of forged Medicare cards to support a range of criminal activities, notably fraud related offences. The access card will significantly reduce the opportunity for a government benefits card to be used to underpin the establishment of a false identity or theft of existing identity.

The AFP is participating in a number of Office of Access Card working groups to provide advice on the development of the security architecture and implementation processes of the access card. The introduction of smartcard technology to the access card will mean state-of-the-art technology is applied to protect data contained on the card, to strictly control access and modification of card information and, ultimately, to counter and reduce fraudulent activity.

In relation to specific provisions of the bill, the AFP is concerned about the offence provision in clause 57, specifically making it an offence for a person to copy or record certain information from a person's access card. The ability of law enforcement officers to copy or image an access card is a vital tool in effective and efficient conduct of investigations. Without the ability to copy information or image the card itself, intelligence analysis and

investigative activity could be significantly impeded. The AFP notes that clause 57 does not apply where a person is a delegate or an authorised person. It is the AFP's position that law enforcement staff need to be specifically precluded from this offence provision when carrying out law enforcement functions.

Thank you again for the opportunity to address you with an opening statement, and I invite questions the committee may have in relation to the bill. I should point out however that, although I will endeavour to answer as much as possible in this public forum, as you may appreciate, there may be some issues that are better dealt with in camera.

**CHAIR**—Thank you, Mr Drennan. Mr O'Sullivan, do you have a statement?

**Mr O'Sullivan**—Yes, good morning. I would be pleased to open up with some comments that may help the committee. It might be useful if I provided some context which would assist the committee to understand ASIO's role in connection with the access card. I say that because I note from the record that some of the questions already raised by committee members relate to operational methods and capabilities and, just as my colleague from the AFP has commented, consistent with longstanding practice, I will not be able to provide specific responses to those operational matters in this particular forum.

Since 2002, the parliament has enacted specific legislation that is directed at ensuring intelligence, security and law enforcement agencies have the powers available to them to be effective in countering security threats that we face, particularly in connection with terrorism. That has happened, of course, against the background of successful attacks against Australians overseas and others in Australia that were planned, aborted or disrupted. The ultimate goal of security, intelligence and law enforcement agencies is the protection of Australia, Australians and Australian interests from harm. In the case of ASIO, those threats to security are defined in the ASIO act. That means preventing those who would seek to maim, kill or destroy the people, the values and the things that we cherish.

Operating in this environment means that ASIO's security and intelligence investigations must remain focused on individuals, groups or organisations whose activities, background and associations are assessed to be relevant to security and who present a sufficient threat to warrant investigation by ASIO. Needless to say, ASIO operates strictly within the legislative framework put in place by this parliament. But ASIO is also subject to guidelines issued by the Attorney-General which require that any ASIO requests for access to personal information held by Commonwealth agencies must be limited to what is reasonably necessary for the purposes of approved investigations. As a matter of fact, those guidelines are available publicly, including on the ASIO website.

ASIO has a system of internal procedures and protocols which require investigations to be authorised by a senior officer or by an SES officer. I note that ASIO does not require a warrant from the Attorney-General in order to seek information from other Commonwealth agencies, but all such investigations are subject to the oversight of the Office of the Inspector-General of Intelligence and Security, and that any intrusion into the privacy of individuals must be commensurate with the assessed level of threat. ASIO draws on a range of information in conducting its investigations, including information available publicly, information provided by other Australian agencies or by international liaison partners, as well

as information obtained covertly through a range of means, including under warrants issued by the Attorney-General.

Increasingly, people who are of security interest are becoming more adept at concealing their activities and their true intentions in order to avoid detection by authorities, so investigations into their activities which are relevant to security need to be done discreetly if they are to be effective. Any requirement which demanded the consent of individuals before the collection of their personal information, or required them to be advised of the purpose of the collection, or provided for access to ASIO's records, would necessarily be completely incompatible with the discreet investigations to which I have just referred. Such requirements would alert people of security interest to the existence of covert investigations and would risk inappropriate disclosure of ASIO's methods, capabilities and sources. It would also undermine ASIO's domestic and international liaison relationships, since partner agencies would be likely to withhold intelligence if there were a requirement for ASIO to disclose this information to such persons of security interest.

ASIO's requirements to obtain a range of information about people of security interest is not new, of course; it has been central to ASIO's work since the organisation was established in 1949. I note and agree with the comments by Senator Ian Campbell to this committee on 16 February when he said:

... access by ASIO or any of the other agencies, such as the Federal Police, to information is not changed by the access card.

He went on to say:

We are not going to give them any more powers.

The use of intrusive methods of investigation inevitably raises questions about the balance between meeting national security imperatives and civil liberties. How that balance is defined at any particular moment is an issue for interpretation and debate in the first place and, most importantly, in this parliament. From ASIO's perspective, the current balance and the framework that has been put in place are appropriate to the tasks that we have been assigned under our act. So, while I cannot go into the details about methodologies or capabilities, I can advise the committee that ASIO will not have online access to the access card register or databases; requests for information would be made to the Department of Human Services. Neither will ASIO officers be permitted to ask to see the access card of a person who is to be interviewed, consistent with the relevant clause of the human services bill.

Finally, can I just observe that section 20 of the ASIO Act places a special responsibility on me as the Director-General of security. It states:

The Director-General shall take all reasonable steps to ensure that:

(a) the work of the Organisation is limited to what is necessary for the purposes of the discharge of its functions;

ASIO has systems and procedures in place to achieve that requirement, and actively cultivates an organisational culture directed at ensuring that that occurs. That is why ASIO's investigations will remain tightly focused, strictly controlled and fully accountable. So, to the extent I am able, I will be very pleased to answer questions from the committee.

**CHAIR**—Mr O’Sullivan, you just mentioned that the access card does not in effect change the access of the AFP or ASIO with respect to information. Is that really the issue, or is the issue that the access card creates some very powerful intelligence—for example, it is potentially a photographic database of every Australian? We do not have that yet, but if this proposal goes ahead we may have it. So the issue is not so much that the law changes with respect to accessing information but that the intelligence available is far more powerful. Do you see ASIO wishing to have access to that potential biometric photographic database, and on what grounds?

**Mr O’Sullivan**—One dilemma in coming towards that question is that it gets very close to operational details of how we proceed. The reason I think Senator Ian Campbell used that phrase in his comments to the committee on 16 February—I assume anyhow—was that he had been advised, and I believe accurately, that the resources that agencies currently have to obtain information are not increased by the existence of the access card. If the access card did not exist or does not come into existence, the same information would be sought by the agencies.

**CHAIR**—Sure, and I understand that. I am not saying the law is changing, but the databases that may become available will change? There will be, potentially, a biometric photographic database of all Australians, and that means that the potential power of ASIO or, indeed, the Australian Federal Police—

**Mr O’Sullivan**—But that assumes that you would not be able to get the information by some other means if the card did not come into existence.

**CHAIR**—This will make it a lot easier, Sir.

**Mr O’Sullivan**—Whether there is a greater degree of ease is a sort of debatable point, I think. What I just say is that, from an ASIO point of view, the range of information will not be expanded by the existence of the database.

**CHAIR**—But the ease with which you can obtain access to photographs of 20 million Australians will be expanded, enormously. It is just a fact.

**Mr O’Sullivan**—As I say, that is an assertion about an ease of methodology; it is not an assertion about the existence of the information.

**CHAIR**—As to the amount of fraud, in relation to the AFP the government has said on many occasions that this legislation really centres on two facts: firstly, facilitating access to welfare and, secondly, fighting fraud. I note the submission from the Department of Human Services has cited the Australian Federal Police. Let me say what DHS says in that regard:

Recently, the Australian Federal Police estimated that Medicare cards are involved in some way in more than 50 per cent of identity fraud cases. In a recent speech at a counter-terrorism summit, the Australian Federal Police Commissioner, Mick Keelty, estimated that identity fraud costs Australians between \$1 billion and \$4 billion annually.

How would the commissioner or the AFP come to that conclusion?

**Federal Agent Drennan**—Which conclusion, the extent of the fraud?

**CHAIR**—That identity fraud costs Australians between \$1 billion and \$4 billion annually. How do they arrive at that figure? I am not saying it is incorrect?

**Federal Agent Drennan**—Probably the first thing to say is that the reason there is a range there—

**CHAIR**—Yes, and it is a big range: between \$1 billion and \$4 billion.

**Federal Agent Drennan**—is that it is quite difficult to quantify. But a great amount of research has been done, particularly in the private sector, which attempts to quantify it. There are experiences in relation to the extent of fraud underpinned by identity which we see. Work has been done by the Australian Institute of Criminology and a number of other bodies out there conducting research, and we rely upon the figures provided by them in an attempt to quantify it. The reason the range is so broad is that it is such a difficult thing to quantify.

**CHAIR**—Did the AFP give any assistance to KPMG? On the same page of the submission of the Department of Human Services, it states:

KPMG has estimated that the Government will save \$3 billion over the next 10 years by introducing the access card.

Do you know whether that is based on any information provided by the AFP?

**Federal Agent Drennan**—Not that I am aware of.

**CHAIR**—Another issue that has been raised in the last two days of hearings—among many, but it is one of the more important issues—is the information on the surface of the access card. Many organisations are concerned that the government should restrict the information on the surface of the access card for privacy reasons. Currently the government is asserting that there should be a photograph on the front and the person's name, and on the back should be a universal identifying number and a digitised signature. I should have one of the mock-up cards with me, but I have left it in my office. Nonetheless, that is the information. Would the AFP require the photograph, the signature and the universal number to be on the card? You can see why I am asking the question, can't you? Many of the groups we have heard evidence from are saying no you should not have that because all it does is make it a de facto ID card, and the government itself in the explanatory memoranda and in much of the information we have received from government says that this is not an ID card. With that information on it, a photograph, a digitised signature and the number, it will become immediately a de facto ID card. We could solve that problem if we took off the photo, the number and the digitised signature. I need to know from you whether we must have those elements on the card for any particular reason?

**Federal Agent Drennan**—In the first instance, perhaps I can refer back to your previous question in relation to the extent to which the current Medicare cards are used in committing frauds, and the figure of 50 per cent is the experience that we have. When we look at our serious and more complex investigations involving identity fraud we see the figure rise up considerably, to about 70 per cent. The reason is that, first, the current card has virtually no security features that are easily recognisable or detectable by people who are presented with the card. In fact, we see that the card is easily manufactured and forms what we would call a 'breeder document' to establish more robust forms of identity documents. So it forms a base level.

**CHAIR**—Okay, so the current Medicare card is highly susceptible to fraudulent usage.

**Federal Agent Drennan**—Yes, and one of the reasons is that it has a name on it, a number and not much else. When you look at the way in which identify fraud is committed, it is actually about names and identities. The reason it can be perpetuated to the extent that it is is that there is not a link between the name and the actual identity of a person by some biometric feature, which is probably the more conclusive way of actually establishing that link. We see that, if there were a biometric feature on the card which directly links to the identity of the person, the card would be far less susceptible to being misused by the person who has it and would be an indirect method of establishing other forms of identity on the basis of that card. We are very much in support of the fact that it does need to include a photograph to ensure that the card is not exploited for other reasons, as the experiences we have had with the Medicare card have shown.

**CHAIR**—As I understand it, there will be no benefits paid unless the smart card is accessed into a reader. In other words, that will facilitate, in a sense, social welfare. It is not supposed to be used as an ID card—or at least that is an absolutely secondary or ancillary purpose. I still do not understand why there has to be a photograph on the front. There will be a photograph on the chip. That is different, and you and I would agree on that. When you put the card in, up will come a photograph of the holder. We have even heard some evidence that having a photograph on the front allows you to facilitate identity theft. Nonetheless, I have not heard any real good evidence saying why we have to have a photograph. The Fels committee did come out in favour of it eventually but they were equivocal. They were certainly against the signature and the number, as was the Privacy Commissioner, who was against all three. I have not heard any good evidence as yet as to why the photograph should be on the card. If we are just talking about facilitating access to welfare and cutting identity fraud, why do we need the photograph? And I am waiting for the evidence, but it has not hit me like a bombshell as yet, I can tell you.

**Federal Agent Drennan**—I take your point that when it is inserted into the reader the photograph comes up. People will use that card for the purpose of getting their services and maybe for other reasons—and as much as we can say that people will not use it for other reasons, there is all likelihood that people will; it is their card. What we are saying is that the purpose is for the delivery of their benefits and services. But we need to ensure that there is a readily recognisable link between the holder of the card and their entitlement, and photograph is that link in the absence of the reader.

**CHAIR**—But there is going to be a reader; no welfare will be paid without access to a reader. That is the problem with that argument. I will hear from DHS later on. Perhaps they have some stirring arguments.

**Senator FORSHAW**—That is the reason we had the microchip.

**CHAIR**—And I think we are all agreed on that. I have probably had a fair go. Senator Stott Despoja?

**Senator STOTT DESPOJA**—Can I just pick up on that last point? You said ‘in the absence of a reader’, and the Chair has made the point that in the case of obtaining benefits or other services you would have the reader. So what function or purpose would the card serve, apart from being an identity card, if it is not used in conjunction with a reader?

**Federal Agent Drennan**—I cannot speak for what people may use the card for—that is the difficulty. For instance, people use a driver's licence. It is a licence to drive, but what else might a person use a driver's licence for? I am trying to be practical here—

**CHAIR**—I understand that.

**Federal Agent Drennan**—A card will be issued for a specific purpose. The card belongs to an individual. What I want to ensure is that, from a law enforcement perspective, we minimise the opportunity for the use of that card to be exploited by any person for any particular reason other than what it has been issued for.

**Senator STOTT DESPOJA**—Thank you for addressing some of the specifics of the legislation. Can we go for a bit of a walk through section 57—you brought it up—and the issue of authorised person? Can you outline for the committee your concerns? My understanding is that in sections 5 and 72 of the bill you get a definition of what an authorised person is. Are you suggesting that the criteria for an authorised person are insufficient for law enforcement purposes? My understanding from your comments was that you were nervous or worried that AFP involved in copying a document might be in trouble because they were not authorised people or may not have the requisite permission.

**Federal Agent Drennan**—Yes, it gets back to the operational activity that we may be involved in. There may be instances where we need to record details of a card. We would need to leave the card with the individual to ensure that services are available to them. But if there needs to be some inquiry made in relation to that person's possession of the card, or some activity which may have been conducted with that card that is the subject of a criminal investigation, then we would need to take some details of that. My understanding of the bill is that if we were to do that without being authorised then we would be committing an offence against that provision.

**Senator STOTT DESPOJA**—Just on the practical side, apart from the function in terms of being in a position to photocopy the card in the first place, would you not be covered by section 72, where it says:

72 Authorisations by the Secretary

(1) The Secretary may, in writing, appoint:

(c) an individual prescribed by the regulations;

to be an authorised person for the purposes of a specified provision 2 of this Act in which the expression "authorised person" occurs.

Is that not sufficient for your purposes? The reason I bring that up is because yesterday we had evidence about section 57 from the Acting Privacy Commissioner in Victoria which actually presented the opposite view, and that was that these provisions and the definition of authorised person was so broad ranging that it invited a number of privacy concerns and potential privacy breaches. What makes you think that you would not be covered by that or that that is insufficient for your purposes?

**Ms Hanks**—Section 72 would give us the scope to be an authorised officer, but our concern is that when we spoke with DHS it was not confirmed that we would be under that power. We were just concerned that section 57 would still apply to us and that our operational

needs might mean that we need to be able to copy a card or copy details at certain times. We wanted to raise section 57 as a concern because we were not sure that the authorisations by the secretary would cover the Australian Federal Police.

**Senator STOTT DESPOJA**—Let us find out what your solution is for dealing with that. Is that to enshrine in the legislation a definition of authorised person that includes the AFP, or is it more broad ranging than that?

**Ms Hanks**—Yes, that could be a solution. We would have to consult further with the Attorney-General's Department and DHS on this issue, but that looks like a solution that would work for us.

**Senator STOTT DESPOJA**—This gets me back to the point about functionality or role and responsibilities. That would make it very clear that the AFP would have a role or, indeed, arguably, an exemption in this legislation when it came to copying documents or accessing information. How does that sit with the submission that you have given us this morning and the evidence that we have had from the department that you would not necessarily directly access information? I know that that was relating to the register, but you are actually talking now about access to the card and what you could do with it. Are you talking about access to the register and the information on that?

**Federal Agent Drennan**—I am not too sure that that is what we said this morning. Our access to information is very similar to that which Mr O'Sullivan talked about. He said that it is for the legitimate purposes of our role and function. We rely very much on the Privacy Act and the privacy principles, in that where there are legitimate reasons for other agencies to disclose that information to us then they can do so. That is what we rely upon for the gathering of information. I am not professing here that our ability to copy a card would be translated into a carte blanche ability to do whatever we like with cards. It would be for our legitimate law enforcement purposes. Again, if there were to be an amendment to that to provide us with the ability to copy the card, then it would be only allowed in the execution of our duty.

**Senator STOTT DESPOJA**—Can you perhaps explain what the execution of your duty might be in practice? Might you want to copy the card if someone is caught trying to put a card through a reader inappropriately or if someone is drink driving? The AFP role is slightly different, but I am just trying to work out in what circumstances would the card need to be copied or accessed for whatever reason by you.

**Federal Agent Drennan**—There may be a number of reasons. In relation to a criminal investigation it may well be that the person's card has been used and they say that it was used unlawfully but not by them. In short, we would need the details of that to conduct the investigation. It may well be that we find a number of cards at a location and there is doubt in relation to the person's authorisation to have them, so we might need to take records of them to check on the validity of them or the validity of those people having access to them. It may well be as with the Privacy Act now where there are threats to life or in disaster situations. A very good example is probably with the London bombings, where they took the details off a whole range of identifying documents that people had from the scene of the bombings and they used them to try to identify those people who were victims. Without an exemption there,

it would be unlawful for us to actually record the details of the cards of people who were victims. There are a range of reasons, but it falls very much in that broad category for us to perform our functions.

**Senator STOTT DESPOJA**—I suspect we are going to have to chase this up with A-G's because I think there is a strong argument that the Privacy Act covers you, but I can see your point in relation to section 57. But I suspect some of my colleagues might want to chase up some of those other issues, so are you willing to take questions on notice, specifically in relation to fraud figures?

**Federal Agent Drennan**—Yes.

**Senator STOTT DESPOJA**—Before I give other people a go, do you have a comment on sections 45 and 46, which deal with offences? In particular, do you think they are practical? Do you envisage that they would be enforced and enforceable? I am wondering if the AFP budget has been suitably increased to deal with the possible prosecutions that may result as a consequence of people breaching this legislation if it becomes law.

**Federal Agent Drennan**—Matters which are referred to the AFP are obviously dealt with under what we call our case categorisation privatisation model, CCPM. That deals with a range of factors but essentially it deals with the seriousness of the offence, the impact upon the referring agency, the impact upon the community and, in matters where there is a monetary value, what the monetary value may be. It would be on a case-by-case basis whether or not the AFP would be involved in the investigation. What we do with some agencies—and I think Centrelink is involved here—is that we agree to do a number of investigations during the year and they have a say in the selection of what those cases may be. Without saying yes or no to whether we would investigate it, there is a framework around which we do accept matters for investigation or, alternatively, we provide advice to the referring department on how they may deal with the matter. Again, there is a range of agencies which have their own investigative capability as well.

**Senator STOTT DESPOJA**—I am not exactly sure which agency I should go to first if someone orders me to produce my access card and I say, 'I don't have to; I am taking you to the law.' I am not sure who is going to be responsible, but we had evidence yesterday suggesting that that kind of prosecution may not necessarily be either a priority or easy to prosecute. I guess we will wait and see.

**Federal Agent Drennan**—Again, we rely there on the *Commonwealth Fraud Control Guidelines* which stipulate that matters which are of a serious and complex nature would be referred to the AFP. But they also make provision for other agencies to do their own investigations there.

**Senator FIFIELD**—Mr O'Sullivan, you said earlier that there would not be any new information available to ASIO as a result of the creation of the access card. I think that is broadly what you said. The chair asked whether it would indeed be easier for ASIO to obtain information, and you said that, while it may well be, that was sort of beside the point. Accepting that, whether it is hard or easy for you, you can still get access to the information and no additional information is available to you. In relation to the photographs, however, there would be millions of Australians who do not currently have any photographic record of

themselves held by a Commonwealth agency. There are people who have passport photographs, there would be ADF personnel with photographic ID, there would be a number of Commonwealth employees with photographic ID, but apart from those sorts of categories another class of person who would have a photographic record held by the Commonwealth does not immediately come to mind. Just in relation to your comment that there would not be any new information available to ASIO, would it not be true that there would be millions of Australians who would have a photographic record held by the Commonwealth government for the very first time and that that would indeed be a source of new information for you?

**Mr O'Sullivan**—That could be true but, as I tried to make clear in my opening statement, we come at the issue from the other end of the spectrum, as it were. We start off from very defined functions under our act and under the guidelines that we are issued by the Attorney-General and under internal protocols that we develop pursuant to those guidelines to ensure that, where ASIO investigates people, there is a credible and defensible basis and, as I said to you, a fully accountable basis to the IGIS about why we are doing what we are doing. In that case, if we have such credible information and we have such specific authorisations and we have complied with those guidelines and protocols, we can then investigate people. The way we carry out those investigations, as I said, is difficult to discuss freely in an open session like this. Nevertheless, it is the case, as you suppose, that on some occasions a photograph would be of assistance. But, to come to your question, it may be true that millions of Australians do not currently have any photographic record that is easily or directly available to the Commonwealth government, but that is not to say that there would not be other ways of obtaining a photograph of them if they were within the category that I have just described. The reason I was having difficulty with your earlier question and your question now is that you are asking me to give you an answer, or to explore an area of hypothesis, and it is a bit difficult because the nature and procedures that we follow do not suppose that we will have a photographic record of 20 million Australians. If you did have that record, I do not dispute that there could be cases where it could be easier, but there could also be cases where it would be just as easy to get it from other sources that I somewhat cryptically described in my opening statement. I think the point that you are bearing on is not an easy question to answer in a straight-up yes or no fashion.

**Senator FIFIELD**—I appreciate that, but I am just coming to your statement that there would be no additional information available about Australians to ASIO as a result of the creation of the access card. I am just putting that I think that that does probably need to be slightly qualified, that there would indeed be at least additional photographic records of Australians who previously did not have a photographic record with the Commonwealth potentially available to ASIO.

**Mr O'Sullivan**—That is true as you describe it in those terms, but what I was trying to say to you is that it could be that such photographic records exist in other contexts which would be just as easily accessible to ASIO—

**Senator FIFIELD**—There might be driver's licences or—

**Mr O'Sullivan**—That is right.

**Senator FIFIELD**—I am not passing a comment as to whether that is a good or a bad thing; it is just important to have that on the record. Does ASIO think the creation of an access card is a good thing or a bad thing, or is ASIO agnostic in this regard?

**Mr O'Sullivan**—I think the answer is that in a formal, legal sense it is not an issue for ASIO to advise the government on whether or not it should have an access card or not or—to take up the point that was raised by the chairman earlier on and by Senator Stott Despoja too, I think—whether there should be, say, a national identity card, for argument's sake. That is not an issue for ASIO. The only additional comment that might be of any use to the committee is to say, however, that from an ASIO perspective there would be a benefit in a broader national sense in having the highest possible achievement of identity security as was achievable compatible with other national goods such as civil liberty balances and so on; that it is a national debit if we have very high levels of fraud and if we have very low confidence in the degree of identity security that exists in this country. Although it is not really strictly an ASIO issue, my broader sense as director-general of security is that the highest degree of confidence that we can achieve, compatible with the other balances that the committee has to consider, is a desirable outcome, and moving towards that outcome is a good thing for the nation.

**Senator FIFIELD**—Thank you.

**Senator FORSHAW**—I wanted to follow up on the issue raised by the Chair and Senator Fifield, but I will make one comment first. There was a reference by Federal Agent Peter Drennan to a photo licence. I think that is applicable across the country; across all states and territories the licence has a photo. I would make the point that the purpose is different. A driver's licence is immediate recognition for the officer when the person is engaging in the activity of driving. You can argue that is why there is a need to have a photo on the licence. The Chair has raised the issue about whether one is needed on the access card. I am having some difficulty following this logic. If there are no additional powers for ASIO and the AFP—powers that they do not already have—and there are no potential new sources of information available, only that they might be more readily accessible, how can the statement be made that this card will significantly reduce fraud?

A figure of \$1 billion to \$4 billion has been bandied about. I can understand the argument about its impact on fraud—that is, if you bring data together and put a chip on the card you have a much more up-to-date method of checking than currently exists with the Medicare card. But I do not see how one can argue that an access card that has a photo and a signature on it, in addition to the information on the chip, is going to be such a significant improvement that we will substantially reduce fraud on the Commonwealth. Can you give me some more information as to why you think it will? It has been put that a large amount of the fraud that exists, say, in Medicare is not through identity fraud; it is actually through overservicing and so on.

**Federal Agent Drennan**—The figure quoted in quantifying fraud was about identity fraud as a whole and not just in relation to fraud on any government agencies as a result of false or assumed identities.

**Senator FORSHAW**—That does not necessarily help your argument. I appreciate your point, and I am sorry if I misunderstood you earlier. This card is not supposed to be available to other than Commonwealth agencies.

**Federal Agent Drennan**—It replaces the current Medicare card, which we see is exploited considerably, in relation to assisting in establishing identities and, in many cases, fictitious identities. If you remove that card from the equation, you have a replacement card that is far more robust in its technology to ensure that it is not misused through someone else using/manufacturing them or whatever other crimes people might commit. That is where it will assist considerably in reducing the impact of identity fraud.

**Senator FORSHAW**—Let me put this to you. If I was sitting over there, I could argue that you can achieve that objective by revamping the Medicare Card on its own and doing the same with any of the other cards that might need to be updated. Medicare seems to be the one that most people focus on here, as distinct from Veterans' cards or others; Medicare has a universal application. I still end up in the same dilemma. I understand it is not a policy position—and it is not your decision as to why this policy has been implemented—but you could achieve the same objective without limiting and perhaps enhancing the ability of ASIO or the AFP to investigate these things by rolling out a streamlined modern-day technologically suitable Medicare Card without a photo.

**Federal Agent Drennan**—We would rely upon our experience, and very much from the law enforcement perspective. Identity crime manifests itself where there is the ability to obtain documents and use documents that do not have a direct link to the actual holder of the document or they have an absence of technological features, which makes it difficult for people to manufacture or misuse that card. We are trying to put forward our experiences in the identity crime arena. We have a dedicated team in Sydney, which has been working now for three years, specifically in relation to identity crime. We now have teams in Perth, Melbourne and Brisbane, and we very much see that it is not an ad hoc thing in relation to people using false identities or assumed identities to commit crime; it is organised. A whole range of people and significant expertise are involved in this. From the perspective of trying to ensure that government services are delivered to the right person and opportunities for people to exploit a card permitting access to services are minimised, the more robust its security features can be, the better.

**Senator FORSHAW**—Will this card be more advanced than what is available now with a passport? I am speaking in a technological sense here.

**Federal Agent Drennan**—I am sorry, but that is not my area of expertise. I know there are a number of security features. Obviously the more security features that can be used in combination, then the more robust is the security of a particular document.

**Senator NETTLE**—I have a number of questions. I will start with one comment that we have heard a couple of times during the inquiry. There is concern amongst the community that a central database, which is proposed as a part of this, would be like a honey pot for people who are seeking to engage in some form of identity theft or identity fraud. Is that an area that either of the two organisations is concerned about?

**Federal Agent Drennan**—Sorry, your concern is?

**Senator NETTLE**—We have had a submission to this inquiry saying that, given this legislation proposes to create for the first time a database with biometric photos but with a range of other personal information about people, this is like creating a honey pot for people who want to engage in identity theft or crime; hackers or whoever will try to get in to access that information. The information is sensitive personal information, and one imagines it could be used to assist people to engage in identity fraud. Is that a concern that either of your two organisations has?

**Federal Agent Drennan**—We have had discussions with Human Services and it would be best to direct this question to them. They are the ones setting up the database and the security features around it. They have not raised those concerns with us in the discussions that we have had in the various working groups. My understanding is that is not a concern to that extent.

**Senator NETTLE**—They have not raised that issue with you. Are you aware of the AFP raising that issue or concern with them?

**Federal Agent Drennan**—I would really need to take some advice on that. I do not have that with me.

**Senator NETTLE**—That is fine. I notice in the department's submission that AFP and ASIO are listed among the groups consulted with. I have some idea of this from Senate estimates for the AFP, but can you outline your involvement to date in the development of the access card? I am also interested in what you envisage as your ongoing involvement with the access card?

**Mr O'Sullivan**—From ASIO's point of view, the answer to your question is partly the comments I made in my statement. But at a more technical level the answer to your question is that there has been a Commonwealth Reference Group on Identity Security. I note you are having evidence from the chairman of that group later today. If I understand it correctly, that consists of 31 Australian government agencies, and was formed to ensure that across-government initiatives at a Commonwealth level were aligned in their approaches. ASIO has been a participant in that process.

**Senator NETTLE**—That process and the other—

**Mr O'Sullivan**—I do not know whether the chairman intends to continue that group after the access card becomes available.

**Senator NETTLE**—Is that the only avenue that ASIO has had an involvement in?

**Mr O'Sullivan**—Yes, in respect of the access card, that is my understanding. I will check on it, but I do not think there is any other.

**Senator NETTLE**—I just thought I would ask, because you are on the list of people they have consulted with. I do not know whether there is any more information from the AFP about your involvement other than some that you have provided already in the past.

**Federal Agent Drennan**—We have participated in the legal working group, the security working group and the implementation working group with the Department of Human Services. We have also had a number of additional meetings with the Department of Human Services on specific law enforcement and security issues. We were consulted on the legislation prior to its exposure and we were also consulted on the government's submission

to this Senate inquiry in relation to the access card. We have had some ongoing discussions and involvement with the Department of Human Services in relation to the access card.

**Senator NETTLE**—Mr O’Sullivan, you mentioned in your earlier comments the requirements in terms of ASIO’s access to information held by the Commonwealth. I thank you for the reference to the guidelines on your website. You indicated that ASIO did not need a warrant to access it. Can you elaborate on that? From the estimates *Hansard* that you were referring to, there seems to be a discrepancy in terms of the response from the Department of Human Services?

**Mr O’Sullivan**—I think you are right. Yes, I think there was a discrepancy. If I have been advised correctly, the legal position is that because of the provisions of both the ASIO Act 1979 and then the exemption provisions located in the Privacy Act 1988, ASIO does not require a warrant. Some of the comments at one stage before the estimates committee may not have accurately reflected that position.

**CHAIR**—You would not need a warrant to have access to the photographic database?

**Mr O’Sullivan**—That would be correct; as we do not need a warrant—

**CHAIR**—I am glad that is on the record. I wonder if people know that.

**Mr O’Sullivan**—I do not know what people know or do not know.

**CHAIR**—That is on the record.

**Senator NETTLE**—In terms of the evidence that we received previously, perhaps I will read it out for you.

**Mr O’Sullivan**—If you would, please.

**Senator NETTLE**—At estimates on 16 February, the Secretary to the Department of Human Services stated:

The Australian Federal Police will be required to have a search warrant to access the database.

She went on to state:

But if they are responding to a threat to life, a threat to injury, an investigation of missing persons, a disaster victim identification or an emergency response then clearly in those circumstances we would be trying to facilitate their faster access.

I took from that she was saying that normally there would be a search warrant but in those circumstances not. Is that your understanding of what kind of access you would have to the database as well?

**Federal Agent Drennan**—As I said before, we would rely very much on what is outlined in the Privacy Act and the information privacy principles as to the basis on which agencies can disclose information to us for our purposes. The Secretary to the Department of Human Services was accurate there except that there is an additional one concerning the enforcement of criminal law. Principle 11(1)(e) states:

... disclosure is reasonably necessary for the enforcement of the criminal law or enforcement of a law imposing a pecuniary penalty, and protection of public revenue.

**CHAIR**—To have access to this photographic database would you need a warrant?

**Federal Agent Drennan**—It would depend on the nature of what it was for.

**CHAIR**—Can you give me some examples?

**Federal Agent Drennan**—If we were seeking evidence to put before the court there is a likelihood that we would proceed with a search warrant. It is a bit difficult, because the bill is still a bill and it does not cover off on those aspects. In the current situation, with Centrelink and Medicare we rely upon the provisions in the privacy principles and also the act. There are occasions when we need to use search warrants as well. Without having specific legislation and what it says and does not say, there are a range of reasons why we would need to have access, as outlined there, and it would depend on those circumstances as to what method we would use to get that.

**CHAIR**—It would not need to be a national security issue to have access to a national biometric photographic database? You would have access to that even if the matter were not a matter of national security, would you not?

**Federal Agent Drennan**—If there were a specific purpose. It is not just that, if we had a whim, we could have a look there.

**CHAIR**—I understand that.

**Federal Agent Drennan**—The roles, functions and the enforcement of the criminal law are what we would be relying upon.

**CHAIR**—But you would not need a warrant, would you?

**Federal Agent Drennan**—Again, it depends on what purpose it is for.

**CHAIR**—It would not need to be a matter of national security, would it?

**Federal Agent Drennan**—The national security would be a matter for—

**CHAIR**—Would it need to be a major crime?

**Federal Agent Drennan**—Again, it depends on why we needed it. If there were a major crime and someone's life was at threat, we certainly would not be going down the road of a search warrant.

**CHAIR**—The committee will investigate what the precise powers are. I think we will have to dilate on this.

**Senator NETTLE**—To assist with my understanding of the circumstances, there is an APEC conference coming up in Sydney. One imagines that protest activity would be part of such events wherever they occur. Perhaps I should use a more generic example. Would you require a warrant in those sorts of instances to access the database?

**Federal Agent Drennan**—Because it is hypothetical, I am not sure what offence we might be investigating and what the circumstances are or whether we are seeking evidence in relation to a prosecution. It is quite difficult to be specific and say yes or no in relation to that.

**Senator NETTLE**—In terms of guidance for the committee in understanding that, the wording that we have from the Department of Human Services is:

... if they are responding to a threat to life, a threat to injury, ... missing persons, disaster identification or emergency response ...

Does that provide us with an accurate essence of the sorts of instances where the AFP would not require a warrant? That is what we are working on so far in answer to that question. I wanted to check with you if we are on the right path in understanding that?

**Federal Agent Drennan**—Yes. However, the other aspect is in relation to the enforcement of the criminal law.

**Senator NETTLE**—Principle 11 in the Privacy Act?

**Federal Agent Drennan**—Exactly.

**Senator NETTLE**—Principle 11 talks about a criminal law investigation. That would be any investigation. The principle is:

... disclosure is required or authorised under the law.

And then:

... disclosure is reasonably necessary for the enforcement of the criminal law.

That exemption in the Privacy Act is not specific to instances where there may be threat to life, threat to injury or the definition we have been given already. If you are working off an assumption that your access is determined by the Privacy Act, my reading of the Privacy Act is that you are exempt from the Privacy Act in any criminal investigation. Tell me if I am reading it wrong, but that is my understanding.

**Federal Agent Drennan**—Firstly, as I understand it, the access provisions of the bill have not been finalised, so we are hypothesising to that degree. The privacy principles are circumstances in which information can be disclosed. The onus reverses there; we can make requests in relation to those matters, and the department to whom we are making the request considers against the privacy principles whether or not they will disclose information to us.

**Senator NETTLE**—You mentioned earlier the issue around clause 57 of the bill and your concerns there.

**Federal Agent Drennan**—Yes.

**Senator NETTLE**—The committee has had drawn to it on a number of occasions that within the legislation there is an exemption from Crown prosecution of Commonwealth and state officers. Is it your understanding that that exemption from prosecution would apply to both of your organisations? Perhaps you are not in a position to answer this—and I can ask somebody else—but because it is Commonwealth and state and territory officers I would imagine state police as well would be exempt from any prosecutions proposed in this bill. Is that your understanding of the Crown exemption in this bill?

**Ms Hanks**—What section is that?

**Senator NETTLE**—I will just try to find it. I do not have it in front of me.

**CHAIR**—You continue, Senator Lundy, and we will come back to Senator Nettle.

**Senator LUNDY**—Yesterday in Melbourne we heard evidence from the Electronic Frontiers association about the prospect of tracking the use of the card. The scenario was that every time someone used their access card, whether to claim concessions or any of the private uses that people may have installed on their card in the future, that would be able to be

tracked. The evidence went along the lines that the audit log of use could either be stored on the card itself or on the central database and updated whenever it was used with the appropriate software. Does the AFP or ASIO have any view or knowledge about the tracking capability of the central database or the technology underpinning the access card, and is that something that you have considered in your activities in enforcing the law?

**Federal Agent Drennan**—I am not aware of the evidence given yesterday and what that revolved around. Likewise, I do not have the technical knowledge in relation to the capabilities of the system. That is probably best directed towards the Department of Human Services. I assume they would have that knowledge.

**Senator LUNDY**—One of the problems with this inquiry is that there is not a lot of detail about the technical operation of the software and the hardware and how it all interacts. Perhaps I can ask Mr O'Sullivan: does that tracking technology have particular relevance to your organisation and would you be seeking that capability within this system to help you do your job?

**Mr O'Sullivan**—I would have to take some technical advice but, as I said in my opening statement, one of the things that is already clear is that ASIO would not have direct access to the databases that underpin this card if they come into existence. I suppose, since we would not have that direct access, any so-called tracking capability would probably not be relevant, but I would need to get some technical advice on that.

**Senator LUNDY**—The other issue is the powers that exist with respect to the telecommunications system. We are not aware of the communications between the various parts of the computer network; the telecommunications system may well be used for transferring data or the bit stream of information relating to this card. Are you able to advise this committee whether ASIO is communicating with the Department of Human Services about that kind of surveillance or tracking of the card's use via the telecommunications system, where you do have extensive powers?

**Mr O'Sullivan**—I am not aware of that, but I would repeat the point I made earlier on. If there were legitimate reasons from a national security/counter-terrorism point of view that required us to try to obtain that information, we would do so and we would have done so at any point in the past irrespective of whether this particular card comes into existence. I do not have any reason to believe that the proposition that the existence of this card somehow increases those things has any validity. I will check and get technical advice on it, but the answer broadly to your question is that that is not the case.

**Senator LUNDY**—I know that my colleagues have asked this in different ways; I will have a go as well. As an organisation, to what extent are you able to insert yourself in the discussion of the design of the technology that is going to deliver this system, both in the construct of the database and how it is connected across the country?

**Mr O'Sullivan**—As I said in answer to an earlier question, we were part of the 31 Commonwealth agencies who participated in the reference group and, as I said, the chairman of that group is coming to speak to you later today so you will be able to get a more precise understanding from him. My understanding at this point is that there has not been any ASIO consideration of the particular technologies and that those matters are all matters that are

before the Department of Human Services. We have not had any particular input into the choices that they make.

**Senator LUNDY**—We are going to have some sort of communication with DSD on their role in authorising the security aspects of the system, but what liaison do you have directly with Defence Signals Directorate in their role in determining and setting the parameters for the levels of security applying to this system's architecture?

**Mr O'Sullivan**—That is a broader question about Commonwealth security issues. The answer is that we have a very extensive interaction with DSD about how secure systems for the Commonwealth—and, more generally, if states and territories follow Commonwealth guidelines—are established. An ongoing function of ASIO is to be a substantial contributor to the formation of Commonwealth standards on security. One of our statutory functions is to provide guidance to the Commonwealth community generally about the observation of security requirements. In the particular case that you mentioned, we have a constant interaction with DSD to ensure that the standards are maintained in view of evolving technology and so on.

**Senator LUNDY**—We heard evidence from CSC—Computer Sciences Corporation—which acknowledged they were tendering and could not say too much about the tender process. One thing we did ascertain in evidence from them and others is that the security features of whatever system wins the successful tender will not be assessed until after that decision has been made on who gets the job. That implies that these things will not be fully resolved until after a tender is in place. Can you tell the committee if both ASIO and DSD's roles in determining the levels of security and the quality of security can still be applied effectively even if the contract has already been let? The Commonwealth, at least in my observation, has left that open to a degree. I am not saying that it would remain open, because there is clearly a procedure there. But it has been left open as far as the contract requirements go.

**Mr O'Sullivan**—I do not have any particular knowledge of those administrative arrangements, but they would be implemented by the Department of Human Services. If the card comes into being, for implementing those databases and the development of the software there would be a generic requirement to comply with Commonwealth security standards.

**Senator LUNDY**—There was some discussion before about the levels of fraud with respect to Medicare cards per se. Are you able to advise the committee on the degree to which the databases that currently support the Medicare card, for example, the HIC computer databases and other participating agency databases, come under attack from hacking and so on? I am not really talking about the human issues of human errors and crimes but really the technological crimes in hacking. I am aware of the ISIDRAS reporting system, which rates different attempts to hack at different levels or different security breaches. My question is: can you provide the committee with information on the number of attacks that have occurred on participating agencies databases and to what ISIDRAS level those attacks have been rated?

**Federal Agent Drennan**—The short answer is no. I would qualify that on the basis that attacks on the databases of those agencies would not necessarily be referred to the AFP. They may well be, and we would provide assistance or advice either through ourselves or through

the Australian High Tech Crime Centre, which is hosted by the AFP and provides significant support to other agencies in that sphere of technological attack. The High Tech Crime Centre sits within my functional responsibilities. I am not aware of any significant attacks on agency databases that have occurred from a criminal perspective. There may have been attacks of which the agencies have not advised us, but I would be surprised if that were the case. Obviously, those agencies would be able to provide the definitive response there.

**Senator LUNDY**—I will certainly be pursuing it with them. There was a Joint Committee of Public Accounts and Audit inquiry into the integrity of Commonwealth information. It did make a recommendation that the AFP ought to be advised of all significant attacks of a certain level or higher. That recommendation was accepted by government, so I would be really concerned if the AFP were not being notified as a matter of course of any level of attack on these systems.

**Federal Agent Drennan**—As I said, it would come to the AFP either directly or through the High Tech Crime Centre. I am not aware of any, so all I can take from that is that there has not been a significant one that has been reported to the AFP.

**Senator LUNDY**—It would be helpful if you could take that on notice and go back to the High Tech Crime Centre and ask them if they have got any statistical analysis of attacks on the agencies involved with the access card.

**Federal Agent Drennan**—Certainly.

**CHAIR**—Do you have some more questions, Senator Nettle?

**Senator NETTLE**—Yes, Chair. I will probably ask if I can put some on notice because we are limited as to time. I refer to the Crown immunity clause in part 1, division 5, section 9 of the bill. It is about the act binding the Crown. The second part of it says that the act 'does not make the Crown liable to be prosecuted for an offence'. I want to ask you about that because your comments previously about section 57 seemed to imply that you thought that the AFP could be caught by that. I want to ask both agencies—and I think this is pretty clear—if you understand that, as officers of the Crown, you would not be liable to be prosecuted under that offence.

**Ms Hanks**—We would have to take advice on that because from previous consultations with Human Services we could not receive any certainty that the section 57 offence would not apply unless we were clearly authorised under section 72. We would need to take advice on whether that would exactly exempt us from the section 57 offence.

**Senator NETTLE**—I would appreciate it if you could let us know about that. Mr O'Sullivan, do you have anything to add in relation to that?

**Mr O'Sullivan**—My legal advice is that ASIO is exempt from the application of the Privacy Act.

**Senator NETTLE**—I accept that absolutely. My question relates to the exemption in this bill for Crown agencies. Presumably that would apply to ASIO as a Crown agency?

**Mr O'Sullivan**—Yes.

**Senator NETTLE**—We were having some discussion before about data matching. This is a tricky one as to working out how exactly to ask the question, because you were being asked about the database and what possibilities that opened up. Perhaps one way I could ask the question is this: could both of your agencies provide for us, on notice or now, an indication of how often you currently access the Department of Human Services or Centrelink information?

**Mr O'Sullivan**—This is a question that I thought someone from the committee might ask me. I am not able to answer that sort of question. Even if we had data in that specific sense, that gets too close, from my point of view, to revealing the way we operate.

**CHAIR**—I understand that.

**Mr O'Sullivan**—I cannot divulge that.

**Senator NETTLE**—Yes, I have been trying to find a way here. We were going through a discussion before about what opportunities this database opens up. Your answer to us was that you can already do all of this and another comment that we have heard is that this makes it easier. I am trying to assess that. That is why I am asking the question.

**Mr O'Sullivan**—I understand your line of questioning. That is partly why I put into my opening statement those comments about the overview and oversight mechanisms to which we are subjected and why I referred to the fact that there is a very narrowly defined basis for our activities. We have procedures and protocols in place that I alluded to and guidelines which are available publicly to specify how we have to operate legally, lawfully. I cannot go into the answer directly to your question about numbers or the precise degree of access, but what I am trying to do is answer the question by pointing towards the way in which the system monitors the activities of its secure intelligence organisation.

**Senator NETTLE**—Which is that you can already data match?

**Mr O'Sullivan**—I did not say that but you might infer that.

**Senator NETTLE**—Sorry?

**Mr O'Sullivan**—The answer is that obviously we can already access data from a whole range of sources and, as I have said, the creation of this particular database does not affect that current arrangement.

**Senator NETTLE**—Is there anything from the AFP on that point?

**Federal Agent Drennan**—I do not have those details with me. I would need to take that on notice.

**Senator NETTLE**—Mr O'Sullivan, in answer to a previous question you talked about the idea—and I have never claimed that you have access to this database—of how you can access the information. In the department's submission to this committee, they talked about all the transactions involving the card being logged. Your answer before was that, given you do not have access to the database, you could not track. That statement ignores the fact that actually all the transactions involving the card are logged and that, given your comments that you have already made about your ability to have access to that information, you could.

**Mr O'Sullivan**—There are two separate points. I thought that I understood your question correctly. One issue is: under the provisions of the current bill if it were passed, would ASIO have direct access online to the information? The answer is no.

**Senator NETTLE**—That is right.

**Mr O'Sullivan**—Would ASIO be able to seek information that is in the database in the way that it can seek information that is not currently in that particular database but which is in other databases? The answer is yes.

**Senator NETTLE**—My corollary, and this perhaps does not even involve you, is that, given that all the transactions involving the card are going to be logged and in that database, that answers the question about whether or not you would have access to that. But you have already answered that question. I do have some more questions but I am prepared to put those on notice if you are both happy to take those questions.

**CHAIR**—Please do, Senator. Federal Agent Drennan, before I refer back to Senator Lundy for questions, I refer to a question that I asked earlier that I now ask you to take on notice. Can the AFP provide to the committee details of the research organisations and their research leading to the commissioner's statement that identity theft in Australia costs between \$1 billion and \$4 billion annually?

**Federal Agent Drennan**—We will, Chair.

**Senator NETTLE**—One of mine questions on notice relates to that, because there was a statement, in a media release issued by the Attorney-General and the minister for customs last week, saying \$1 billion, and we have another one from them earlier saying \$1 billion as well. I will provide those references to you to assist you in providing that answer to us on notice.

**Federal Agent Drennan**—That is why I qualified it earlier, saying it is difficult to quantify. That is why there is a range, as opposed to specifics.

**CHAIR**—I do understand that. It is more for our report. We need that research, in a sense.

**Senator NETTLE**—Federal Agent Drennan, so what you are saying is that your definition of identity fraud includes the under-age teenager who is trying to get into a nightclub. I am trying to work this out. If you are talking \$4 billion, the teenager getting into the nightclub with a fake ID is not costing the Commonwealth any money. I accept what you are saying—that you can have a big definition of identity fraud that includes the teenager getting into the nightclub—but I will put on notice those questions about how that adds to the \$4 billion, because it does not seem to cost the Commonwealth anything if under-age kids go drinking in nightclubs.

**Federal Agent Drennan**—It may in a health sense.

**CHAIR**—We will go to Senator Lundy.

**Senator LUNDY**—Apropos of the concern about the facial recognition technology deployed in Customs, does the AFP or ASIO have a comment about the veracity or quality of biometric photographs as a way of identifying people quite specifically, or do your organisations have views that another form of biometric identification would be more effective for serving the purposes of preventing crimes?

**Federal Agent Drennan**—That is an area where there is particular expertise in relation to the technology surrounding facial recognition software. Certainly I am not qualified to answer to the extent of that. I know that is an area where the technology and accuracy are developing quite rapidly.

**Senator LUNDY**—Do you know what the current percentage of accuracy is?

**Federal Agent Drennan**—No, I could not tell you that.

**Senator LUNDY**—Can you, Mr O’Sullivan?

**Mr O’Sullivan**—No, I do not have any technical information to answer that question, but I understand there is an answer to your question. I assume that the people who assemble the technology can bring it to you, but it is not an ASIO issue.

**Senator LUNDY**—Do you have a view on which is the best? Obviously DNA sampling would be the best, but that is not particularly practical for an access card. Is there a rating of biometric testing that you can refer to that shows what is the best?

**Mr O’Sullivan**—My understanding of the question is that it is partly a question of what you want to buy and how much you are prepared to pay. It is just a question for consideration. I think it is the case that if you multiply features you get higher degrees of confidence. If you are satisfied with whatever degree of confidence that biometrics brings you then that is fine, but if you are not satisfied with that then you can think about other things that you want to do to increase your degree of confidence. Then there is the question of what costs of various kind—monetary and intrusiveness—you are prepared to pay for it. I do not have a technical answer to your question. But the broader point that I made before was that the higher the degree of confidence that you have in identity security, the greater the validity of the system that you construct.

**Senator LUNDY**—Thank you for that comment. Can I ask the AFP the same question and can you offer any insights along a similar vein?

**Federal Agent Drennan**—We would very much agree with what Mr O’Sullivan said and would add that law enforcement has relied upon fingerprints for many years. They are a very accurate form of identification. However, when you weigh that up, similarly to your comment in relation to DNA, the practicalities of people having their fingerprints recorded is one which would probably have similar aspects to DNA. The position that we take is that there are a number of biometric identifiers and there is continuing development and research in relation to those. Those biometric identifiers which have been used for longer periods of time and where there has been more research are probably more accurate. Again, I would need to qualify that, but that is the extent of my knowledge.

**Senator LUNDY**—Do you use biometric photographs as part of your kit of systems of identification of alleged criminals? Do you have that capability within your suite of technologies currently?

**Federal Agent Drennan**—We are starting to get into an area of operational issues that I would not want to go to in a public forum.

**Senator LUNDY**—I will take that as a yes, but I take your point. I should say that is a reasonable question given that we are now talking about the deployment of a biometric

photograph system. I think it is important for the public record to know whether the police have the capability of identifying people using biometric photos, so I will ask you again whether you have that capability.

**Federal Agent Drennan**—As you said, facial recognition software is used by Customs in conjunction with passports. Customs and the Department of Foreign Affairs and Trade could probably make some comment in relation to their experiences with that. It would answer your question to say that that technology in relation to facial recognition is available to us. It is a tool which is effective in combating identity crime. The point that I made very early on today was that, when we are talking about false identities, names do not actually mean anything, because that is exactly what is being manufactured or taken over. It is the ability to be able to link a name to an identifier of a particular person that is the greatest tool in combating identity crime.

**Senator LUNDY**—Thank you.

**CHAIR**—Hence the problem with the Medicare card. You have just got a name and number and there is nothing else. Senator Nettle, do you have a quick question?

**Senator NETTLE**—Mr O’Sullivan, you indicated that ASIO is exempt from the Privacy Act. Is that under principle 11 of the Privacy Act or is that somewhere else that I am missing?

**Mr O’Sullivan**—I do not have the act in front of me. I will get you advice on that.

**Senator NETTLE**—Thank you.

**CHAIR**—Senator Stott Despoja, do you have anything further?

**Senator STOTT DESPOJA**—I will put mine on notice to save time.

**CHAIR**—Thank you very much for your assistance this morning.

[10.43 am]

**ALDERSON, Dr Karl, Assistant Secretary, Criminal Law Branch, Attorney-General's Department**

**EVANS, Ms Sheridan, Assistant Secretary, Identity Security Branch, Attorney-General's Department**

**GODWIN, Mr Des, Director, Identity Security Branch, Attorney-General's Department**

**JORDANA, Mr Miles, Deputy Secretary, Attorney-General's Department**

**SHEEDY, Ms Joan, Assistant Secretary, Information Law Branch, Attorney-General's Department**

**CHAIR**—Welcome. Do you have an opening statement?

**Mr Jordana**—The Attorney-General's Department supports the Human Services (Enhanced Service Delivery) Bill 2007 and this department has worked with the Department of Human Services on matters of common interest. One of the Attorney-General's Department's key areas of interest relates to national efforts to strengthen identity security and combat identity related fraud. The identity security enhancements associated with the access card, which include, for example, both a rigorous enrolment process and the addition of a digital photograph, will help protect the identity of cardholders while also reducing the risk of fraud, which is of major concern to the Australian government and the Australian community.

The proposed legislative framework for the access card is consistent with key elements of the national identity security strategy. This strategy places a high value on robust enrolment procedures, strong document security features and the capacity to verify key proof-of-identity documents. Through our work with the Department of Human Services we are confident that the access card embodies these characteristics. An important component of any strong enrolment process is the capacity to verify proof-of-identity documents presented by applicants. As we have indicated on previous occasions, the Attorney-General's Department has been funded to build a document verification service, a DVS, over a four-year period and I am confident that we will be able to deliver a DVS in that time frame. We have also indicated that it should be possible by the time registration commences for the access card in 2008 to verify key Commonwealth documents such as Australian passports and citizenship certificates.

The DVS will enable participating agencies to verify that a document was in fact issued by the document-issuing agency claimed on its face, that the details recorded on the document correspond to those held in the document-issuing agency's register and that the document is still valid—in other words, it has not been cancelled or superseded. It is important to emphasise that the DVS cannot prove a person's identity. Document verification forms just one part of the process of identity verification. Nor can the DVS verify documents issued outside of Australia. Checking of overseas credentials, where required, will be done outside the context of the DVS. We have commenced discussions with state and territory governments about the expansion of the DVS to encompass other key documents such as birth certificates and drivers licences. Part of this discussion will examine the scope for such documents to be

verified by the DVS during the access card enrolment process. However, all parties acknowledge the challenges involved in achieving this within such a tight time frame.

Should the DVS not be available for checking of birth certificates and other state and territory issued proof-of-identity documents by the commencement of the enrolment process, other document verification options are possible. These include the Certificate Validation Service operated by the Council of Australasian Registrars of Births, Deaths and Marriages for validation of birth certificates and the National Exchange of Vehicle Driver and Information Systems, or NEVDIS, operated by Austroads, which contains national drivers licence information.

The proper protection of personal information is a critical aspect of a viable and successful access card scheme. Information on the access card and the register will need to be subject to strict protections to safeguard against unauthorised use and unauthorised disclosure of personal information. The government has consistently acknowledged the importance of seeking to ensure the protection of personal information and privacy in the development of the card and that these matters will be given further consideration in the context of the next tranche of legislation. The Minister for Human Services has asked the consumer and privacy task force to undertake a privacy impact assessment as a prelude to the government's consideration of inclusion of further information and privacy protections in the next tranche of legislation. The Attorney-General's Department is closely involved in providing advice on the development of further legislative protections. The Office of the Privacy Commissioner is also assisting the Department of Human Services.

The department looks forward to working with the Department of Human Services and providing assistance to the consumer and privacy task force to ensure that there are appropriate mechanisms in place to enable individuals to seek merits reviews of administrative decisions relating to the access card. Those review and appeal mechanisms are being developed and, I understand, will be included in the second tranche of legislation. The Attorney-General's Department considers that the processes contained in the Human Services (Enhanced Service Delivery) Bill 2007 represent an important advance in combating fraud against the Commonwealth and will significantly strengthen identity security within the Australian community generally. Thank you.

**CHAIR**—When do you think the document verification service will be up and running in toto? When will it be fully operational? We heard evidence in the past that it would be 2010.

**Mr Jordana**—We expect a document verification system will be operational certainly within the context of this year. As I have said, we are seeking to have the passports online and also citizenship documents online at least in time for the registration process for the access card commencing early next year. The connections through to state and territory documents are not a matter over which a federal government has complete control and we have already begun a dialogue with state and territory governments about connecting those systems up. I am afraid it is beyond my capability to give you a time line in which a full DVS will be up and running. We were provided with funding for four years commencing in the middle of last year, and we are confident that we will be able to deliver for the government within that time frame.

**CHAIR**—A full DVS will not be available on all potential documents that may be given to prove identity until, say, 2010, will they?

**Mr Jordana**—A DVS, a document verification system, as we have been funded to build—

**CHAIR**—Passports and citizenship, I understand; but there are plenty of other documents, aren't there?

**Mr Jordana**—The key ones that people generally talk about are birth certificates and drivers licences. They are the key ones that we will be focusing on in building the DVS. Because of the complexity of the discussions likely with the states and territories who control access to birth certificates and drivers licences, it will be difficult for us to have a full DVS, as you describe it—which is to have all of those documents covered by all states and territories—by the beginning of next year.

**CHAIR**—We have heard evidence to the effect that in establishing identity the problem is always the weakest link. Identification is only as strong as the weakest link.

**Mr Jordana**—That is very true. However, if your reference is to the verification of documents, as I said in my opening statement, there are alternatives to using a document verification system. The major strength of the document verification system is that it is an online, real-time system. It is possible to feed information directly into the birth certificate system or directly into the drivers licence system and achieve verification results as a result of those separate processes. It is a bit more cumbersome, but it is still—

**CHAIR**—I understand that. The bottom line is that the full service will not be up and running by next year, will it?

**Mr Jordana**—No. I will never say never!

**CHAIR**—That is not a criticism. It is just an administrative reality. That is the point. I have one last issue before I hand over to Senator Forshaw. You mentioned the appeal mechanisms and so forth that are coming in the second tranche of legislation. Why weren't they all included in the first tranche? We have heard so many complaints in the evidence that we have taken so far. It is very hard for the committee and indeed for the community to understand what their rights will be under this legislation when we have not seen a bill that outlines those rights.

**Mr Jordana**—That is not really a question I feel very well equipped to answer.

**CHAIR**—I would be happy to ask the minister. That is probably unfair, Mr Jordana, and perhaps I am expressing my frustration.

**Mr Jordana**—I have seen indications from evidence presented—and it was also in the bill itself—for the submission made by DHS that they were attempting to address in the first tranche some of the issues that they had identified as the ones needing early airing. But, as I have said, I am not the best person to answer that question.

**CHAIR**—I accept that, but we are not happy about it. Senator Forshaw.

**Senator FORSHAW**—Are you able to tell me what specific sections of the bill the Attorney-General's Department was involved in drafting? Or did you have an involvement in the entire bill?

**Mr Jordana**—I cannot answer that question off the top of my head.

**Senator FORSHAW**—Let me expand on that a bit. I wanted to ask some questions about the sections that go to offences. I am wondering whether or not the Attorney-General's Department would have had a prominent role in the development and the final drafting of those sections of the bill.

**Mr Jordana**—If I could ask Dr Alderson to help us there.

**Senator FORSHAW**—I would have thought you would have, but I want to know.

**Dr Alderson**—The answer to the initial part of your question is that our department was consulted on the entirety of the bill, and one of the areas where we have a responsibility is giving advice on the framing of criminal offences. So, although the ultimate decision on framing rests with the Human Services portfolio, we certainly were involved in discussions about the framing of those offences.

**Senator FORSHAW**—I presumed you would have been. I would have been surprised if you were not, but I needed to establish that. One of the concerns that the committee has, which has been raised by other senators and in evidence, is that one of the objects of the bill is that this is not to be taken to be an identity card. I have made the point previously that in all my years of experience both in this place and before in looking at legislation, I cannot think of an objects clause in any act where an object has been expressed in the negative. But, to put that aside, there are provisions which state that to require a person to produce an access card as a proof of identity is an offence, and it actually says in the explanatory memorandum that there are severe penalties for that sort of conduct and also penalties for other misuse of the card. What we are interested to know is how realistic that is and what sort of evidence would be required to mount a successful prosecution of a person or a company that required somebody to produce that card. How do you go about it in a practical way and would you be bothered to do that, given at first glance and even after consideration that it may simply come down to one person's word against another? Sustaining a successful prosecution may be extremely difficult and, I would suggest, very rare.

**Dr Alderson**—There are a few pieces of information that I can give you in response to that question. Any criminal offence and certainly this one plays a number of roles. This is even before you get to the question of how you put together the evidence to prosecute the offence. The first is that it is a clear statement of policy and the legal position—that is, it makes it clear that it is not legitimate to ask for the handing over of the card.

**Senator FORSHAW**—I understand that.

**Dr Alderson**—The second is that it is also designed to be a deterrent, particularly with the very strong penalties that have been included here. When criminal law works at its best, you never have to come to the question of how you mount a prosecution because, by clearly articulating to people the serious consequences of breaching it, you deter the unlawful behaviour.

**Senator FORSHAW**—I am sorry to interrupt you. I understand that argument as I have some qualifications in this area myself, but you would appreciate that the constant failure of a

deterrent to work has the opposite effect, and that is that it becomes more honoured in the breach than in the observance.

**Dr Alderson**—The expertise on these specific forms of evidence and how they are gathered obviously rests with the operational agencies, AFP and DPP, but in a general sense there is always a continuum of ‘difficult to prove’ to ‘easier to prove’ and situations where in practice bringing together that evidence might be easier where you have a recurring course of conduct. If you have one complainant and one person denying something, that is more difficult to prove. If you have a number of people complaining of the same circumstances, that mounts up as much more cogent evidence. That would be one illustration of where in practice it would become easier to prove. The second thing in terms of the priority AFP would give to these matters is that they obviously have a whole series of things that they take into account, but one of them is the extent to which parliament has indicated that enforcement of these offences should be a priority, and a clear signal of that is the severity of the penalties that have been proposed in the bill.

**Senator FORSHAW**—I understand that. Are there currently situations where an offence is committed, either in the government sector or the private sector, where a person is asked to produce a particular form of identity proof? In other words, is it an offence to demand that a person show their seniors card, their veterans card or their Medicare card in circumstances other than where it would be seen to be a legitimate use, or is there no such prohibition?

**Dr Alderson**—There is no general offence in Commonwealth law relating to the production of identity documents.

**Senator FORSHAW**—That is what I thought. We have here a situation where we are going to have a whole new regime which relates to a new card that is going to be produced. I would suggest it is going to be produced for every eligible citizen in this country, despite the fact that it is voluntary, because of the very fact that Medicare is a universal scheme for all Australians. We are now going to have a scheme where there is a prohibition and a serious offence committed if someone requires the production of that card, yet we have a history of years and years where it was not an offence to ask a person to provide a particular card as proof of who they were and their status. That is the case, isn’t it? Does that cause some concern to the Attorney-General’s Department, given that you are setting up an entire regime that is based upon it no longer being an offence to require the production of the card, whereas it has been up to now?

**Mr Jordana**—I am not sure that I understand all aspects of your question. Clearly there are a whole range of circumstances in which I am asked as a citizen to prove I am who I say I am. For example, that could be for my bank account, working in the Commonwealth public service, getting on a plane or working in the maritime industry—I have to produce some documentation to prove it.

**Senator FORSHAW**—I will tell you where I am leading this to. I am not necessarily arguing here that it should not be prohibited conduct for persons who are not authorised to require the production of an access card—I am not arguing that at all. I am putting to you two propositions. Firstly, this is going to endeavour to change the behaviour of large sections of the population and, I would suggest, the business community. That in itself is a major issue.

For instance, if a senior citizen goes to the cinema and wants to get a discount on the price of a ticket, they are asked to produce their seniors card. That is quite a common occurrence in a lot of areas of commerce for seniors. It enables them to get a discount on a whole range of things if they produce a seniors card. Under this legislation it is an offence to require them to produce the access card, which can prove that they are a senior. I would put to you that that is a radical change.

I am seeking to understand how the government and the department is going to deal with that new situation. I would suggest that at the moment that is a right that those businesses have and that is an expectation that individuals have—that they produce that card if they want a cheap ticket to the cinema or the zoo or if they want to go to McDonalds to get a free cup of coffee. What I am leading to is that at the end of the day people are going to be asked to produce the card or they are going to produce it and they may not be at all aware of their right to refuse to do it.

**Mr Jordana**—I admit that I am a bit confused with the question. I had understood—and probably the Department of Human Services is best placed to clarify this—that to receive a certain kind of service you would need to produce the card. If you choose not to do so, no-one can force you but you may not get that service. That is as I understand it. The obligation or the requirement that people not oblige you to produce the card stands in its own right, whether it be in those circumstances or in other circumstances.

**Senator FORSHAW**—We are going to have the Department of Human Services back this afternoon and we are going to pursue this, but there are two situations. The first is whether or not the cinema is entitled to ask for the production of the card in the first place if it wants to offer senior citizens a discounted ticket; that is, whether they are an approved body that can ask for the production of that card, and I am not sure that they are. Secondly, how do they determine from the card, as there is nothing on the face of the card as we understand it, that identifies that person as a senior? They have to read the card through some sort of electronic reader. That is where the problem starts to arise because of the information that is contained on the chip. I have to say, with due respect, that I am concerned that the Attorney-General's Department, the section of the bureaucracy that should be focused on the legal niceties and difficulties arising out of this form of legislation and so on, should be able to tell this committee in what circumstances it is legal and when it is not legal and what problems may result from it for the citizens who have rights to privacy but also have obligations under this card.

**Mr Jordana**—The kinds of questions you are asking go to a level of granularity with respect to the operation of the access card which is beyond our capacity to answer. I would suggest that you direct those questions to the Department of Human Services.

**Senator FORSHAW**—Is it your understanding in the examples that I have given—let us say a discounted ticket to the cinema, to the one-day cricket or to the rugby league—that it would be legitimate for those organisations or companies to require the production of the access card for that person to be able to prove that they are entitled to get the senior citizen's discount?

**Dr Alderson**—Human Services ultimately can give the best advice on the casting of these provisions, but I think I can give you some more information. One key distinction is that there is no prohibition on requiring somebody to prove their identity or prove something about themselves, such as their age, in order to get a benefit and then to leave the choice to the person as to how they will do that. For example, at my local video store I am required to provide identification to take out a video, but there is no requirement that I produce any particular document, such as a driver's licence or, once this card comes into existence, this card. That is legitimate. What is not legitimate under the terms of this offence is to say specifically, 'If you want to use our service to hire a video from this store, you must produce this specific card.'

**Senator FORSHAW**—I am not talking about general situations. I am talking about specific situations where currently there is a senior's card or a veteran's card which will disappear and be replaced by a single access card. What currently exists is that those specific cards are discrete and they clearly identify the person in that category. The new arrangement does not do that but the new arrangement is also different in that it says that you cannot even ask for it. You cannot say, 'Show me your access card,' whereas you can currently say, 'Show me your senior citizen's card,' in order to get the discount.

**CHAIR**—Your issue is that your entitlement to concessional status is not on the face of the document.

**Senator FORSHAW**—That is part of it. That is not the primary issue. The other issue is that it goes to the issue of function creep and to the whole new regime which is setting up an entirely different arrangement which is going to be new for a lot of people in this country.

**Dr Alderson**—There are two principal parts to our response there. The first is that there is nothing to stop a cinema requiring a person to prove their age to get a benefit. The second is your concern about the functionality.

**CHAIR**—The age is not on the card and neither is the concessional status.

**Dr Alderson**—No, that is right. What I am saying is that in terms of what this bill allows and does not allow, there is nothing to require proof of certain things to get entitlement. It is about producing this card. The second point that Senator Forshaw has raised about the functionality of certain information being on a card and what will replace that is definitely a question best directed to Human Services. They can provide the best advice in terms of the arrangements that will be made to have that functionality or to allow people to access different kinds of information.

**Senator FORSHAW**—I will leave it at that.

**Senator STOTT DESPOJA**—Is the department happy with the idea of law enforcement agencies such as the AFP and ASIO having warrant-free access to the information that may be contained on the register or in the chip? Is that something you have examined? It might be worth explaining now or taking on notice the department's understanding of when access could be warrant-free for those organisations in accessing the information?

**Mr Jordana**—The legislation that governs ASIO's activity is defined by its own legislation, so our views on that are probably not particularly relevant. Similarly, the powers

that AFP have are defined by their own legislation or other legislation that impinges upon those powers, so again I am not too sure that it is something on which we have a view. They exist as they exist, and that is a reflection of government policy.

**Senator STOTT DESPOJA**—You are obviously aware that, because of the legislation to which you have referred, there will be circumstances under which both of those organisations and potentially others will be able to access without a warrant the information that is contained in the register and potentially on the chip as well?

**Mr Jordana**—I heard the testimony this morning.

**Senator STOTT DESPOJA**—I am just making sure that A-G's is aware, because we have had circumstances where there has been some uncertainty previously. I take on board your points about the document verification service and you have given us some alternatives and some other options for validation or checking proof of identity. Has the Attorney-General's Department done any calculations or has it any views on the verification process—that is, the registration process and the application for an access card, which of course can be one and the same? My understanding is that the Department of Human Services or KPMG have calculated that we are looking at around 10 to 12 minutes for the entire process. That is the interview, the photograph and presumably verification of documents. Is that your understanding or do you see it happening in different parts?

**Mr Jordana**—We have had discussions with the Department of Human Services on the registration process. The amount of time that it takes is an issue that they would have concerns about; it has not been the principal focus obviously of our engagement with them. As I understand the enrolment process that is envisaged, the amount of time that the applicant spends when they physically come to register, if that is the way in which they are going to be registered, would depend on how much information had been provided in advance. I gather there will be scope for information to be provided in advance so that some of the checking that is necessary could be done in advance. That will obviously have an impact on how long a person is in the office to go through the application process. I gather there is a relationship between those two. The time period has not really been an issue which is of interest to our department, per se.

**Senator STOTT DESPOJA**—What about the time period in terms of verification of documents and proof of identity? Is that something that you have considered or given advice on?

**Mr Jordana**—Both the Department of Human Services and us are aware of what is in the realm of the possible at the moment. For example, if there is a need to verify a document that is—I mentioned this before—a passport or citizenship certificate, we believe it will be possible by the time the registration process starts to do that through our document verification system. The Department of Human Services is also aware that it is possible at the moment to check birth certificates by bundling information together and presenting that to the certificate validation service, which is the birth certificate system, and have them checked using that route. There is also the route available for a drivers licence.

**Senator STOTT DESPOJA**—You talked about real time in relation to the DVS and obviously passports. How long does doing the validation take through that process? Do you have any idea on average?

**Mr Jordana**—In its own right it is not a long process. It is still an electronic process. This is getting down into a level of technology which is a bit beyond me, but it would require the information being bundled together and then physically transmitted. It can also be online as well, so perhaps the batches can be electronically transmitted as well for validation. As I said, the DVS is an online, real-time system, so it provides the capability of an applicant presenting themselves, presenting the document in question and then for a real-time validation check to be done on that document. That is the strength of the DVS. As I have said, the other systems require the gathering together of information and sending it in batches. That batch is then run through the system and the results come back in a batch lot, are returned to the senders and the information accessed in that kind of way. There is a difference in the way that the information is gained, but it is largely the same information.

**Senator STOTT DESPOJA**—That raises two points which I will not necessarily explore now: one is the time frame involved in that system and the other is any deficiencies with those systems. Obviously I can ask Human Services about their 10- to 12-minute interview, photograph and verification episode because to me that sounds quite extraordinary. It takes longer to get a video card—I don't know, Dr Alderson, how long it took you to get your video card—so to get an access card in that time seems extraordinary.

**Mr Jordana**—As I have said, and I will not prolong this if you do not want me to.

**Senator STOTT DESPOJA**—I am happy if you have got views on it.

**Mr Jordana**—I had understood that there would be an avenue available to applicants to provide information in advance so that a lot of that work is already done before they front up at the office. That is why it may be possible to achieve a truncated form of that.

**Senator STOTT DESPOJA**—Of course, there is the provision for registration and application for the access card to take place at the same time, but I understand your point about breaking it up. Once the document has been verified, would the department give us its views on an amendment that would prohibit the retention of a document once it has been verified? For example, would it not be preferable, where lawful or practicable, for there to be sighting of documents in relation to proof of identity as opposed to the scanning, copying or whatever of that documentation? What are your views on that and on the issue of an amendment to the legislation that would prevent the storage of such documentation post verification? Why does it need to be kept?

**Mr Jordana**—That is very much a matter for the Department of Human Services. Each organisation has its own particular business requirements. In meeting those business requirements they may or may not require records of documents. That is a question best directed to the Department of Human Services.

**Senator STOTT DESPOJA**—What about the issue of allowing individuals the opportunity and the ability to access and, indeed if need be, the information that is stored about them on the register? Is that something that the Attorney-General's Department has a view on?

**Mr Jordana**—I would ask Ms Sheedy to comment on that.

**Ms Sheedy**—Normal access would be through the normal processes of FOI.

**Senator STOTT DESPOJA**—And the ability to correct information?

**Ms Sheedy**—That is the same, and the Privacy Act has provisions in relation to the correction of records. It would be the same process.

**Senator STOTT DESPOJA**—Does the Attorney-General's Department have a view, for example, if a breach has occurred? That is, if your information for some reason as an individual is accessed in some way—browsed through, copied; in other words, privacy breached—do you believe that individuals should be informed of that breach? Clearly, unless I am wrong, there does not seem to be any legislative protection included in the Privacy Act that would ensure that happens under the access card.

**Ms Sheedy**—Not at the moment, but that is an issue that the Law Reform Commission is considering in its review of the Privacy Act.

**Senator STOTT DESPOJA**—And I hope a few other things. Mr Jordana, can I ask you or your officers' interpretation of section 57? You would have heard ASIO and the AFP talking about their concerns this morning that in relation to copying of a document they were not confident that they would be deemed an authorised person. Obviously flowing on from that was the issue of crown immunity under section 9. Where do you think ASIO and specifically the AFP stand in that circumstance? Are they authorised persons? I thought they could be made authorised persons with the stroke of a secretarial pen, but it would be good to get your views.

**Dr Alderson**—In terms of the first part of your question about section 57, I suppose it stands as a policy choice. The approach this bill reflects is that you authorise on a case-by-case basis, as you say, through the secretarial pen. That is one way that you can frame it, and I think the agencies have mooted another way in which you could do it, which is that you define all officers of an agency as being within without doing that on a case-by-case basis. That is ultimately a policy decision for government as to which way it will be done.

**Senator STOTT DESPOJA**—If not a policy decision, what about an interpretation? That is what seemed to be missing this morning. For example, you had the AFP believing that they were not necessarily covered by section 9. I do not want to misrepresent them, but they were not sure if they were covered by clause 9. Perhaps the Crown immunity one is that we could turn—

**Dr Alderson**—I can be quite precise about the Crown immunity.

**Senator STOTT DESPOJA**—Good; go for it.

**Dr Alderson**—The provision in this bill on Crown immunity is drafted in the same way as virtually every relevant Commonwealth act since Federation. It reflects the position that the Commonwealth has always taken, as indeed have other common law jurisdictions—that is, the Crown itself is not subject to criminal prosecution but that principle does not extend to officers or agents of the Crown. Section 9 in no way precludes prosecution of an officer, for example, of the Australian Federal Police, even the Australian Federal Police Commissioner, if that were ever merited; its only limitation is on prosecuting the Crown as an entity.

**Senator STOTT DESPOJA**—That makes perfect sense to me. It certainly will not make the AFP any happier. The issue of authorisation and ministerial discretion brings up for me the issue of the broad ranging powers available to the minister and the secretary under this legislation. Does the Attorney-General's Department have a view as to whether or not the ministerial discretion and secretarial discretion is proportionate in this bill?

**Dr Alderson**—I do not think we do. We do not view it as a technical or legal question. There are two ways that you can approach a provision of this kind. As I have said, that is through having individual appointments under a provision such as section 72 or defining in a category of people. The resolution of that is that there are pros and cons to either approach.

**Senator STOTT DESPOJA**—Should linkage of databases be prohibited under this legislation? Is there a need for that specific provision or does the department not have a view?

**Mr Jordana**—I am not too sure what you might be referring to. Are you suggesting that there will be a linkage of databases?

**Senator STOTT DESPOJA**—I am suggesting that we do not have anything expressly prohibiting that. I am wondering if it is your understanding that there could be linkages made from one department to another. Is that something that you would consider as protected under this legislation?

**Mr Jordana**—You might have to check with the Department of Human Services on this, but my understanding is that there obviously are databases that exist within the Human Services portfolio. The relationship between those databases within the portfolio is something that I am not sufficiently informed about in order to be able to answer your questions. There are also questions of relationship between databases outside of the portfolio and those within the portfolio. There are quite explicit pieces of legislation that exist currently that do govern those relationships. I am not sure if Ms Sheedy has any further detail on that or if I have answered that adequately.

**Ms Sheedy**—That is the situation at the moment. There is permitted data matching, otherwise data matching is prohibited. I am not aware of any moves to change that situation.

**Senator LUNDY**—On the issue of data matching, for the purposes of this inquiry it would be very useful to have a table which shows what type of data matching is permitted—that is, a general description and the section of the act.

**Mr Jordana**—With respect to this act?

**Senator LUNDY**—No, to other acts. I am referring to the data-matching act and other acts that permit data matching of any type, so that we can get a global picture.

**Mr Jordana**—We will see what we can pull together. Obviously many of these provisions and pieces of legislation do not reside within our department. We are not in charge of them or anything, but we have had occasion—

**Senator LUNDY**—You would be the most likely to have a holistic view.

**Mr Jordana**—We might be able to pull together some information for you. We will see what we can find.

**Senator LUNDY**—Thank you.

**Senator STOTT DESPOJA**—I have another one to put on notice because I realise that I have had more than my fair share of time. What is the department doing to strengthen laws that deal with skimming and other practices that might involve handing over identifiers, particularly online? I would appreciate it if we could get an update on that.

**Dr Alderson**—I can give a very quick response to that. There is a joint Commonwealth-state-territory process of working together to develop some model offences in that area. There has been no public announcement of those because they need to be considered by ministers, but there is work going on which we expect will come into the public domain within a few months.

**Senator STOTT DESPOJA**—Thank you.

**CHAIR**—Senator Nettle, do you have any questions?

**Senator NETTLE**—Obviously you are aware that in the past there have been media reports about the Attorney-General's Department looking at an ID card. I want to ask you about the connection between this and that. Is that something that was dropped, or has it been merged into this? What, if any, connection exists between those two proposals?

**Mr Jordana**—The government made a very clear statement about an identity card a year or so ago and that stands in its own right. There has not been and there is no work being undertaken on an identity card within our department.

**Senator NETTLE**—You have given some information already about when your department started working on the access card proposal, so I am trying to ascertain whether there was any work done on an ID card prior to that announcement that you talked about a year ago which was then handed over to Human Services or which you continued to do. That was my question.

**Mr Jordana**—I can say that we have not handed over any work to do with an identity card to the Department of Human Services, because they are not interested in that. Around the time that the government was looking into the issue, there was some very rudimentary work done on issues relating to the identity card, because the discussions were in the public domain. We were obviously servicing our own minister's interests in that, but we have not done, in the time that I have been with the department, which is now about 2½ years, intensive work on an identity card and we are not doing intensive work on an identity card. We do not see the Department of Human Services access card as being an identity card. We have an interest in it because it is a document that some people may choose to use as evidence of their identity and, from that point of view, we have an interest in it.

**Senator NETTLE**—What happened to the rudimentary work that you have talked about? Did that just stop? Is that still with you or did you hand it over to Human Services? Can you give us any detail about that?

**Mr Jordana**—We have not passed over any work. We have not been asked by the Department of Human Services for any of our work on an identity card.

**Senator NETTLE**—I accept what you say that it was very rudimentary work and that you are not pursuing that. Given the government decision, can you give us any details about what kind of rudimentary work was done and what the status of that is now?

**Mr Jordana**—It was not doing work on, say, scoping what an identity card might look like. We were not involved in that kind of work. It was work around providing the government with information to help them handle parts of the public debate on the identity card. We were not running around scoping what an identity card would look like, because we were given no such instructions by the government to do so.

**Senator NETTLE**—Can you give us an idea of the time frame of when you started looking at that issue? I accept what you are saying that you were doing, but I am just interested in the time frame. I am happy for you to take that on notice.

**Mr Jordana**—Could you repeat the question please?

**Senator NETTLE**—I am just interested in the time frame. You said that there was some rudimentary work done in preparing the minister for the public debate, and I accept that. I am wondering if you can tell us when that work was done. When did you start doing that work and when did it end?

**Mr Jordana**—It would have been the period towards the end of 2005 and the beginning of 2006, because that was around the time that the government made its announcement of its decision to rule out an identity card.

**Senator NETTLE**—I would appreciate it if you could provide more detail on that on notice. I am quite happy about the date of the announcement and therefore the period of time that you were working on it, but it would be appreciated if you could take that on notice.

**Mr Jordana**—Yes.

**Senator NETTLE**—Internationally, when there is debate around an ID card it is often in the context of counterterrorism and security issues. What benefits does the department see that the access card could have in relation to counterterrorism and national security?

**Mr Jordana**—To the extent that within our community, for a variety of reasons, people are asked to establish their identity, to prove who they are and who they claim to be, that obviously has an impact in the introduction of a new document into the community, which people will be using for those purposes. They will have the right to choose to produce that when asked to identify themselves. That, of course, is an interest in the general area of national security, law enforcement or whatever. I am not relating this necessarily to the access card but just more generally. When someone applies for an aviation security identity card, as part of that process they have to prove their identity to the people they present themselves to, who are normally with the airline or the airport. That is also being worked on in the maritime environment. These are under state regimes, but when someone turns up and wants to have a right to either purchase or deal with ammonium nitrate, they need to prove their identity in one form or another. Even when someone opens up a bank account, they have to produce evidence of their identity. In all those situations, we as a department have an interest in seeing the quality of the documents that are produced to verify identity as being as strong as possible. That is our general interest in that area. I am not sure that answers your question.

**Senator NETTLE**—That is helpful. So, you envisage that the access card will be used as a proof-of-identity style card?

**Mr Jordana**—It is up to you or I as citizens to decide when we front up at a bank or go and catch an aeroplane and someone asks us to produce some document ID or something like that what we produce in response to that question.

**Senator NETTLE**—I wanted to ask you about whether the access card would be used in courts, in legal settings. The example that I thought of was for eligibility for legal aid. Would that be a potential use? Could you have a card reader at the court to tell if you can or cannot get access to legal aid? Is that an application that would relate to you?

**Dr Alderson**—The first part is that that is subject to the same rules that everything else is, which is that you cannot specifically be required to produce that card, but you can be required to provide information and choose to use that card to give that information. On the specific example of legal aid, the tests for determining whether someone is eligible for legal aid are reasonably sophisticated and I cannot imagine in practice that producing a card would actually be a gateway to getting legal aid.

**Senator NETTLE**—It will be appreciated if you are able to provide anything more on notice about doing that. I do not understand all the processes that are used to determine the eligibility for legal aid, but presumably it is more information than is in the Centrelink database. It strikes me as an avenue. I am just wondering if that is something that you are interested in. If you can provide more information, that would be helpful.

I want to ask about clause 54 of the bill, which is about an offence for unlawful access cards and, in particular, note that this creates an offence for failing to surrender the card when the secretary asks that the card be surrendered, after suspicion on reasonable grounds that the card was falsely acquired. The penalty is two years. These sorts of offences are not that uncommon in a lot of security legislation. But what if the secretary is wrong that you falsely acquired that? Under this offence, could someone be imprisoned for two years because the secretary suspected that they had wrongfully acquired the card and did not surrender it, even if subsequently you discover that that was an incorrect assumption or suspicion on the part of the secretary? Could you explain how that would work?

**Dr Alderson**—Once the obligation to return the card has been invoked then you have to respond to that obligation even if you think a mistake has been made and you obtained that card legitimately. There are two additional safeguards in there. In clause 54(3)(c) the secretary must inform the person that it may be an offence not to comply with a requirement. That goes beyond the standard criminal offence in making sure the person is conscious of the consequences of not complying. As with any criminal offence, the practical circumstances get taken into account in the decision whether to prosecute and ultimately in the sentence that is imposed. But it is clear the way it is framed that, once that determination is made by the secretary, the obligation is to return the card.

**Senator NETTLE**—My concern is that the card is the thing that gives you access to services. It gives you Centrelink payments and other entitlements and benefits. If the suspicion is that you obtained it incorrectly, this clause comes into effect and you have to hand it over. You are notified and there is a penalty if you do not. Then, whilst a determination is made about whether or not you did have it falsely, you cannot get services. Maybe I have to ask Human Services about this. I do not know if or to what level you have been involved in

framing these offences. This is not about the wording of the offence; this is about the impact of the offence. If the card is about getting services, whilst you are trying to prove that actually it was a mistake you do not get services.

**Dr Alderson**—I think you correctly identify that the issue you are pursuing is one of what happens in practice if you are required to hand over a card and how the services are provided. That is definitely a question that Human Services can best advise on.

**Senator NETTLE**—We had some discussion earlier, during the Friday hearing of this inquiry, about the offence where you are asked to show your access card. A comparison was made with the offence that exists in the New South Wales motor registry bill in relation to the New South Wales drivers licence—whereby it is an offence to ask that the New South Wales drivers licence be provided. There have been no prosecutions, so far as the witnesses who appeared before the committee were able to tell us. Can you shed any light on that kind of offence? This came up yesterday in the context of questioning. Is this offence going to be used? We heard that evidence again yesterday. There is an offence there for the New South Wales drivers licence yet nobody could give us an instance where that has been prosecuted. Can you make any comment on that?

**Dr Alderson**—I repeat that I think the issues you are seeking to tease out are similar to a question Senator Forshaw asked earlier. In essence, I suppose—and I am not saying that this is the case in this offence—some Commonwealth criminal offences are enacted and never prosecuted or rarely prosecuted but still perform a very important role. Firstly, they act as a clear statement of what people's rights and obligations are so that it is clearly set out and people know where they stand and know what they must do. For the vast majority of people in our community, all they need to know is what their obligations are and they always choose to comply with them.

Secondly, for those tempted not to comply, the severe criminal penalties are designed to act as a deterrent so that people are conscious of how serious the consequences of a breach would be. Thirdly, in terms of what would happen in practice, it is very difficult to speculate about how many occasions and in what circumstances people might contravene this requirement. The hope and the objective would be that they never would. In terms of law enforcement resources and when a law enforcement agency would investigate a matter such as this, there is a whole suite of considerations that agencies—the AFP, for example—take into account in making those decisions. One of them is: what has parliament indicated in terms of the seriousness of the conduct by the penalty that is imposed? So should these offences be enacted with the five-year penalties, for example, that are currently imposed for some of these offences? That is one factor that would tend towards law enforcement resources being directed to this.

Ultimately, though, one of the roles that we play and that we contribute to our department in the framing of offences is looking at the question: has this been set out in a way that would be practical to prosecute? That is one of the things we looked at and gave advice on. That has been factored in. These are drafted in the modern Criminal Code style that is meant to make it easy for a court to determine the different elements, whereas in years gone by that was not so clear. It has been designed to make it possible to effectively prosecute. As to the number of

cases that might arise in practice and in what circumstances these would be investigated and prosecuted, it is impossible to speculate because the circumstances might differ so widely.

**Senator NETTLE**—I am interested to hear you say that your advice was that this is practical to prosecute. We heard evidence from lawyers who said, ‘I think this would be really difficult.’ I have caught a lot of planes in the last week and have often been asked to provide my New South Wales drivers licence. I do not think any of those people will be—and nor should they be—prosecuted for doing that. I am interested to hear that your advice is that it is written in such a way that you can prosecute.

**Dr Alderson**—The trade-off always with all of these offences—and this is where it becomes quite a sophisticated exercise—is that, on the one hand, you do not want to make things so simple to prosecute that you are actually capturing a large group of people who really have done nothing wrong and, on the other hand, you do not want to make the barrier so high that you can never achieve a successful prosecution. These are designed to try to strike that balance.

**Senator LUNDY**—It was contended by a witness in Sydney that there was some inconsistency or contradiction between the computer crime laws and the ownership of the card and the proposal that an individual has ownership of the card. I have been trying to work through my notes to find out what the source of that concern was and I cannot find it. So I would like to ask you generally: what are the implications of private ownership of the card as it affects the various laws aimed to prevent computer related crime?

**Dr Alderson**—I believe it was Professor Greenleaf who may have been raising that issue. If I understand it correctly, the point he was making was that if the card is the property of the individual rather than of the Commonwealth then certain offences in the Commonwealth Criminal Code which relate to Commonwealth property, including some of the computer crime offences, would not be applicable. Generally I have no reason to dispute that proposition. Again this is an issue that is probably more one for Human Services, but as a general comment I do not see that in a legal sense as being a significant issue or problem because all states and territories have relevant laws applying to the misuse of property, damage to property and those kinds of things. There are lots of forms of identity, such as my drivers licence, that are not subject to Commonwealth cybercrime laws, but there are other state and territory regimes.

**Senator LUNDY**—How would it work with the Commonwealth part of the chip, where the Commonwealth requires specific information to be contained in that part of the chip? Ostensibly I understand that that information is owned by the Commonwealth. How does that fit into the general proposition that the card is the property of the holder?

**Dr Alderson**—How all of that fits together is probably a question better put to Human Services, because that goes a bit beyond the role we have played in working with Human Services. I think it would be more a question for them as to the specific status of that information. I cannot add much other than to make the general comment that my tax return contains information that I am required to provide to the Commonwealth but the copy of the tax return that I keep in my house is my property.

**Senator LUNDY**—I do not know how much you are involved in this, either, but we have also taken a lot of evidence about the prospect of other services, private and commercial services, being contained on the card. What jurisdiction do you have on the data, content or applications that might be put on the card if they are found to have breached Commonwealth law? It might just be a dodgy service provider that is breaking the law in the provision of some sort of commercial service, but what could you do about it and how would you pursue that, if people have loaded on to their cards applications and data that might break the law—albeit unknown to them?

**Mr Jordana**—That is well beyond what we would be capable of responding to.

**Senator LUNDY**—Aren't these the sorts of problems that occupy A-G's when programs like this are proposed? All the witnesses have said when we have asked a technical question like this, 'You will have to ask A-G's.' We know the department will say that was a question for Attorney-General's. We have nowhere to go as a committee with a lot of these questions.

**Dr Alderson**—One point of clarification is that we are not the legal advisers to agencies or to government. In the current environment agencies, on legal questions about how they frame things, either go to the Australian Government Solicitor or a private law firm. Our role is in giving policy advice in certain areas where we have expertise in how things might work in practice. We give advice in those areas. But a hypothetical question about what might happen in certain circumstances is really part of the policy development process for which the agency, in this case the Department of Human Services, is responsible.

**Senator LUNDY**—Have you at any point been asked by Human Services your opinion on who should own the card?

**Mr Jordana**—It was a government decision.

**Senator LUNDY**—So you provided advice to the minister on that point?

**Mr Jordana**—It was not an issue that we were heavily involved with. We are part of a consultation process on this. There is a secretary's group. There is a deputy secretary's group. A lot of issues that revolve around the development of the card have gone through those groups. To that extent we have been exposed to some of the debates and discussions around those issues. But it has not been an issue that has taken up a lot of our time or that we have really focused on.

**Senator LUNDY**—Can you listen in this evening so that, when the department says, 'That was a question you should have asked A-G's', you can get back to the committee?

**Mr Jordana**—Sometimes there is confusion—I think Dr Alderson referred to it—and a distinction between the legal advice that is provided perhaps by the Australian Government Solicitor or some private law firm and the Attorney-General's department. There is an assumption sometimes that we are providing legal advice where that is not really our role. Sometimes that results from a confusion rather than an accurate depiction of who they should be going to.

**Senator LUNDY**—That is certainly not the impression we have got from evidence so far. It would be interesting. The impression—and I may be incorrect—is that A-G's has been involved in the sort of advice that—

**Mr Jordana**—I can say with a fair degree of confidence at least with respect to that issue—you might have some other examples that we could respond to—that it is not something that to my knowledge we have been heavily involved with. As I say, as part of a general consultation process we have heard the discussions around that issue. It has not been occupying a lot of our time.

**Senator LUNDY**—What role have you had with respect to the contracts for these services and the drafting of the tender or the provisions of the contract that will govern how these services are delivered? We heard a bit of information about the systems integration contract, for example, and we know that the card itself will be a separate contract to that. Have you had any involvement in the preparation of the tender documentation?

**Mr Jordana**—Not at that level, no, not on those types of issues.

**Senator LUNDY**—Would you be involved in, for example, looking at those tender documents or indeed contracts when they are drawn up—

**Mr Jordana**—No.

**Senator LUNDY**—for the purposes of providing advice? So you do not provide any policy advice or advice generally about commercial contracts?

**Dr Alderson**—As a general framework comment, and then Mr Jordana might say something about the specific situation, the policy on contracting within the Commonwealth actually rests with the Department of Finance, and the role of giving legal advice on contracts rests with the Australian Government Solicitor and private law firms. We have no general role in relation to the framing of contracts.

**Mr Jordana**—To the extent that those contracts reflect a manifestation of some policy discussions that have gone on about certain things, obviously—

**Senator LUNDY**—What about liabilities with respect to the contract and the application of sanctions on contractors who fail their service-level agreements?

**Mr Jordana**—No.

**Senator LUNDY**—No involvement?

**Mr Jordana**—No.

**Senator LUNDY**—Thank you, Chair.

**Senator NETTLE**—A lot of witnesses have said to us that there are offences in the bill about copying the information on the surfaces of the card. But they pointed out the view that the offences do not cover the information on the chip or in the database. I wanted to check if that is your view—that they do not cover that. If that is correct, why don't they cover unauthorised access to the information on the chip and the database?

**Dr Alderson**—To the extent that issues arise, obviously we devote a large amount of resources and time to looking into issues that arise through processes such as this committee's hearing. The way it would work in practice is that the Department of Human Services would look first in terms of the policy parameters and framing and then on a question like that they might well seek our advice and input. But that is a discussion that has not happened yet. Obviously, there have been a range of other areas where I have felt confident enough to give a

view about the legal operation of the provisions. That is one that I do not feel comfortable expressing a view on.

**Senator NETTLE**—It was clause 57. The submission of the Australian Privacy Foundation said that that clause does not prevent a person copying or maintaining a record of the chip's unique serial number. They also, elsewhere in this submission—it is not in that paragraph—refer to copying information that is on the card. Do you share that view about what an offence is? I will ask Human Services, but I thought it did relate to the offence, and I was wondering what involvement you had.

**Dr Alderson**—Anything further we could say on this would develop out of a discussion we might have with Human Services. For example, they might have legal advice that they draw to our attention. I do not know.

**Senator NETTLE**—Can you listen out for that one again tonight? We will ask Human Services.

**CHAIR**—Are there any further questions for the Attorney-General's department?

**Mr Jordana**—There is one issue, with your indulgence, that Ms Sheedy might be able to clarify. It arose in previous testimony.

**Ms Sheedy**—Senator Nettle asked ASIO about the coverage of the Privacy Act. You asked whether it was just IPP 10 and 11 that they were outside of. The intelligence organisations are outside the act altogether. They are not bound by the act in relation to their activities and agencies providing information to them are not bound by the Privacy Act. They are outside the purview of that.

**Senator NETTLE**—Is that in the ASIO Act?

**Ms Sheedy**—No, it is in section 7 of the Privacy Act. It is a very complicated section where agencies come in and out. But they are out.

**CHAIR**—There being no further questions of the department, I thank you, Mr Jordana and officers, very much for your assistance this morning.

[12.01 pm]

**CURTIS, Ms Karen, Privacy Commissioner, Office of the Privacy Commissioner**

**PILGRIM, Mr Timothy, Deputy Privacy Commissioner, Office of the Privacy Commissioner**

**SOLOMON, Mr Andrew, Director, Policy, Office of the Privacy Commissioner**

**CHAIR**—Ms Curtis, we welcome you and the other officers. Do you have an opening statement before I call for questions?

**Ms Curtis**—Yes, thank you, I would like to make an opening statement. Good afternoon. I thank the committee for the opportunity to appear. Today I intend to highlight major points from my office's submission and to make a few general comments. I draw the attention of the committee to the fact that I have consistently made the argument that new technologies, including smartcard technology, are not inherently privacy invasive. Technology can be used in ways that are privacy invasive or privacy enhancing. Further, I recognise the potential of the access card system to deliver significant benefits to individuals. A well-conceived and well-designed smartcard system for the delivery of health and social welfare benefits should be able to enhance individuals' privacy. The office understands that a smartcard can be configured to ensure that access to an individual's information is limited to those who have a need to see that particular information. Further, a central point where an individual's identity can be verified may assist in ensuring the accuracy of that information amongst the participating agencies. Finally, a smartcard has the potential to reduce the risk of identity fraud by handling personal information in a more secure way.

To achieve those benefits, my office favours a comprehensive privacy framework to handle the personal information of the great majority of the adult Australian population. A comprehensive privacy framework involves a matrix of measures, including the design of the system, technology, legislation and oversight mechanisms. Addressing all four elements of the framework will help to ensure the best possible privacy outcomes for such a large project. I believe that the access card project is moving forward on all four of these fronts.

This bill addresses the legislative element. I have called for and welcomed a legislative framework to underpin the access card and the systems that support it. I believe that the suggestions I have made in the submission would enhance privacy protections and would also inform the future tranches of legislation that are foreshadowed for the access card. In relation to the specific sections of the bill I make the following comments. Part 2 of the bill deals with registration for the access card. My submission focuses on the need to ensure that only information that is needed should be collected and stored on the register. In particular, I make the point that the access card, including its back-end systems such as the register, is intended to identify an individual to participate in health and welfare agencies. I believe that information that may be necessary for a particular agency to determine whether a benefit is payable to an individual should be kept in the individual's record with that agency rather than attempting to establish a central point from which identity verification and eligibility for benefits and services can be determined.

Given that guiding principle of collecting only information that is necessary for the purposes of the access card rather than particular benefit eligibility and notwithstanding the

arguments made in the DHS submission to this committee, I still consider that individual citizenship, sex or Indigenous status need not be stored on the register. Similarly, I consider that an individual's residential address is unnecessary where the postal address is recorded in the register for the purpose of receiving relevant communications.

I also take the opportunity to mention that legislative provisions that go to the technological design of the system may prematurely preclude more privacy enhancing options. An example of such a decision is in item 14 of the table under clause 17 of the bill. This clause requires that the register include flags that indicate relationships with particular agencies. This appears to mean that each agency with which an individual has a relationship must be able to link the individual's access card number and their local agency issued identifier. This creates a situation where more than one agency can hold a common government issued identifier for a single individual. The risk here is that the ease of matching those records may in the future increase the temptation to change existing restrictions on information sharing between agencies and thus the framework for large-scale data matching could be in place. The best way to ensure that this does not happen is to avoid creating a system that would make it easy to happen.

One way this could be achieved is by storing the existing agency issued identifiers on the chip with the access card so that when an individual docked their card at an agency it would recognise the agency identifier and there would be no need for the access card number to be stored by each agency. While this suggestion means that a number of different Commonwealth identifiers would be stored in the one place, the ability to translate an agency identifier to an access card number will not rest in any government-controlled database. The only place where the translation can happen is in the chip, which is within the control of the individual. The access card chip will need to be subject to security measures appropriate for storage of such information.

Turning now to the information displayed on the face of the card, I welcome the decision to allow an individual to choose their preferred name to be on the face of the card and the option for individuals to choose whether their date of birth is displayed. This facilitates individual control over the information displayed. My officers argue that the individual should also be able to choose whether their photo and their signature are displayed on the face. These measures would further enhance privacy. However, I acknowledge that the government has considered this issue, including competing demands, and put forward in this bill its decision on those matters. It is now imperative to ensure that the security of the whole system provides maximum possible protection around this information.

I would like to make a few comments on the ability for an individual to consent to the use of their access card number—

**CHAIR**—What about the number, Ms Curtis? Do you want that to appear on the card?

**Ms Curtis**—Sorry?

**CHAIR**—A number?

**Ms Curtis**—The number on the card is fine.

**CHAIR**—You have no problem with that?

**Ms Curtis**—No. We have accepted that in our submission. Clause 57(2) of the bill allows for the copying or recording of the access card number, photograph or signature with the written consent of the owner of the access card. However, I believe this may be inconsistent with the terms and policy intent of national privacy principle 7, which prohibits organisations from adopting, using or disclosing Commonwealth issued identifiers. Generally, as I have already indicated, providing individuals with control over their personal information is consistent with good privacy practice. However, a consent mechanism is unlikely to be appropriate for a government issued unique identifier that will be held by most of the adult population. This is already recognised in the requirements surrounding the use of a tax file number.

As more organisations or agencies collect, use and adopt the access card number, even with individuals' consent, and as greater amounts of personal information become associated with that number, the risks to privacy increase. I am concerned that individuals may not always be aware of the potentially significant long-term privacy risks when they are asked for their consent, especially where they may be offered an immediate and tangible convenience. My office suggests that organisations should not be permitted to copy or record the access card number with or without the individual's consent unless it is in accordance with the specific requirements of other legislation.

I am aware that the access card number is not a lifetime identifier; I understand that the number will change each time the card is reissued. However, I am not confident that this will eliminate the risks associated with the use of a single identifier across government agencies and private sector organisations, in some cases, for an extended period of time, and given that each new card number for a particular individual may be linked to the last.

Finally, I look forward to seeing more detail on how further legislation will deal with matters not yet raised in the bill. In particular, my office's submission sets out recommendations for statutory processes governing the introduction of future uses and on specific secrecy provisions that might appropriately be implemented to protect the information on the register and in the chip. The Department of Human Services submission indicates that subsequent legislation will address a number of matters—in part 2(4) of their submission—that will be informed by ongoing consultation by the department and the consumer and privacy task force. My office looks forward to working with both of those in addressing issues for the future tranches of legislation. I invite questions from the committee.

**CHAIR**—Thank you, Ms Curtis.

**Senator LUNDY**—Just going to the point you make in your opening statement about the technology being a key element of four elements, to what extent is the Privacy commission privy to the actual technology? We have had CSC before us, who have tendered and therefore cannot say too much. That is fair enough, given their circumstances. We have had great difficulty in getting any information about the architecture that will underpin the system. What knowledge do you have about the systems architecture that allows you to basically tick that off as an area that you think has been addressed adequately in the plans to date?

**Ms Curtis**—I will clarify what I said. I said we are moving forward on all four fronts, not that we have got the definitive answers in all four areas at this point in time.

**Senator LUNDY**—But you are not opposing the proposal at all? You are just going with it?

**Ms Curtis**—With a hundred billion dollars of government expenditure a year it is good public administration for us to look very carefully at the systems we have in place. The existing Medicare technology has been around for 23 years. It is appropriate to look for the best way we can protect people's information and provide good services. However, it does require that you actually examine very carefully all aspects of the proposal. We have been very involved with the Department of Human Services and the Office of Access Card over a long period—in fact, going back to 2004, when the then Health Insurance Commission was looking at a smartcard. We have continuously been involved in the processes of providing advice. During 2005-06 and currently we have provided advice to a number of the working parties. To the extent that we are aware of the technology, members of my office are involved in some of the working parties that have been looking at it. I would ask Mr Solomon to comment on that.

**Mr Solomon**—We have been involved, as the commissioner says, in some of the working parties. We understand the basic parameters of the architecture of the scheme. We have had access to the tender documents prior to their finalisation but under strict security regime to just view those. We have some knowledge and concept of how this scheme is being constructed. I do not think I am at liberty to disclose that to the committee; it is a matter for the department.

**Senator LUNDY**—The same brick wall we hit last time. It is a real problem for the committee, because so many of the questions go to how this will be built and what the permissions are between the different layers of people who are reading the cards, the database and so forth. Without that information—and I appreciate it is probably not your place to give it; it would be the department's—it is very difficult for the committee to make a determination on whether privacy will be protected or whether it will be secure enough. That is something that we will pursue with the department this afternoon.

I have one specific question, however: in our questioning to CFC last Friday at the hearings in Sydney I asked whether they were aware if the metadata standards—that is, the information addressing system within the databases—of the registration database would be the same as the metadata standards on the existing databases or at least one thereof, for example, Centrelink or HIC. Are you able to answer that question? Their response was that that was as yet unresolved. We will test that with the department. Do you have any additional information, given it is such a key issue with respect to the design of the system, as you say, Ms Curtis, and the potential for it to be used for extensive data matching in the future?

**Ms Curtis**—That is a technical question that I think you will have to address to the Department of Human Services.

**Senator LUNDY**—But would you agree that it is absolutely critical in terms of the potential for this system to be expanded into looking at data matching? Is that not the sort of thing that you have expressed that you are afraid of, if that were the case?

**Ms Curtis**—I cannot answer a question about the metadata. I am not sure whether my colleagues can answer questions on their technical application. But ideally you would have all

pieces of legislation before the committee at the moment, which would help to make these assessments easier for you.

**Senator LUNDY**—You mentioned that you anticipate another piece of legislation. What is your understanding of what is going to be in that subsequent piece of legislation?

**Ms Curtis**—I think part 2(4) of the Human Services submission identified a whole page of dot points, from my recollection. It will be addressing more of the privacy protections and security and more information about the chip and about the back-end system.

**Senator LUNDY**—So all of the questions that go to the design of and therefore the potential for this technology to be abused or not abused are not contained in the current bill, anyway?

**Ms Curtis**—No. The first bill really addresses the registration and the card, and establishing the fact that the card exists.

**Senator LUNDY**—Does the privacy commission have a problem with that, given that essentially puts all of your key points in abeyance until we see the second bill?

**Ms Curtis**—This process has been going on for a long time. We have been making those points. I think the Department of Human Services has tried to accommodate many of our suggestions. I think it is a construct of the process they are going through; it means that things are being dealt with in chunks or sequentially.

**Senator LUNDY**—Divide and conquer is one way of looking at it. I would like to go to your point about the storage of the number—the unique identifier—on the chip itself as opposed to within the database. How could that be given expression in the current bill, given the design of the system is foreshadowed for the next bill? How could we give effect if we were of the mind to amend the current bill to pursue that suggestion?

**Mr Solomon**—The issue for us is that the current bill actually cuts off a potential option by indicating that there will be a flag, and that seems to indicate the design. So that is what we have raised—that that may have cut off that potential option. It is not what could be put in the bill but the fact that that is in the bill and cuts off an option.

**Senator LUNDY**—That is the point you were making about the technologically specific aspects of the bill that preclude that particular privacy enhancement?

**Ms Curtis**—That is correct.

**Senator LUNDY**—You have made a specific suggestion of amending a clause of the bill, in your submission, to fix that particular problem?

**Mr Solomon**—We have not indicated what to do about that specifically in terms of what words to take out. We have just indicated some issues.

**Senator LUNDY**—Which clause is it?

**Ms Curtis**—I think it is section 17, clause 14, from memory.

**Mr Solomon**—It is one of the items that is indicated on the register.

**Senator LUNDY**—Can you describe in more detail how you would envisage that proposal working, given the limited knowledge about the systems architecture to date?

**Mr Solomon**—It is about how the system recognises the agencies that you have a relationship with. The concept we are raising is that that information could be on the chip and, therefore, the chip itself would recognise the relationship and tell the agency that you were docking the card with who you were by reference to their particular identifier—Centrelink's identifier, Medicare's identifier and so forth. The agency would then not need to have the access card number itself in its systems. That is the overarching purpose of our proposal. In terms of technical detail, we do not have the expertise or the skill to put forward how to do that in a technical way. We are just putting forward the policy proposal.

**Senator LUNDY**—The obvious technical question that flows from that is: how would you get that information onto the chip and would there still be a database there that would administer, if you like, the distribution of the cards and that initial information being placed on the chip? Okay, we will not go there. I do not know; I am just speculating on what the technological implications would be and whether that system would still require a central database to be administered by Human Services.

**Mr Solomon**—There are a lot of issues about how it would actually occur. It is partly about how long you keep information in particular systems as well. At the moment the register keeps permanently the flags against which agencies you have a relationship with. There may be ways of building that system so that that information is only temporarily held that connects the information until it gets onto the chip. There is other information that will only be temporarily held in the register until it gets onto the chip, as the department has discussed and is included in the bill. Similarly, it could be just a temporary measure; it is not held permanently on the register before it gets into the chip.

**Senator LUNDY**—We will explore that one with Human Services. Thank you. I also have some questions about the powers and resources of the privacy commission. I remember years ago asking the same kinds of questions. I know that the Privacy Commissioner is not well resourced, particularly for proactive activities and the pursuit of complaints right through to taking action. There is a pretty serious hierarchy in terms of what qualifies for taking action and what does not. Has it been foreshadowed or have you been provided with additional resources not just to participate in what has been an extensive long-term consultation exercise, no doubt requiring a lot of research and effort, but also in terms of your role that has been flagged in representing the interests of citizens who, for whatever reason, may feel their privacy has been breached because of a misuse of the access card?

**Ms Curtis**—On a general note, in the federal budget last year we received extra funding. Essentially the office now has a budget of about \$8 million a year, whereas previously—as little as two or three years ago—it was about \$4 million. We have received extra funding for particular purposes: to help business with understanding their obligations under the act; to improve our compliance handling processes; and, finally, to provide policy advice to government—three general areas.

We also have developed a memorandum of understanding with the Department of Human Services in recognition of the significant resources that my office has been putting into the project. We have a number of MOUs with other departments and agencies as well. We have a work plan and we commit to doing certain things; it in no way fetters independence. It is

couched in terms of our providing advice but it does not prevent us from making comments that may be at odds with what they may be most interested in.

**Senator LUNDY**—At odds with the advice?

**Ms Curtis**—They may not like what we say and we may not like what they do. But it is a serious attempt to understand that it does have an impact on a small agency.

**Senator LUNDY**—How is that MOU with Human Services constructed and what does it involve?

**Ms Curtis**—It is over a four-year period. There is \$375,000 a year in funding. We commit to meet regularly and also to provide a report on the activities that we have agreed under our work plan.

**Senator LUNDY**—Is that \$375,000 per annum out of the Human Services budget?

**Ms Curtis**—Yes.

**Senator LUNDY**—So they give the privacy commission money to perform certain tasks?

**Ms Curtis**—Yes. This is in its first year, effective from 1 July last year.

**Senator LUNDY**—What do you spend that money on, specifically?

**Ms Curtis**—Essentially, on staff and providing advice. I might ask Mr Pilgrim to give the detail.

**Mr Pilgrim**—At the moment, that money is being particularly focused on providing for additional staff in our policy area to allow us to undertake research so that we can provide various advice on possible implications of the access card in terms of its working with the Privacy Act. Down the track, it will also provide us with the opportunity to perhaps do some work on assessing some of the systems and the information transfers that may occur with the access card. So there will be a couple of phases in how we expend that money.

**Senator LUNDY**—Will it be forthcoming once it is in place and people start making complaints? Will they still give you money then?

**Ms Curtis**—We have a four-year agreement at this point in time. I assume that it will stay in place for four years and, if there is a need for it to continue, for us to give advice, the agreement could be renegotiated.

**Senator LUNDY**—I suppose it depends on how much trouble you are causing.

In terms of assessing the systems that you mentioned, I go back to the question about the issue of the tender documentation. At what point will you get access to the contracts and be able to do an assessment on the privacy protections in the contract, given that many of the services and systems integration will be done by a contractor, not public servants?

**Mr Solomon**—I am not sure exactly when we would be given access to the contract. I could not tell you the answer to that at this stage. But, as I have said before, we have had access to documentation under strict security controls prior to the tender being released. So I would presume that, at a future time, once the contract has been put in place, unless the department have some reason why we should not be able to see it, to give them some advice in that area, then we probably would get access at that time.

**Senator LUNDY**—Going to the issue of pursuing complaints: are you confident that, under the current budget—and I presume this \$8 million is ongoing—and with the anticipated removal of the additional \$375,000 after the four-year period, you will have the resources necessary to adequately represent citizens who are aggrieved or allege a breach of privacy?

**Ms Curtis**—Currently, we receive only about 130 complaints against the Commonwealth government in total, including against Centrelink and Medicare. Given all the transactions, that is a relatively small number of complaints. Those agencies handle privacy complaints before they would come to us. I would envisage that there may be an increase in complaints, but I would expect that our resources would be appropriate to deal with it. But if that were not to be the case, we would obviously make a case to government for extra funding.

**Senator LUNDY**—That is all I have.

**CHAIR**—I have a few questions. I will be as direct and as quick as I can. One of the big issues that we have encountered over the last two and a half days of hearings has been much concern about the discretionary power of the minister and the secretary. I notice, in paragraphs 24 and 35 of your submission, you argue that the bill could usefully promote community confidence by including a general provision that these powers be exercised in consultation with the Privacy Commissioner—that is, the discretionary powers of the minister and the secretary. Do you have examples where that has worked in the past?

**Ms Curtis**—In our submission we make reference to the spent conviction scheme.

**CHAIR**—Can you expand on that?

**Ms Curtis**—It works quite well.

**CHAIR**—It has worked quite well?

**Ms Curtis**—Yes. We probably only receive a request once a year or twice a year. I think I have probably done three requests since I have been commissioner, which is 2½ years. But as a system that appears to have worked quite well.

**Mr Pilgrim**—The system has worked quite well. We are required to provide advice to the minister in those circumstances about our views on the appropriateness or otherwise of someone seeking exclusion from the spent conviction scheme. Our experience has been that our comments are carefully considered. Again, there may not always be agreement, but I think the process has worked well from our perspective and that our views have been taken on board.

**CHAIR**—How about in relation to the discretion of secretaries or public servants operating in that context as well?

**Mr Pilgrim**—From my experience, I do not believe that we have operated in that circumstance, where it has been a discretionary power on the part of the secretary or other public servants.

**CHAIR**—Is there any reason why you could not?

**Ms Curtis**—I do not believe so.

**CHAIR**—There has been a lot of concern expressed about the powers of the secretary under this legislation. I am sure you are aware of them; you point to them. Some people have

made the case that they are the sorts of powers that, in general, parliament has some oversight over. But in this case, of course, they do not because it is not a legislative instrument; it is not subject to oversight by parliament. Are we looking at a mechanism to somehow ensure that the public, to use your words, can have confidence in this process? The committee thanks you for your suggestion, and we will look at it.

Secondly, just taking one example—and Senator Stott Despoja raised this issue before with another witness—clause 17(12) concerns proof of identity documents. You argue—and I think Professor Fels does also—that you oppose the scanning, copying and keeping on file of proof of identity documents once verified. In other words, it is okay to copy them, but once they are verified they should be destroyed. Do you hold to that view?

**Ms Curtis**—We hold to that view. A general principle of privacy law is that you collect information for a particular purpose and, once that purpose is no longer required, you delete your information unless there is a reason to keep it. We would suggest that, once verification has occurred, there should be no need to actually keep those scanned documents.

**CHAIR**—Again, my colleagues raised this morning the criminal offences under proposed sections 45 and 46. You argue that there should also be included some civil remedies, and again this has been touched on by other witnesses over the past couple of days. I suspect Senator Nettle is going to ask this question, so I will take it from her: do you see any problems with sections 45 and 46 working in practice?

**Ms Curtis**—I think in our submission we referred to the fact it is difficult to prove criminal—

**CHAIR**—Problems of proof.

**Ms Curtis**—The burden of proof would be harder. I think it goes almost to the heart of this bill in that it is clear that the access card should be used only for a specific purpose and have a number of objectives. In that sense, anything that took it further than an access card would be at complete odds with the bill and therefore it would be appropriate to have offences with high sanctions.

**CHAIR**—I understand that in the sense that, as you say, it goes to the core of the bill, and it is almost a matter of principle. I think the committee accepts that. But the problem is that we have had much evidence that it just will not work in practice.

**Ms Curtis**—In our submission we also raised the idea about civil penalties.

**CHAIR**—That is right; that is what I mentioned this before. I asked that.

**Ms Curtis**—Yes.

**CHAIR**—That is why the committee is interested. Do you think perhaps we should use civil remedies to buttress the potentially less utilitarian criminal offences?

**Ms Curtis**—Yes. We have proposed that the tax file numbers may provide another useful model. Again, individuals may seek a remedy under the Privacy Commissioner's tax file number guidelines. Also, then you can do something under the Taxation Administration Act as well.

**CHAIR**—We will look at that. We heard a lot of evidence about those criminal offences and I just wanted to get your views on the civil remedies. Finally—and you touched on this and I rudely interrupted you, Ms Curtis, in your opening statement—I want to ask about the information on the card. The government has said repeatedly in the explanatory memoranda, in other material, in parliament and in press releases that this bill is about facilitating access to welfare and fighting fraud. They are the two principal objects of this legislation. Some people have put to us that we can stop in its tracks any likelihood of this becoming a national ID card simply by taking the signature, the number and potentially even the photograph off the card. I am not saying it solves all the problems, but it would certainly kill fairly instantly the idea of a card being used as an identity card, because people would not be asking for it, would they? All it would have is your name on it, potentially. What do you say to that?

**Ms Curtis**—I think we wrote about 20 paragraphs on that in our original submission to the Fels task force last August. We recognise that some individuals actually want that option of having a photo on the front. So our preferred position was to give people the choice.

**CHAIR**—Of whether they want a photo?

**Ms Curtis**—Of whether or not they want a photo.

**CHAIR**—That is your preferred position? I want to hear your preferred position, not—

**Ms Curtis**—No, my preferred position would be that it not be compulsory to have a photo, but to give people the choice to have a photo if they so desired. So it would be of use to those people who do not have other forms of photo ID—those who do not have a drivers licence, for instance.

**CHAIR**—We do not want to get to the stage where we are creating the architecture of this scheme just because some people need a form of ID. It is different if some people choose to have a photo on it; that is a different issue. Some people have tended to argue that we need this entire scheme because some people need a form of identification. It does not wash with me that we need to have this entire artifice just because some people need another form of ID. That is not going to be good enough. We need to do a bit better than that. Do you see the number being required on the card?

**Ms Curtis**—We have said that it is okay to have the number on the card.

**CHAIR**—In the same way the Medicare number is on the card?

**Ms Curtis**—That is correct.

**CHAIR**—Once again, though, with the reservations that it should not be copied and so forth that you made before. What about the digitalised signature?

**Ms Curtis**—We have expressed concerns about why the digitised signature is needed as well.

**CHAIR**—In summary, a photo is optional; the number should be on the surface of the card and no digitalised signature?

**Ms Curtis**—That is correct.

**CHAIR**—Thank you very much.

**Senator STOTT DESPOJA**—The chair's summary deals with the face of the card. But looking at your comprehensive submission, there are a lot of problems with the legislation that we have before us. Ms Curtis, as the guardian of privacy in this nation—the head honcho, top banana or whatever when it comes to privacy protection in this land—as a citizen I am looking to you and asking should this legislation be passed in its current form? Is this a sufficient danger and threat to privacy protection in Australia as it currently stands? Based on your submission, that is the impression I get.

**Ms Curtis**—Our submission addresses the bill. This bill is the first tranche of legislation. The system that is proposed for the access card is more than just this bill. I think it would be ideal if we had the whole system to look at at the moment. We do not. We have this bill, which is establishing a few key elements. Our role is to protect and promote privacy in Australia. Our legislation is couched in terms where privacy is not an absolute right; we need to look at a variety of issues when we are determining where the balance may lie. We need to have free flow of information. Businesses need the right to operate. We need to protect the privacy of individuals.

We have examined this proposal in its various iterations for over three years. Inherently, it is not a bad thing to improve our delivery of social services. As we have said in our submission, we think there are a lot of benefits that will accrue to Australian citizens. What is important is that we ensure as we implement the system that we have those four elements there, that we get the technology right, we have the appropriate oversight mechanisms, we have legislation in place and it is designed appropriately. This bill is a first step in getting all of those things in place.

**Senator STOTT DESPOJA**—Is this an acceptable first step? With all those qualifications and agreeing with you on all those bases in terms of improved service delivery and the issues and criteria to be taken into account, and acknowledging your ideal that a second tranche of legislation should be in place, as the Privacy Commissioner, when you look at this legislation and the possibility that it will be rammed through in two weeks time with a truncated, running-late committee process—we do not even have a minister—are you prepared to go on record and say that this should not be passed without the second tranche of legislation that actually deals with the issue of privacy protection? This is where we are at, and I do not mean to reflect my frustrations on you. I think it has become evident to members of the public, agencies and my colleagues—many of whom were aware of this—that there are privacy loopholes in here that will have huge ramifications for your job, your work and the people of Australia. Would you recommend that this not be passed until we have dealt with the second lot?

**Ms Curtis**—The second tranche of legislation will address all of those protections.

**Senator STOTT DESPOJA**—Will it?

**Ms Curtis**—It is foreshadowed that it will. It is clearly stated in the explanatory memo and the DHS submission. Ideally, it would be best to have the other pieces of legislation, but they are not here. I would say, with some suggestions, that this piece of legislation is needed to be able to move forward.

**Senator STOTT DESPOJA**—Mr Pilgrim, do you have a view?

**Mr Pilgrim**—No, I think the commissioner has covered that, thank you.

**Senator STOTT DESPOJA**—What was your level of involvement in the privacy impact assessment?

**Ms Curtis**—That is going back to the end of 2005 and early 2006—is that right?

**Senator STOTT DESPOJA**—Yes.

**Ms Curtis**—We were involved to the extent that we helped prepare the terms of reference—correct me if I am wrong—for the successful consultants, and we looked at the draft and then at the final PIA.

**Senator STOTT DESPOJA**—So you have seen the privacy impact assessment. I am trying to get my hands on one of those. The document verification service—DVS—has been delayed until 2010, as we have heard today.

**CHAIR**—It will have full operability then.

**Senator STOTT DESPOJA**—It will not have full operability until 2010, thank you. In your mind, does that have any implications for the successful operation of the access card and the protection of it? Is that something that concerns the office?

**Ms Curtis**—The DVS's great asset is the fact that it is just a verification point, a yes/no. It actually is not creating any extra databases or any further information. It is the ideal way for people in Australia who have been here a long time and have a footprint here to have their information verified. Ideally, again, it will be operational as soon as possible to make the registration process simpler.

**Senator STOTT DESPOJA**—Going back to the issue of the second tranche of legislation, would one possibility be amending 33(a), the clause that deals with the space on the card—in particular that deals with the individual's space as opposed to the Commonwealth information on the card—and deleting it? Would that go some way towards preventing what I feel is a blank cheque at the moment in terms of the Commonwealth's area of the chip? Clause 33(a) states:

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

(a) information in your area of the chip ...

That is the line that is not accompanied with any specifics. Would you find it acceptable if that was deleted and maybe dealt with when the criteria to deal with it are actually introduced?

**Ms Curtis**—I think in principle it is ideal to have 'information in your area of the chip should be permissible.' I think if you deleted 33(a), we would not be allowing for a system to be designed that would have a chip that had an individual part.

**Senator STOTT DESPOJA**—I am not suggesting you could not amend the legislation at another time. What I am saying is that, for now, while there is no final list of things that may actually be on the card—there is no final decision; in fact, no decisions have been made—would it not make sense to postpone dealing with that element because it is so open-ended?

**Ms Curtis**—I do not know whether my colleagues have any particular views, but—

**Mr Solomon**—We did not address this issue within our submission to the committee. I think it is just a part of the framework that the bill sets out for the card, the chip and the register. I do not think we would have a view that that should be deleted from the bill at this stage, considering there are going to be further changes to the legislation to address the privacy issues in relation to all aspects of the chip and the register.

**Senator STOTT DESPOJA**—We have referred a number of times to clause 17, obviously mostly in relation to Senator Lundy's question, and I know that you have gone through it in some detail in your submission. Similar to you, I am curious about item 16 in clause 17, which is the one dealing with death; the fact that, if you die, the date of your death is placed on the register. You have queried as to why it would need to be on the register, understanding, of course, that it would need to be passed on to agencies. I am curious as to whether you have been given any idea from government or whether you have a notion of how long personal information would exist on the register after death?

**Ms Curtis**—I cannot answer that detail.

**Mr Solomon**—My understanding is that the department is still looking at that issue; that it has not made a final determination on how long information will stay on the register after death. I think that in their submission to this committee they mentioned that issue.

**Senator STOTT DESPOJA**—Is that of concern to you, that a decision has not been made on that, and that relates directly to not just storage of information but storage of information when we are not even on this mortal coil?

**Ms Curtis**—I think that further consideration is going to be given to it and I think even the Fels task force may be looking at that as well. It is one of the issues associated with its registration discussion paper which will be coming out shortly, I understand.

**Mr Solomon**—The department is looking at it in the context of the Archives Act and other Commonwealth requirements.

**Senator STOTT DESPOJA**—Are you happy to take questions on notice? The Privacy Act, as you well know, is under review by the ALRC at the moment. What are the implications of that, if any, for this process? Do you think the access card will be affected by the changes to, if there are any, or the recommendations of the ALRC in relation to the Privacy Act and its loopholes or adequacy or otherwise?

**Ms Curtis**—I do not think so, because the ALRC will be reporting in March 2008, and often they have extensions and then government responses usually take some time. I would be surprised if we did not have a response until 2009 on that—in two and a half years

**Senator STOTT DESPOJA**—Genetic privacy probably gives us a good example. How should we deal with or protect information that travels off shore? Do you have a view on that?

**Ms Curtis**—In relation to the access card?

**Senator STOTT DESPOJA**—Yes.

**Ms Curtis**—NPP 9, National Privacy Principle 9, covers the way the private sector transfers information overseas. We have suggested in our submission to the Australian Law

Reform Commission that a similar provision should also be in place for government departments and agencies for any information that is transferred overseas.

**Senator STOTT DESPOJA**—Speaking of the Privacy Act, Senator Nettle was hoping I would ask about this on her behalf. I think this is something we are all interested in. You may have heard the evidence today from ASIO and AFP in relation to their access to the register and potentially information on the chip. Do you have a view about the notion of warrantless access to information and in what circumstances that should or should not happen? We just want to clarify that they are exempt when it comes to law enforcement.

**Ms Curtis**—The privacy principles are broad based principles. Again, it was a recognition that there needed to be a balance, and it was appropriate to have access for law enforcement agencies in particular for certain circumstances. Currently—

**CHAIR**—Would you like this taken on notice or do you want an answer given now?

**Senator STOTT DESPOJA**—Yes, if that is okay.

**Ms Curtis**—Principle 11 allows disclosure in certain circumstances. Currently, principle 11 operates quite well with the law enforcement community. There is a suggestion that I would make to the committee. At the moment, DFAT provides access to law enforcement agencies to the biometric photo database in certain circumstances, and we understand that the system works quite well. You might like to look at that as a model for the way access could be provided to law enforcement agencies to the photographic database that is proposed under the access card.

**Senator STOTT DESPOJA**—Are there any exemptions or loopholes in the Privacy Act that currently concern you in relation to the construction of this access card? One obvious one is the issue of authorised and unauthorised access specifically when it means people are or are not informed about the fact that their information has been accessed in some way or they have had their privacy breached. I know you have brought up the issue of civil redress. I am happy for you to take it on notice too.

**Ms Curtis**—The Australian Law Reform Commission's submission suggests that consideration should be given to some sort of mandatory reporting of breaches—not absolutely every breach—and we need to come up with some threshold. We have asked the ALRC to examine that.

**Senator STOTT DESPOJA**—Do you think that should be the case with the access card if information is accessed inappropriately or it is accessed without—

**Ms Curtis**—It should be dealt with appropriately under either the Privacy Act or any specific secrecy provisions that they then put in place. Mandatory reporting of it I think should be done in the context of what is worked out ultimately for the Privacy Act. Mandatory reporting is relatively new. It is not easy to actually say what the best method is. We need to think very carefully about how we construct mandatory reporting.

**Senator STOTT DESPOJA**—While you are thinking carefully about it, do you have a view on the access card in terms of an appropriate threshold or level? As you say, it would be best worked through the Privacy Act. The problem is that the Privacy Act does not cover an issue at the moment in relation to, say, an agency employee who inappropriately accesses or

browses and breaches someone's privacy. At what point should an individual, given that they do not know they have been affected, be informed and what kind of threshold should there be? I would presume that everyone should be informed, but you are saying that there is a bit of a delicate balance or that a debate needs to take place?

**Ms Curtis**—A one-off browsing, inappropriate look or a mistake in bringing up the wrong records in some way is very different from something that was deliberate and involved using the information or disclosing it—somewhere in between.

**Mr Pilgrim**—We could take the example of a tax file number. If a tax file number is in some way compromised, the tax office will make attempts to contact the individual to offer them the opportunity to have that number changed and get a new number. That just adds to the level of where the threshold should be—where the number is compromised and it may impact on the individual's ability to continue to carry on business using that number or, in this case, that card. There may be a threshold test along those lines as well.

**Senator STOTT DESPOJA**—Thank you for that example. I would be curious to see how this debate goes on and whether it is picked up by government in terms of potential changes to the legislation, particularly in the second tranche. I might put my data matching questions on notice. Section 17(17)(a) talks about such other technical or administrative information that can be added to the register by the secretary. Does that mean audit logs and serial numbers, for example? You may have covered some of this in Senator Lundy's questions in relation to clause 17(14). Is there a possibility that some of these numbers might become de facto unique identifiers? I am to put a more specific question on notice, but do you have any concerns about that clause and in particular the powers of the secretary?

**Ms Curtis**—In paragraphs 21 to 23 of our submission we might have addressed that issue.

**Senator STOTT DESPOJA**—You have talked also about the fact that it is unclear in terms of the effect it would have in limiting the secretary's ability. Are you concerned by the broad-ranging—

**Ms Curtis**—It is uncertain, so we are suggesting greater clarity and transparency.

**Senator STOTT DESPOJA**—I will ask the department about that. I turn to linkages in relation to the agencies' databases, which you might have heard us ask about this morning with the Attorney-General's Department. Obviously, it is not expressly prohibited in the legislation that there be linkage of information held on agencies' databases. Would you recommend an amendment that expressly prohibited that?

**Ms Curtis**—Our understanding is that it was not the intention to have any linkage between the agency databases whatsoever.

**Senator STOTT DESPOJA**—I think the Attorney-General's Department confirmed that. I am not suggesting that there is a motive to link databases. I am just wondering if we should put an added protection in the legislation to ensure it does not happen.

**Ms Curtis**—It is not there at the moment, but I would suggest that consideration should be given to putting in an express prohibition.

**Senator STOTT DESPOJA**—I know that is the view, I think, of the acting Victorian Privacy Commissioner, from whom we heard yesterday, but I just wanted to check whether there were any views on that. In terms of a role for—

**Mr Pilgrim**—In terms of whether or not there should be a prohibition, I think what the commissioner is saying is that we think it could warrant further assessment about whether or not the prohibition should occur. However, I think it could be done in such a way that should allow possibly for recognition that there may be some good reasons in some cases for data linkage to occur—for assessment of trends, analysis, research, and those sorts of areas. It could be done in such a way that we already see under, say, the data matching laws that exist already.

**Senator STOTT DESPOJA**—Yes.

**Mr Pilgrim**—While there might be a prohibition, there could also be a potential for some exemptions to allow it to happen in certain specified or prescribed circumstances.

**Senator STOTT DESPOJA**—Indeed. You could always have the explicit provision and exceptions—

**Mr Pilgrim**—Yes.

**Senator STOTT DESPOJA**—as opposed to it being somewhat open-ended. We have heard from witnesses who have said there may be a role for a public interest monitor, a privacy commissioner or a third party to oversee what is happening with the legislation or, indeed, the upkeep of the register, for lack of a better term. Do you have a view on whether a public interest monitor or other such—

**Ms Curtis**—I do not have a specific view on a public interest monitor at this stage, but we have always said that there need to be appropriate oversight mechanisms, and that will be the subject of the next tranche of legislation or the one after.

**Mr Pilgrim**—Building on that, the Privacy Commissioner does have some statutory functions under section 27 of the act, firstly, to provide on her own volition comments on the development of legislation and government policy. Further to that, down the path of, say, when a system such as this is in place, we also have an auditing power; we could audit the use of personal information in a system such as this.

**Senator STOTT DESPOJA**—You bet—I am aware of that section and I am hoping it is going to be used. Thank you. I will put further questions on notice.

**CHAIR**—I have a couple of questions following on from the senators' questioning. In relation to the Privacy Act and how that protects information relating to the access card, the development of the register and the development of the photographic database, are you satisfied that the Privacy Act offers sufficient protection?

**Ms Curtis**—We have also called for specific secrecy provisions to be included in the next tranche of legislation to cover access to the information on the register—

**CHAIR**—And the photographic database?

**Ms Curtis**—And the photographic database, the chip and the register—the whole system.

**CHAIR**—You are not satisfied that the Privacy Act at the moment offers sufficient protection?

**Ms Curtis**—I think such a large-scale project would be enhanced by having extra provisions. That is consistent with other views as well.

**CHAIR**—What will those provisions be?

**Ms Curtis**—Quite a number of departments and agencies in the enabling legislation have secrecy provisions. There are 140-odd secrecy provisions in various pieces of Commonwealth legislation. It would cover the way information could be accessed, used and it would also cover penalties and sanctions.

**CHAIR**—Are you happy for ASIO to have access to the photographic database without a warrant?

**Ms Curtis**—As Mr O'Sullivan said, I think it would depend on the circumstances. In some circumstances he would require a warrant.

**CHAIR**—And in others he would not?

**Ms Curtis**—That is correct. At the moment, the system does not require that he have a warrant in some—

**CHAIR**—This is the creation of a very large, powerful, national database, and he would have access to that without a warrant. Does that not concern you as Privacy Commissioner?

**Ms Curtis**—Law enforcement and Australian intelligence agencies are exempt from the operation of the Privacy Act. Those six agencies have in place their own privacy guidelines, which are quite similar to the Privacy Act.

**CHAIR**—That does not answer my question. There is this argument that the information is there. The fact is that this is bringing information from all around the country into one database. It is not necessarily new information at one level; Mr O'Sullivan cleverly said that. But, in fact, it is making it far, far more accessible to a law enforcement agency. Are you not concerned that ASIO without a warrant would have access to that register and to the photographic database, which has a biometric function that makes it useable in all sorts of circumstances? As Privacy Commissioner, does that not worry you?

**Ms Curtis**—We try to look at all of the issues that are put before us and try to weigh them in a balanced way and come up with a position. Currently the parliament has decided that the law enforcement agencies and Australian intelligence community agencies are exempt from the operation of the Privacy Act.

**CHAIR**—Sure, but we rely on advice from people like you to say that this is a very powerful database and perhaps there should be new protections.

**Ms Curtis**—That could be considered as part of the next bill, in the next tranche of legislation.

**CHAIR**—I look forward to seeing that. This is a very serious issue of warrantless searches through a biometric photographic database and the national register by ASIO. It is fine so long as the matter is considered rather than it being allowed just because, 'Oh, well, the Privacy Act makes exceptions for law enforcement agencies.' That is what I do not like. I have no

problem if it is a considered issue; if parliament sits down and considers it specifically. That is one thing. Let us not just let it slip through to the keeper and think, 'Oh, gee, we gave that away five years ago.' That is my problem.

**Ms Curtis**—We would welcome consideration of those issues.

**CHAIR**—We look forward to your comments on that. Back to the number on the card, you said that you do not have a problem with a unique personal identifier being on the card. Why don't you have a problem with that? Welfare services will not be paid out unless a card is entered into a reader. Certainly the number can be on the chip, but why does it need to be on the card surface at all?

**Mr Solomon**—The existing Medicare card has the Medicare number on the face of the card. The department has argued that it is important for the card number to be on the face of the card for those vulnerable people who want to access the department through the telephone, and apparently there are quite a lot accessing Centrelink, Medicare and so on through the telephone. In order for people to be able to identify who they are talking to, the card number is something people would be able to give as part of the way of identifying who they are.

**CHAIR**—Would that not make it less secure? I could just take Senator Fifield's card and read out his number over the phone. If that is the identification, they might just give me all of the details about Senator Fifield.

**Mr Solomon**—That is not the only identification that would be asked for, but it is of assistance to people who are elderly and so on, who may not easily remember the number themselves to have it on the card. It just assists that process.

**CHAIR**—You mean like credit cards over the phone; about as safe as that?

**Mr Solomon**—I think the office's position is that there needs to be something on the card. You cannot just have a card with nothing on it.

**CHAIR**—You could have your name.

**Mr Solomon**—We have taken the position—

**CHAIR**—You could have 'Mr Andrew Solomon'; what is wrong with that?

**Mr Solomon**—We have taken the position that, if the photograph, signature and date of birth are by choice those are good privacy enhancing features. We have not taken a position on the actual card number.

**CHAIR**—You have not justified yourself very well, with the greatest of respect. You tell me what you want. The parliament is here to listen to what you think is desirable. If you think privacy would be further enhanced by getting rid of the number, you tell the committee that.

**Ms Curtis**—I think Mr Solomon just said it would not be.

**CHAIR**—It would not be. If that is your evidence, that is fine. So you do not think that privacy would be enhanced? You are not concerned about card numbers falling into other people's hands and so on?

**Mr Solomon**—There are provisions in the act already going to the copying of the number and the use of the number. The government is looking to protect the number from misuse in the community.

**CHAIR**—You say:

In particular, the Office notes the importance of ensuring that the Bill does not establish a legislative framework, whether intentionally or otherwise, that relies on or assumes the existence of a unique personal identifier ...

You are putting that unique personal identifier on the front of the card. Are you not making it easier to do exactly what you say you do not want to happen?

**Mr Solomon**—As I have said, there are provisions in the bill around the use of the number.

**CHAIR**—Why make the number so readily available? Why put the temptation out there?

**Ms Curtis**—I think the representatives from the Veterans' Affairs Department would be able to argue strongly for one reason why they would like the number on the face of the card, which is to help veterans. Veterans have apparently indicated they think it is highly desirable and it is the way they operate. They use that number.

**CHAIR**—They may, and there might be an option to put the number on. I do not have any problem with that. That is a different issue. I think I mentioned right at the beginning of our questioning that you cannot argue that, just because some people might find it a convenient form of ID, we should create this entire architecture. That is not an answer, is it? No. Are there any further questions of the Privacy Commissioner?

**Senator FORSHAW**—Were you here when I asked some questions and had a discussion with the Attorney-General's representatives about the use of the card in circumstances such as people wanting to get a concession? The provisions in the bill are in clauses 45 and 46. The explanatory memorandum states:

For example, some service providers provide some of their services at discounted rates to pensioners or to persons who are entitled to particular kinds of Commonwealth concessions. Subparagraph 46(1)(d)(i) is intended to ensure that these service providers can continue to provide these discounted rates to persons who are entitled to the relevant concession. Accordingly, it will not be an offence for a provider to refuse to provide a service at a discounted rate if a person refuses to produce his or her card to verify that they are entitled to the relevant concession.

Clauses 46 and 45 are similar. Do you have a clear understanding of where the limits are in regard to the operations of that exemption, if you like?

**Ms Curtis**—I think that is a question for the Department of Human Services.

**Senator FORSHAW**—I know it is a question for the Department of Human Services. That is what the Attorney-General's department told me. But it is also a question, in my view, for most people who are appearing today.

**Ms Curtis**—The Department of—

**Senator FORSHAW**—You are the people who are going to have some role in overseeing the operation of this legislation in the same way as A-Gs and others, and it is important that we understand the boundaries in terms of who has a right to require the production of this card outside of the agencies that we clearly understand have that right—Medicare and so on.

Secondly, how is it that going to happen given that the information they may be seeking, such as proof of concession status—seniors card or veterans' entitlement card—is not on the card itself but is contained in the chip? As the Privacy Commissioner, shouldn't you be absolutely confident that any exemptions given or any entitlement allowed under this legislation, particularly to the non-government sector—companies and others—to access this card is clear and unambiguous, not confusing and will not undermine the supposed security of the information?

**Ms Curtis**—My understanding is that a working group in the Commonwealth is looking at the issue of concessions, and it is liaising with the states and territories on a way to ensure that appropriate concessions will still be available to those people who are entitled to them. I understand that is a work in progress.

**Senator FORSHAW**—What you are telling me—and I say this with the greatest respect, Ms Curtis, because I think you are labouring under a similar situation to ours—is that they have drafted a bill and they have tried to cover the operation of who can access it in circumstances where they are saying that it is unlawful to require the production of the card in general unless it is done for a proper and prescribed purpose. Then, unfortunately, we do not have any real clear indication as to the extent of the class of persons, organisations or companies that will be able to do it lawfully.

**Ms Curtis**—People will offer their access card—

**Senator FORSHAW**—But that is not what we are dealing with here. We are dealing with who under the proposed law has an entitlement to require its production.

**Ms Curtis**—My understanding at the moment is that it is only those participating agencies that are listed.

**Senator FORSHAW**—That is not what I understand the legislation to say. I am confused or uncertain about it. I am having trouble in defining the groups that might be able to do it lawfully. A whole range of people out there, retailers and everybody, offer concessions—

**Mr Solomon**—I might be able to assist. The intention of the department, and through the bill, is that, where people currently offer concessions to Commonwealth benefit holders, that will continue.

**Senator FORSHAW**—I understand that.

**Mr Solomon**—The intention of the bill is that, if I have a concession that is issued by the Commonwealth and I want to ask for that concession from a provider who provides it, the provider can actually ask me to present my card. It is a simple proposition.

**Senator FORSHAW**—I understand that. That is obvious. I understand exactly what the explanatory memoranda says. The difficulty that I come back to all the time is that the new access card that will replace the seniors card, the veterans' card and so on, as we are told, will not have an identification on the card that says, 'I, John Citizen, am entitled to seniors benefits or a seniors card.' It will not have that on the surface. It will not say that I am a veteran or that I am a widow of a veteran. That is different from the current situation. There are specific cards that you show to the person at the cinema counter, who looks at it and says, 'Yes, you get your discount.' This card will not be like that. The information that they are

searching for is on the chip. Presumably, they are going to have to read the card to be able to ascertain that the person who shows the card is a senior citizen. I think you need to know the extent of who can access that information under those exemptions.

**CHAIR**—I should just point out, Mr Solomon, that Senator Forshaw and I were earlier discussing that the veteran community is in a slightly different category because some of the concessions will in fact be on the face of the card.

**Senator FORSHAW**—A few are.

**CHAIR**—Put it this way: it still applies in many other circumstances.

**Mr Solomon**—That is true. In some circumstances, for permanent concession holders, there will be indicators—either a colour or something else on the card; for others, it will be on the chip. The privacy enhancing feature of this card is that, with a simple reader that can only indicate that you have a concession, a provider will not see your address, date of birth and so on. This card actually provides a privacy enhancing feature in that circumstance. As we understand it, the way the department wants to roll it out is that there will be a simple reader that shows only a concession entitlement and no other information.

**Senator FORSHAW**—What you are saying is that, at the end of the day, it comes down to the technology of the reader and what it is capable of doing. The readers will not be able to electronically record the information that might come up on the screen or whatever it is when they put the card through. Is that what you are saying?

**Ms Curtis**—As we understand it.

**Mr Solomon**—The technology will be important, and we have said that in our submission.

**Senator LUNDY**—Do you know what sort of reader is attached to the ones you buy at the shop?

**CHAIR**—Different readers for different folks. That is right, is it not, Mr Solomon, as you understand it?

**Mr Solomon**—Yes. The department will have a different type of reader from the local hairdresser offering a concession.

**Senator FORSHAW**—I understand that is the argument, but we are unsure about this and need some proof about it. The other thing I have difficulty I have with is that it is an undefined class of persons or organisations, because you cannot draw up a list and say, 'All these groups and businesses can do this and all those groups and businesses cannot.' I can see that, at the moment, they could all ask for the seniors card, but that is not what this legislation is doing. This legislation is coming at it from a different angle. It is saying: 'Here is this new card. Some will be entitled to ask for it and some will not.'

**CHAIR**—I think that could be considered to be more of a comment. Ms Curtis and officers, thank you very much for your assistance to the committee today.

[1.19 pm]

**SPIERS, Ms Carolyn, National Manager, Access Card Group, Department of Veterans' Affairs**

**SULLIVAN, Mr Mark, Secretary, Department of Veterans' Affairs**

**TELFORD, Mr Barry, General Manager, Policy and Development, Department of Veterans' Affairs**

**CHAIR**—Mr Sullivan and officers, thank you very much for your patience. I apologise on behalf of the committee for the late engagement this afternoon. I have a feeling it will be a very long day for all of us.

**Senator FORSHAW**—As deputy chair, I should just add—and this is no reflection on the chair or members of the committee—that the reason we are late is largely that we are on an incredibly tight timetable with this inquiry, as you would understand.

**Senator LUNDY**—Dictated by the government.

**Senator FORSHAW**—We have to report by next week.

**Mr Sullivan**—We are here for as long as you need us. I have further deferred my flight.

**CHAIR**—Thanks, Mr Sullivan. Hopefully, we will not delay you for too long. I do appreciate it. Mr Sullivan, do you have an opening statement?

**Mr Sullivan**—I will keep it very short. Thank you for allowing us to appear. We have a responsibility to ensure that, in the policy development and implementation of the access card, the needs of veterans and their dependants are recognised and accounted for. We deal with some 305,000 veterans and beneficiaries in receipt of a DVA treatment card. They are our interest. I think I will leave it at that.

**Senator FORSHAW**—You were present when I just had that exchange with representatives of the Privacy Commissioner. Without going through all of it again, would you care to comment upon and allay my concerns about veterans entitlements cards? Cardholders may regularly use that card, in the private sector particularly, to obtain concessions and discounts. We will have a new system whereby the card may have to be read electronically to ascertain that the person is entitled to a concession. Are you happy about that in terms of the privacy and confidentiality of the sorts of information that the department has on its clients?

**Mr Sullivan**—In respect of veterans, particularly those who have gold cards, we have badged on that gold card that they are a particular sort of veteran: a TPI, a POW, a war widow or a person in receipt of EDA.

**Senator FORSHAW**—How is that done?

**Mr Sullivan**—It is embossed on the card or, in respect of the TPIs, it is actually a little symbol on the card that says they are a TPI. The bill provides for such markings to be present on the veterans access card. In respect of veterans on a gold card who are a war widow, EDA, POW, TPI or blind, that marking will be on the exterior of the card, as it is now, and it will be apparent to anyone offering concessions.

**Senator FORSHAW**—Are you saying that there should be no reason for a cinema proprietor or retailer to actually read it electronically?

**Mr Sullivan**—That is right. For the gold card holder it will be as it is now; an offerer of concessions will see clearly that this person is so entitled.

**Senator FORSHAW**—That raises an interesting issue, because we were told yesterday in Melbourne by representatives from Legacy that there would be potentially markings on the card for people within the veterans community. In effect, we have a second version of the access card that is specific for veterans. What will be the situation with proprietors who may want to read the card, and how can we be sure that they will not do that and that it will be an offence for them to do that? I am assuming that it would be an offence for them to do that, or maybe it is not; can you tell me?

**Ms Spiers**—The answer is not straightforward on that particular issue, because gold card holders can also be holders of pensioner concession cards. If the person were to try to rely on their pensioner concession card status, the concession provider would have to read the chip to be able to read that status. What we are proposing with the gold access card with those badgings is to have basically a business as usual rule for what we have now. People will identify themselves as TPIs, war widows, POWs, blinded or EDA recipients, and on production of the card and on being shown the card the concession giver provides that concession.

**Senator FORSHAW**—There are two issues here. One is the actual letter of the law and how we can be sure that there is an identifiable range of persons, companies or organisations that have the right to ask for the card, who have the right to electronically read the card, and the rest who do not. There is also the broader issue that concerns me and others that it will be essentially a huge task to get information out to the community in general that this will be the new regime, that there will be in future situations where people, who may in the past have sought production of the card or asked legitimately for it, under this scheme may not be so entitled to do that. Do you have any comment about how that will all happen?

**Mr Sullivan**—As Ms Spiers said, in respect of veterans it will look like business as usual, and the message out there will be business as usual. If you currently have a gold repatriation health card, you will have a gold access card that will recognise you as a veteran and that will signify that you are in a particular category of veteran or that you are a veteran's dependant, which will be very familiar to both the service providers and members. We always pick up people when they say that this is a welfare card; we do not dispense welfare, we dispense services—health in particular and other services. It is through 50,000 providers that we dispense those services. Veterans do not pay for the services we dispense; we pay for them through a provider. For us there is a familiarity with the fact that the card is not overwhelmingly an identification card. The current card is the way we do business, and the proposed card continues that business and provides potential for doing our business better. That is as we see it, and that is the response of the veterans community largely as they see it.

**Senator FORSHAW**—Moving on to one other issue, one of the arguments advanced in support of the card is that it is for ease of administration, and you mention this in your submission. If a person has to notify a change of address or personal data, they will only have

to do it once and it will flow through the system. Can't that be achieved anyway without the necessity to have one card replace two, three or four?

**Mr Sullivan**—I think it is more difficult—

**Senator FORSHAW**—Where is the big advantage?

**Mr Sullivan**—I will tell you. The classic example for us is that you have a serviceman now who is in the services. He would have a Medicare card. He leaves the services, becomes a veteran and needs to access the services of the Department of Veterans' Affairs. At the moment we would put that serviceman through a registration process, including POI and so on. That person in the future will have an access card. They will come to the Department of Veterans' Affairs and they are registered with us. We purely go into: 'What is the transaction you are interested in?' We do not have to do anything with that person. That is a big advantage of this card.

The advantage is that it would require each agency to keep tabs on the other agencies that have a dealing with this person, which I do not think anyone wants us to do, and then basically transfer and maintain some form of real-time updating process so that we have covered off every agency in respect of personal information change. I do not think there is really a viable alternative in respect of cross-government updating of personal information other than a discrete database on a discrete card. The early debate was really around transition and take-up. We do lose looking down the track. As I see it, there is enormous benefit for that serviceman who becomes a veteran not to have to initiate the whole process with Veterans' Affairs through another process. We take that access card and we say, 'Yes, the Commonwealth knows you. Let's start talking about what services we can deliver to you.'

**Senator FORSHAW**—Thank you for that. I suppose that is why I think that, at the end of the day, the argument that this is not an identity card is a fallacious one. I do not ask you to comment on that. The very fact that you end up with one card that is accepted right across the spectrum as identity details leads me to that conclusion.

**Senator LUNDY**—How many cards do veterans carry?

**Mr Sullivan**—A veteran could carry many cards. They could carry a Medicare card, a range of Centrelink cards and one or two DVA cards. There are many veterans who have dealings outside of Veterans' Affairs and who have cards for each of those dealings outside of Veterans' Affairs.

**Senator LUNDY**—Have you ever heard of anyone having 17 Commonwealth related cards?

**Mr Sullivan**—No, I do not know of a person who has 17 cards. But I corrected Human Services because I think the '17 cards' ignores the veterans' cards, and you can go higher than 17 hypothetically. There are a lot of cards.

**Senator LUNDY**—How would the services that Veterans' Affairs provides be included on the access card within the current proposals?

**Mr Sullivan**—The access card basically provides that person with access into DVA systems through the gateway of the access card. We would provide our services in very much the same way we do now. One potential, however, is for certainty in the linkages between a

provider, a veteran and the department. There is potential with the chip technology for the card—and it is not a proposal in any of the legislation, although it is in our business thinking—to ease for the veterans the way we procure services for them. The way we can do that is to have technology that allows for that procurement process eventually to be as direct as possible.

**Senator LUNDY**—What does that mean?

**Mr Sullivan**—It means, for instance, that if you currently go to an optometrist as a veteran you have your gold card. The optometrist will ring us and do some work with us, and we will approve the provision of glasses to the veteran within a range of price and quality. They will then provide that to the veteran and send us an invoice for the glasses. We will process the invoice and pay the provider in due course. Clearly, chip technology provides the potential for the optometrist to know that the person is an entitled veteran and to charge us. There would not be any need at all for us to be involved other than reconciling what has happened against that card.

We are a unique deliverer of Commonwealth services in the way that we purchase services. We do not enter into co-payment arrangements. We do not require people to pay for services. We pay the third-party provider. The more transparent and easy that can be for the veteran, the greater the service for the veteran. We think the access card certainly provides us with plenty of potential to make that service a whole lot more streamlined for veterans.

**Senator FORSHAW**—In that example of the optometrist, is there a Medicare component as well?

**Mr Sullivan**—No.

**Senator FORSHAW**—So the transaction is all through DVA?

**Mr Sullivan**—Yes. A veteran holding a gold card has no Medicare aspect to their health services. DVA pays in full for the health services and does not claim anything from Medicare.

**Senator LUNDY**—In terms of your business thinking, what input have you been able to provide into the various joint working parties with Human Services?

**Mr Sullivan**—We are in many respects a full partner to Human Services. We are the other portfolio engaged in the card, so we are involved in all of the groups that you have heard of in your hearings: the secretary's group and the deputy secretary's group. Carolyn Spiers and her people almost work full-time with Human Services. We are engaged in the Registration Taskforce. We have no complaint whatsoever about the way that the Department of Human Services engages us in respect of our side of the business. I think we have been able to provide a lot of good input because our side of the business to a degree deals with a demographic which at one point is one of the more difficult demographics to deal with in respect of the access card.

**Senator LUNDY**—One of the frustrations of this committee has been our inability to get some more technical information about how this system will operate. How confident can you be as a department that it will work according to plan when I presume that, like everyone else, you are not privy to that information either?

**Mr Sullivan**—We work on the inside, and we certainly understand the thinking. We certainly sign off in respect of the thinking about the architecture and the capacity for our systems to be able to deal with and meet that architecture. As others have said, until we see the response to some of the tenders we will not be able to look at the detail of the system. But we understand how it is proposed to operate, and we are required to be able to sign off from our agency's perspective that we can deal with that. As part of the tender evaluation process, some DVA expertise is being contributed to that process.

**Senator LUNDY**—Are you incurring any additional costs with respect to your own IT systems to integrate what you need to do to fit in with the access card?

**Mr Sullivan**—We certainly have to ensure that our IT systems are capable of integration. We have to ensure, say, that our data is to standard. We hope it always would be, but that standard is incredibly important at this time. We are funded for our access card activities.

**Senator LUNDY**—How much?

**Mr Sullivan**—I would have to take that on notice. It is about \$4 million. That is for this year. Please do not hold me to that. I will get back on notice in terms of what our particular access card funding is.

**Senator LUNDY**—How much of that is spent on IT systems, and will your own contracts with IT service providers have to be varied to accommodate the access card plans?

**Mr Sullivan**—No. Part of it is some attribution. For instance, we ourselves had decided that we needed to improve our personal particulars systems—our person management systems—and that gave us an opportunity to have that system well and truly refined for access card, and some of that we attributed to the access card. Our participation in tender evaluation and other technical issues with the Department of Human Services requires the input of our most precious asset: people—not our contractors. But it does not require any additional new contracting variation within our own systems.

**Senator LUNDY**—Are you able to tell me whether the standards used within your existing database will match metadata so that the addressing system for the data stored will match that of the proposed new database?

**Mr Sullivan**—I do not know whether I would use the word 'match' but they are certainly compatible. We have no problems in terms of—

**Senator LUNDY**—So they are interoperable?

**Mr Sullivan**—Yes. Clearly, a prerequisite is that we can—

**Senator LUNDY**—I would have assumed so. We have not been able to get an insight from any other witness yet as to whether it is a prerequisite.

**Mr Sullivan**—I think I would use the word 'interoperate' rather than 'matching'. 'Matching' is a very precise term.

**Senator LUNDY**—We asked some questions of Vision Australia, and witnesses representing people with disabilities, who expressed some very strong views about the look and feel of the card. Does DVA have any views about the physical nature of the card—that is, textures or different edging—so as to make it more easily used by vision impaired people?

**Mr Sullivan**—We have had cards issued to visually impaired people for a long time.

**Senator LUNDY**—What are the features of those cards?

**Mr Sullivan**—Basically, there is an indicator on the card. It used to be ‘BLI’, and now it is ‘BLIND’. We continue to talk to them about that. That is embossed and, therefore, they can feel it. The veterans’ feedback to us in respect of the look and feel of this card is that they want it to look and feel as much like a gold card as it can. The veterans are an interesting group. They like the idea of a photograph being on a card. I heard Senator Mason before, and I would agree with some of the things he said. A lot of our veteran cohort do not have any form of photographic ID, and that is partly why they want it.

**Senator LUNDY**—Because they do not drive?

**Mr Sullivan**—They do not drive; they have never had a passport; most of their identification is old.

**Senator LUNDY**—Have you surveyed your clients?

**Mr Sullivan**—We talk to the veterans. We have a number of peak consultative bodies. The veterans come to us. So we have had submissions directly to us from people like the war widows and others.

**Senator LUNDY**—How can you provide evidence to the committee of the views of veterans to the effect of what you are saying?

**Mr Telford**—There is what Mr Sullivan has said in terms of our ongoing consultation, which is extensive. Also, we provided assistance to Human Services in getting together widows, veterans and other members of the veteran community for various focus groups and consultations that take place as well. In terms of the discussions around look and feel and all other matters with the card, and aspects of what should or should not be on it, veterans and widows have been included in those consultations, focus groups and that research.

**Senator LUNDY**—Do you have a general statement that encapsulates what those views were as expressed in that consultation process?

**Mr Sullivan**—I think only as we related it in our submission. It is our view of what veterans are telling us. If you say, ‘Give me the documents behind that’, no, I would not be able to show you a whole set of documents. We also have a very acutely aware veteran community, and they will be reading this transcript. If any of them disagree, they will tell both you and me. As I said, their major concern is that they want it to look and feel like their gold card now. They can see that it potentially may have some other benefits to them, but as long as it delivers the DVA benefits the way they are familiar with, they are comfortable.

**Senator LUNDY**—Would that go towards having either some kind of texture or different edging so that vision impaired people or blind people can find the card themselves and be confident that it is being held up in the right way, as distinct from having them identified as a blind person on the card? Views have been expressed that that is not desirable.

**Mr Sullivan**—Some people say that is what they want. I have heard other groups say that maybe that is not. Of course, we would be interested in a view that could be commonly held as to any way we could improve the look and feel of a card for people who are either visually

impaired or who have some other disability, which that would help. Traditionally and for quite a long time, that has been done in respect of visually impaired people by having 'BLI' embossed on their card; it was not even 'BLIND'. They could feel that, and that is how we have done it. If it could be done better, we would be open to it.

**Senator NETTLE**—I am happy for you to take this question on notice if need be. We had some discussion yesterday about how the government has been saying that you need to change your address only once and then everybody will be told. A witness yesterday asked, 'What if the person who changes the address makes an error in entering the data?' That would create complications for you if it spread everywhere. That has prompted me to ask departments whether you are able to provide the committee with an idea of the number of instances in your own record keeping in recent times when you have had difficulties with errors in the data going in.

**Mr Sullivan**—We would have no idea. We could look and say, 'Did someone change your address quickly in succession?' That may indicate an error. If someone gives us a slight error in their address, finds that their mail does not turn up quite right, rings us the next week and says, 'I don't know whether I said "street" but they wrote it down as "street" and I really live in "drive", so would you please change that?', we would just do that as a change of address. We could tell you how many changes of address we have processed, but how many for which there is an error—no idea whatsoever.

**Senator NETTLE**—You do not have any kind of quality assurance program that measures that sort of thing?

**Mr Sullivan**—When someone rings up and says, 'I live in Smith Street, Surrey Hills', we take that address from them. We check who they are. We do all of that. If they then ring up and say, 'I am in Smith Drive', we say, 'We will make it Smith Drive.' We do not have quality assurance in respect of checking addresses.

**Senator NETTLE**—Or any other data entry errors? It is not just addresses that I am asking about.

**Mr Sullivan**—Until you get into high technology such as geo-systems and things like that where you can actually say that this address does not exist, you will not be able to do that. You could go back to someone—which you can technically do—and say, 'This address does not exist in Australia.' You could then possibly do it, but other than that I do not see a quality assurance check being able to do it. We would not have any data on that.

**Senator FORSHAW**—Are you planning to roll out the card in the same way as we have been told it will operate generally for the community, which might be through Medicare offices? I would like an idea of what you are doing.

**Mr Sullivan**—We will be a registration outlet in our own right, and we would anticipate that many veterans will want to use DVA as their registration outlet, although it will be open for them to use any of the registration outlets available. I guess we will be putting a balanced message out, and that is that our registration is open and available, but that registration and availability will be open for a long time. I anticipate that probably our profile of registrations will be similar to the general community; probably an early rush and then a steady registration process.

**Senator FORSHAW**—Are you planning to write to all of your cardholders or clients?

**Mr Sullivan**—We will be writing and using our Vet Affairs magazine, which goes to all veterans, and encouraging them to talk to us.

**Senator FORSHAW**—So there is nothing specifically unique or different with DVA?

**Mr Sullivan**—Other than that vets know that if you come to DVA you are treated well.

**Senator FORSHAW**—I am conscious of that. That is probably what prompted the question.

**Mr Sullivan**—I should say ‘very well’, because you will be treated well at any Commonwealth agency.

**Senator FORSHAW**—Yes, that is what prompted my question. Are there specific arrangements that you would be making that may not be mirrored in other government agencies?

**Mr Sullivan**—I think it is just familiarity with that group of people.

**CHAIR**—Mr Sullivan and officers, thank you again, and apologies from the committee about the late start.

**Mr Sullivan**—I understand, and good luck with your challenge.

**CHAIR**—Thank you.

**Proceedings suspended from 1.50 pm to 2.51 pm**

**FELS, Professor Allan, Chairman, Consumer and Privacy Taskforce**

**CHAIR**—Ladies and gentlemen, I call the committee to order and welcome Professor Allan Fels and Professor Chris Puplick to the table. Before I invite questions from my colleagues, Professor Fels, do you have an opening statement?

**Prof. Fels**—Yes. Thank you very much. When the government announced its intention to introduce a card, it established an independent task force to advise it publicly on privacy and consumer issues, and its reports would be issued publicly. The task force is made up of me, Professor Puplick and Mr John Wood. We have issued an early discussion paper. We also issued report No. 1 on the architecture of the card. We also published comments on the draft bill in the form that it was in, in early January. We have put out already a discussion paper on emergency and health data. We also have a discussion paper on registration. It has been with the Minister for Human Services for a few days but—

**CHAIR**—The registration paper is with the minister?

**Prof. Fels**—Yes, with him. We also have a few upcoming things that I should mention by way of our work program that I am sure will interest you. We are going to do a report on appeals processes under the proposed legislation. That is in regard to things like whether someone is refused a card or decisions by the secretary and so on. We are also going to do the privacy impact assessment about how personal data is handled and dealt with. We are doing a report on the customer controlled section of the chip. We will also be doing a paper on any further tranche of legislation.

**CHAIR**—Professor, by ‘any further’ do you mean the second or a further tranche than the second?

**Prof. Fels**—I think each tranche of legislation. The next tranche is the second, and we would be reporting on that.

**CHAIR**—You are not foreshadowing a third, are you?

**Prof. Fels**—No. We are also doing work that will be embodied in a report about exemptions and exceptions and about cancellations and suspensions of cards. Finally, we will do a report on governance issues in regard to the card. When the government announced its proposal for a card, we saw our role as being to advise on privacy and consumer issues arising from that. Our focus has been less on the justification of the card and more on the details. Not that I have general problems with the card, but we are more concerned with the details.

The broad view that I and the task force have is that it is possible to have a new card of broadly the kind the government has proposed that would benefit consumers, make transactions easier, not harm privacy, benefit government processes, and not be an ID card in the sense that one is required to produce it or in a number of other popular senses. We think it is possible to have a card of that kind.

**CHAIR**—That is good news.

**Prof. Fels**—We have made a number of recommendations. The major recommendation in the first report was that indeed there should be comprehensive legislation to define the nature

of the card and its functions, to limit function creep as far as possible and to ensure privacy protection, and that is the legislation that you have before you. Most of the recommendations in our first report were accepted. Two recommendations that were not accepted included our saying that the number on the surface of the card—on the rear of the card—should not be there; it could be on the chip. Similarly with the signature, we did not think the case had been made out for the signature to be on the surface of the card. I am happy to discuss that, but I will continue this statement for a minute or two. Also, I would suggest that at this very moment there has not been a fully comprehensive response to issues about the destruction of documents. Although I have not quite followed it all, I did pick up Senator Stott Despoja's question about this. I think it was said to her that that is unresolved.

We also put out a paper on the draft legislation as it appeared in January. That was a public submission. The government accepted a fair number of the recommendations that we made; for example, that the place of birth was irrelevant, and that has now been removed. Also, we were critical of the use of titles on the face of the card or even inside it, and on the whole we had some success with that recommendation but there are also some titles left on it—'Mr' and 'Mrs', which we do not mind. We have some doubts about 'Dr'. Also, there was the fact that it should be made a lot clearer in the legislation that the card should not be used as an ID card. On the whole that proposal was also accepted. Really they are the things. I am happy to talk about the issue of the number on the card, the signature and that kind of thing or to answer any other questions.

**Senator STOTT DESPOJA**—I am happy perhaps to facilitate this process. If I bring up a topic that other senators want to ask about, maybe that is one way of doing it. Professor Fels, you pre-empted my question in relation to some of the recommendations of yours that had not been adopted. I, perhaps cheekily, ask you for your top three recommendations that have not been adopted so far—those that you wished were adopted.

**Prof. Fels**—The number on the card and the signature on the card. And, I am not 100 per cent comfortable with date of birth. On the question of the number on the card, there are three options.

**CHAIR**—We have just had this discussion with the Privacy Commissioner. I questioned her at some length. She had no particular objection to the number. I queried that and I was not particularly satisfied with her answers. Nonetheless, that was her stance.

**Senator LUNDY**—We were not satisfied either, for the record.

**CHAIR**—I just wanted to raise that. I wanted you to know that. On the other hand, she was against the photograph, or thought that it should be optional, and against the signature being on the face of the card.

**Prof. Fels**—I am happy to talk about the photo also. On the issue of the number, to state the obvious, you could either not have the number on the card, you could have the number on the card for everyone—that is, it could be compulsory—or cardholders could have the option of having the number on the card. We originally leant against the idea of the number being on the card, but we see much merit in the idea that it is the option of the cardholder whether or not there is a number on their card. I suspect you know all the arguments for and against, but I will briefly mention a few. The arguments for the card—indeed, I think they are set out by the

government—are that the number can be used by customers and agencies for quick identification over the phone or online, and that is rather convenient. But it is also a double-edged sword, because having the number visible on the surface of the card also increases its vulnerability to fraud and to identity theft—and that is despite the fact that there are secret questions and so on as a safeguard. Also there is an argument put up by the government, which I do not fully understand, about providers sometimes needing a reference number to get a refund. I also wonder whether this is a question of asking the government whether they could think about changing their ways of doing business a little bit, because there are significant privacy issues involved in regard to the card and so everything should not be entirely dictated by a given way of doing business.

Also it has been said that clients cannot remember numbers. That is quite possible, and the numbers will be rather big ones. But I think, on the other hand, that would be a factor if people had a choice. They might think, ‘It is more convenient for me and I’d prefer to have it on the card so that I can always know what it is.’ Others would not want it on the card. Why not, perhaps, make it a question of consumer choice. In regard to the issue of not remembering numbers, one can think of quite a variety of situations where you cannot remember the number and it does not matter; at other times there may be some inconvenience through not having the number in front of you. Another point put forward is that systems fail and therefore you need some numbers around. But this is a rather unhappy basis upon which to support having a number on a card, it seems to me.

We have heard from the Department of Veterans’ Affairs that veterans are very attached to the number. They have a familiarity with the number and they are attached to it. Again, maybe that could be dealt with by giving people a choice. The problem with the number that we have had—as, I am sure, have others—is that it is a little bit of a step in the direction of having a unique personal identifier number. I think the number has to be in the system and it has to be on the chip. We are not against that. So this one is a more marginal call. Nevertheless it is just taking a little step closer to a unique identifier. Of course it is proposed now that the number changes, and that is an improvement over the original proposals. Originally we thought there would be one number that you had for life. Now if you change your card, you get a new number. Nevertheless, it is a step in the direction of a unique personal identifier, and there would need to be quite a strong case for it.

I think, in regard to the number, you have to strike some kind of a balance between privacy issues, protection against fraud and identity theft, and things of that sort versus some probable greater inconvenience if people do not have the number on the card. What better way could there be of resolving this issue than giving people the choice? I suppose giving them the choice does bring up the problem that it starts to get a bit complicated enrolling for the card, because you would have to give people some idea of the issues in determining whether or not to put their number on the face of the card. I have not heard anything thus far that suggests this would make registration impossible or anything like that.

**Senator LUNDY**—The way you have articulated it, there is a cascading list of reasons for why the government has contended that the number ought to go on the card. But from our perspective, we hear the government saying all the time that the primary reason for this whole

initiative is to crack down on fraud. Do you agree with the proposition that therefore the decrease of vulnerability to fraud ought to be the primary objective?

**Prof. Fels**—Of the whole card?

**Senator LUNDY**—Of the whole exercise, which would logically mean that the number not be on the card at least in a default situation?

**Prof. Fels**—My general take on the card is that the present card has reached its use-by date, or soon will, and it has to be replaced. But it has to be replaced—

**CHAIR**—Do you mean the Medicare Card?

**Prof. Fels**—Yes. It has to be replaced by some kind of smartcard technology, and there are quite a few pluses in the new card. It is not simply a question of fraud. There is also some convenience in that if you go into Medicare to make a claim or into Centrelink, you often have to spend more time on identity questions and things of that sort than will likely be the case with the card. So it does have some other advantages besides just cracking down on fraud.

**Senator LUNDY**—The point I am making is that the government has self-nominated that as being one of the primary policy motivations for it. We know there are lots of other reasons, but that is the one that the government keeps waving about first and foremost. From the opposition's perspective, that is the one that they try and say that we have a problem with in terms of our concerns with the access card.

**Prof. Fels**—I have mentioned a number of reasons, and I suppose you are making the point that you might reduce the fraud in one dimension and transfer it to another dimension. That is a concern that is on our minds in regard to the card. There are fairly complicated trade-offs in that, but I think there is some onus on the proponents to be able to show that you need the number on the card.

**Senator STOTT DESPOJA**—I am going to draw you back to your top three again. We have covered the number. You mentioned the signature?

**Prof. Fels**—Yes. The story in regard to the signature seems to me to be fairly similar. Again, a signature on the chip is fine or is necessary, but whether it should be on the surface of the card is more problematic. There seem to be three options: that it is not on the card at all, that it is on the card or that it is optional for cardholders, even though it would still be on the chip. Regarding the signature, firstly, we have heard that a lot of people, including veterans, actually like having the signature on it. It also probably facilitates processing, but remember that the signature will be on the reader so it will be possible to check the reader, and maybe that will be less efficient and slower, although I am not totally sure of that. The main checking seems to be on forms that come in. Against the signature on the face of the card are fraud or identity theft possibilities. It is one more piece of centrally stored data, and one should exercise a bit of caution and be satisfied that there is a reasonable case for actually having stored somewhere millions of signatures. I think there are some reasonable arguments for making this a matter of choice.

Then, again, we go back to what the registration process would be like in this situation. It would complicate it a bit, because people would have to be informed in some minimal fashion

as to what the kinds of issues are in whether or not they sign up. Also it may be, for all I know, that people make a choice on the day and then they think about it in the light of experience in following years and change the card so we get a number of card changes as time passes and so on. On the whole, we favour the choice option.

There are two other issues. On the date of birth, as you may recall—and I have no criticisms of this—the issue of users having the choice of putting their date of birth on the card came up a bit late. You can see why many people would welcome that, and who are we to interfere with people's choices? One thing that has, however, struck me as a possible way of addressing this would be to give people the option of simply saying what the month and year of their birth is, so it would leave their birth date off. That would reduce the chances of identity theft and fraud somewhat. The more data on the card, the more the problems. As we have mentioned in the report, it can be quite a big operation and there will be not nice people, whether here or overseas, thinking of ways of using the card for their advantage and getting the full birth date on it. I just raise that question.

We also raised the question of whether there could be flagging so that there is a flag if you are 18, 55, 60 or 65 years of age. I understand, although I have not checked this, that there is a fairly large number of alternative ages in relation to various concessions, so the number of flags would be fairly large. I am not particularly arguing against that. I do suggest that it would be useful to have a look at this question of whether you could have less information on the card. If you were heading in that direction, a further issue would be: do you mandate that people can only put the month and year of birth and nothing else, or do you give them a wider choice? It will start to be quite a complicated enrolment process if we are not careful. I see some merit in having the month and the year of birth, but I think it would be useful to get a government response on that one. It has not been publicly discussed by them.

**CHAIR**—And the photo?

**Prof. Fels**—Isn't it interesting? There is a somewhat similar set of options here. Do you have it on the card? In our first report, we said yes.

**CHAIR**—Yes, you did, with some reservations, though.

**Prof. Fels**—Yes. There are options there. There is the question, again, of whether it is optional but it is in the chip. The government has said in its submissions and so on that having the photo on the face of the card would facilitate transactions for consumers. There would be quick recognition of them in dealings with the government and maybe in dealings with doctors, pharmacies and so on. It is the idea that you just hold up the card and it shows your face. If you did not have the photo on the card, I think whoever was dealing with you, the cardholder, would have to take a bit of time to look you up. This is a social services and Medicare card, and all the people dealing with you will have their own reader. Presumably the readers will work pretty quickly. Probably having the photo on the card would speed up processes and would have consumer convenience advantages. Certainly there is a case for having the photo to begin with, because that stops this double claiming or multiple claiming that we have heard about in terms of someone under the present system sometimes getting many cards. It would seem that there is a justification for having a photo in the system,

**CHAIR**—By 'in the system' do you mean on the chip?

**Prof. Fels**—Yes, on the chip.

**CHAIR**—It does not have to be on the face?

**Prof. Fels**—Yes. We are not against it being on the chip or on the register. It is not an insignificant issue having a photo in this situation. It is also true that photos are part of the modern scene these days, and we have all sorts of instances of photo identification—drivers licences and many other forms. Some of the great battles over privacy have been lost. Again, this involves the government having a collection of photos, which again should be viewed with some caution.

**Senator STOTT DESPOJA**—On that point, do I dare weigh up the arguments you have just put to us? It sounds like you are still quite equivocal at best on the issue of a photograph. In fact, I would argue the information you have just given us now would weigh against having a photograph on the surface of the card as opposed to—

**Prof. Fels**—It could be a matter of choice.

**Senator STOTT DESPOJA**—What do you mean by ‘consumer convenience’?

**Prof. Fels**—What I mean is that if you walk into Centrelink or Medicare—and also when you go to doctors and other things—with a card with your photo on it you can be immediately identified as the person. As you know, if you walk in with a Medicare card with someone else’s name on it they cannot really—

**Senator STOTT DESPOJA**—But they still have to use the reader, don’t they?

**Prof. Fels**—Yes, that is right.

**Senator STOTT DESPOJA**—So it is certainly an added bonus in that respect, from a convenience perspective, but it is still not something that is necessary?

**Prof. Fels**—Yes, that is true. They have to use the reader for these purposes. But there are cases where people will look at the card and immediately see that your face matched it without having to open up the reader and all that kind of thing. That was what I was—

**CHAIR**—But you would not allow someone to access welfare without reading the cards.

**Senator STOTT DESPOJA**—No.

**Prof. Fels**—Maybe I could clarify this. In the non-Commonwealth-government situation, for some people the card with the photo on it would be a very useful form of personal identification. Isn’t that what you are on about?

**Senator STOTT DESPOJA**—No. I think the chair is going to pick up on that point.

**CHAIR**—I am going to put this into context. We have heard arguments about consumer convenience and we have heard from veterans and blind people about the advantages of another form of identity. I think we all accept that. But I am not convinced that that of itself justifies the apparatus. Getting back to your point, Professor, if you can make a choice, in other words, if you want a better form of identity—and I think this is what Senator Stott Despoja is saying—in other words, if veterans want it, blind people want it, other people want an extra form of ID, then let them have the photo, the number, the signature or whatever. But

that does not mean it has to be compulsory for the rest of the country. Is that putting it in the right bundle?

**Prof. Fels**—Yes. As I said, we originally supported the photo on the card and the idea of it being a matter of choice did not come up. But I now tend to see the idea of it being a matter of choice as having a lot of merit, almost to the point where I think a very strong case would need to be made against that before you would remove the consumer choice possibility.

**Senator LUNDY**—To follow up on that point: despite previous recommendations to government, are you now confirming for this committee that the preferred way forward, in your view, would be to have an optional photo on the surface of the card?

**Prof. Fels**—On balance that is our current position, but I think also that it would be useful to hear more from the government on their perception on this, whether there are any major administrative problems or whether this would mean that the whole system that they are proposing to have does not work. I would have thought, however, that the big thing for them is to have a photo in the chip and on register rather than necessarily compelling it to be on the card when there would be some people who would be strongly opposed to that and not like it and there would be others who, given the choice, would not want their photo on it.

**Senator STOTT DESPOJA**—Thank you for that. I asked for your top three and I got four and counting. I am sure we could go on, but I might just ask questions on a couple of other matters, Professor, just in the interests of time.

**Prof. Fels**—Yes, please.

**Senator STOTT DESPOJA**—We should check if you are happy to take questions on notice, by the way.

**Prof. Fels**—Yes.

**Senator STOTT DESPOJA**—You are in the process of a privacy impact assessment.

**Prof. Fels**—Yes.

**Senator STOTT DESPOJA**—Obviously there has been one previously, which is a very private privacy impact assessment. The rest of us are not allowed to look at it, and I know I am not going to see it, but I still plug that particular request to the department/government. Do you understand why some of us are feeling very uncomfortable about potentially passing the first tranche of legislation with minimal if any privacy safeguards in this bill or, in fact, areas of the legislation, such as clause 33(a), which allows for the individual's space on the card, yet no details as to what the functions, role or the protections will be in relation to that section. I find it staggering that some of the key issues of privacy protection and security, and broader matters, have yet to be resolved. They are in the process of being discussed, debated and analysed but not necessarily solved. Do you think it is a bit of a big ask to expect this tranche of legislation to be passed?

**Prof. Fels**—I am reasonably inclined to leave that to your greater wisdom than mine and to note that you will get the second go, anyway, in this next tranche.

**Senator STOTT DESPOJA**—Sorry, get a—

**Prof. Fels**—I do not know that I could add anything for or against it, except to note the obvious point that the matter is coming back to you for a second bite at the cherry, in any event. We are doing a specific paper on the customer controlled part of the chip. That will be made public.

**Senator STOTT DESPOJA**—Indeed. I realise that you are doing a paper on that, but it is effectively legislated for in this part, this tranche. It is provided for in this part of the legislation. I acknowledge that your good work is ongoing, but that should belong here, should it not? This is the foundation that is being laid for those specifics but we do not have the specifics. Can't it wait? Could we at least delete this part—33(a)—and just deal with this bill, which is essentially about the Commonwealth functions?

**Prof. Fels**—I am not very keen to get into that one. This is for the wisdom of the legislators, which we know is really big.

**Senator STOTT DESPOJA**—You know how to turn down a question in a really polite way. Using 'wisdom' and 'legislators' in a sentence gets me every time. Can I ask about the smartcard technology? You have said on record today something that we all acknowledge: the Medicare card has an antiquated element to it and the world is getting into smartcard technology. You mentioned it had pluses. We are talking about a fairly ambitious proposal. Do you believe that the technology is sufficiently mature for a project of this kind? You are confident in the maturity of the technology?

**Prof. Fels**—Is this in my capacity as one of the world's leading economists or as one of the leading regulators?

**Senator STOTT DESPOJA**—Just your general wisdom.

**Prof. Fels**—My general feelings about it are that the technology is okay for this. That is, I see that things like banking cards and the technology there works well. There are worries and hazards about the whole fact that there is an industry out there working extremely hard to try to bust into these systems and so on, but they seem not to have got caught up. My own feeling—but it is no more than that—is reasonable confidence about the robustness of the technology from the point of view of protection against false invasion and so on.

**Senator STOTT DESPOJA**—Can I ask you a bit about the process? You have been obviously involved in consultations, and for that we thank you personally, and particularly Professor Puplick, for including us in your discussions. Have you had feedback from some of your submitters expressing concern about the pace at which this legislation for the smartcard/access card is unfolding?

**Prof. Fels**—There were grumbles about the consultation process with regard to the legislation and the turnaround time in January. On the other hand, the whole project was announced in the middle of last year and there has been an ongoing release of information about it. My impression is that the well-informed critics have had a fairly good opportunity to look at the policies and so on. There is a fairly well-informed critique, it seems to me—and an appreciation, for that matter—of what is happening.

**Senator STOTT DESPOJA**—Have you had many discussions with the Privacy Commissioner on the implementation of this card?

**Prof. Fels**—I have had some but not a huge number. Of course I know her quite well, and we had an early discussion. She has put in significant submissions, which I have read and studied. It is just I have not had a lot of meetings with her. I have also met the UK Information Commissioner. I had a big talk with him about it. That is in a slightly different setting. We are taking heaps of notice of the Privacy Commissioner's submissions.

**Senator STOTT DESPOJA**—Do you have a view for the committee on the role or potential role of the Privacy Commissioner in the context of this legislation passing and the access card being in operation? For example, do you believe there an argument for strengthening the role of the Privacy Commissioner or added resources for dealing with complaints that may or may not arise with an access card or maybe for strengthening provisions in the bill that see consultation being mandatory? Obviously there is a provision for consultation, but it is not just about seeking advice; it is also about the advice being taken. I am just trying to work out a role for another party in keeping an eye on privacy.

**Prof. Fels**—Yes. We are going to do a separate paper on governance and that will undoubtedly bring up that question. Also, the Privacy Commissioner will obviously be giving us assistance with the privacy impact assessment.

**Senator STOTT DESPOJA**—So that governance paper presumably will look at broader accountability, public accountability mechanisms and issues like a public interest monitor or—

**Prof. Fels**—Yes, and whether it should be the Ombudsman, the Privacy Commissioner or someone keeping an eye on it and things of that sort. That is the sort of issue we will address.

**Senator STOTT DESPOJA**—Do you have a comment on the broad-ranging discretionary powers in the legislation for the minister and/or the secretary of the department? There are 20-odd mentions in the legislation or provisions for quite broad discretionary powers. Is that something you would care to comment on?

**Prof. Fels**—Again, we are doing a paper on appeals, but that is mainly on the mechanism. As a general principle, we think for most of the decisions that can be made under the legislation there should be some rights of appeal or parliamentary scrutiny and that kind of thing. There is reasonable provision for that, but I would suggest that one should err on the side of caution on this matter in terms of maximising the parliamentary review processes and appeals and so on. The question of the discretion is dealt with in the registration paper, which the Minister for Human Services is no doubt thinking about at the moment.

**Senator STOTT DESPOJA**—You mentioned in your opening statement that that has gone to the minister; that paper was with the previous human services minister, Senator Campbell. When did he get that?

**Prof. Fels**—On Wednesday night.

**Senator STOTT DESPOJA**—It was a big week. I am assuming it will be passed on to the new minister and then obviously that will be made public.

**Prof. Fels**—I believe so.

**Senator STOTT DESPOJA**—The issue of discretion I think has an impact on privacy considerations, particularly, for example, the role of the secretary in designating who is an

authorised person. That is why I am asking those questions. I realise that there are lot of papers on which you are working and that are in the offing, but again I get back to my point that I want to be able to look at this legislation in conjunction with some of those issues and those questions being asked and preferably answered. For example, would you support or do you have a view on enshrining in the legislation a list of authorised persons or making clear who has access to the register—for example, actually explicitly stating or defining authorised access?

**Prof. Fels**—My initial take is that I would be a little hesitant to put that into legislation, but there should be some process where the parliament has a chance to review these matters, and I think there are some mechanisms for parliamentary scrutiny and so on. Also, I am happy to come back to you on that one a little bit.

**Senator STOTT DESPOJA**—Perhaps even now or on notice you could consider the converse—the idea of explicitly prohibiting unauthorised access and making it very clear what constitutes unauthorised access to information. Again, I know you have mentioned the appeals mechanism. I am happy to make this my last question. I know I have had a lot of time. I could just keep going. You mentioned the appeals paper and other issues that you will be working on. On the issue of redress, which you commented on in your opening submission, do you believe that people who have had their information accessed for one reason for another, in an unauthorised way, should have not just the right of a civil remedy, if you like, but actually the right to be informed of any potential privacy breach or browsing through their information that is in some way unauthorised? I am not suggesting it is easy to do. The Privacy Commissioner today talked us through thresholds and a range of other interesting things. Is that something—

**Prof. Fels**—As a very broad principle, yes, if someone's information is improperly accessed, generally speaking, they should be informed.

**Senator STOTT DESPOJA**—I will put further questions on notice, unless we suddenly have a lot more time.

**CHAIR**—We will see how we go. Professor, before I hand over to Senator Lundy, I just want to raise an issue that was raised earlier today with the Director-General of ASIO and also the Australian Federal Police and then I raised it with the Privacy Commissioner—that is, the Privacy Act and how it relates to law enforcement and law enforcement exemptions. With the creation of the access card and the national register of information and also potentially a photographic database, do you think that the Privacy Act offers sufficient protections to both the photographic database and the national register? The director general said to me: 'We don't in certain circumstances need a warrant. We will have access to the information if required.' That is right, but the fact is that this is creating new sources of information and bringing them together. Does the Privacy Act offer sufficient protection to the community against privacy invasions from law enforcement bodies?

**Prof. Fels**—This is not exactly false modesty. I am stronger on the more obvious consumer privacy things and the trade-offs in regard to national security and so on. But we have suggested, by the way, that there should be some cross-referencing in legislation to possibilities of gaining access and that in some way the ASIO/AFP access should be set up in

legislation rather than relying on other acts, as far as possible. I do not know the practicalities of that, but that would seem to make some sense to me as a possibility.

**CHAIR**—Thank you for that. That does make sense. That progresses the debate for us. The Privacy Commissioner did tell the committee that she was proposing for the second tranche some secrecy provisions. That is fine, but I am just not sure it goes far enough. If we can specifically address these issues in relation to the AFP and ASIO, and that is your proposal, that is terrific.

**Senator LUNDY**—We have heard a lot of evidence from other parties about the fact that there is very little information about the technological design of this system. We are not privy to the tender documentation, although I plan to ask the department lots of questions about that later today. We do not know that the technical features of the system are. We do not how secure the readers will be or whether the readers will have software capable of making copies by their nature and it will only be the law that prevents that rather than the technical capabilities of the readers and so on.

There are lots of other questions about the intraoperability of the databases and how agencies providing services will be able to communicate with that database and how secure that exchange of data will be as well as how secure the actual systems work. We just do not know. How confident are you in the conclusions you have reached and the advice you have given that you have enough information about the technical and technological design of this system to inform your determinations to date?

**Prof. Fels**—It is a question of the process that is followed in advising us of the technological soundness of the scheme. In that regard there are some processes being set up within the government, which we have discussed in our initial report. Basically, the idea is that the Defence Signals Directorate, which is a very high-powered group, is going to review the technology and, in particular, the security of the information. We would expect them to give it a really rigorous workout, and if they give it a clearance then that would make me feel comfortable.

**Senator LUNDY**—Further to that, do you think it is possible to design privacy into a system or do you think that the privacy has to be an innate or built-in part of the technology itself?

**Prof. Fels**—Generally, my concerns on privacy are not strongly on the technology side, although everyone knows there is always the possibility of something going amiss, but more in terms of the uses of the data. I have been keen to see that there should be very strong protections, safeguards and so on about ordinary people in government and elsewhere getting access to the data. Maybe there needs to be a double-barrelled approach to this so that everything is done in the technology to protect privacy, but at the same time you need a strong legislative backup. I do not know if that answers it.

**Senator LUNDY**—It does. As I said before, the frustration is that we have a lot of quite grand statements from the government about how rigorously protected privacy will be; it is being closely analysed by you and your committee. But most of the conclusions really come down to public policy intent. What I am interested in being able to test, which this committee will not be able to do, is how closely the features of the system match that intent in a

technological sense. I have a lot of experience in looking at how closely the public policy intent matches up with the technology deployed, and this government does not have a good record. When companies were first allocated an ABN number as a result of the GST introduction, the ABN data was put on CD and sold to Dunn & Bradstreet, because there was no public policy consideration about the implications of that and so forth. I am sensitised to this match or the potential mismatch. Because we do not have any of that technical design detail, we are sort of living in hope that there will be a match.

The recommendations that you have made—and perhaps even the ones that you have made and have not been accepted—might be a part of the ultimate legislation that passes the Senate. Who knows? That is unlikely, but we live in hope about that, too. That is all good, but how closely that matches the ultimate outcome is something that concerns me greatly. It is a lot of words, but it leads into: what is the ongoing role? Do you have a role in looking at making sure that the public policy intent, as expressed in the legislation, is followed through in the design, deployment and operation of the system?

**Prof. Fels**—Generally, we are definitely around for the first two years dating back to last July or thereabouts. I think the appointment is for two years but with the possibility of some renewal, I guess while the registration is going on. I have never thought that we are here permanently, but we might be—

**Senator LUNDY**—You might need to be.

**Prof. Fels**—We will be making some recommendations on governance, anyway, once the law is in as to how that should be done. There is always uncertainty about new technology. Sometimes it goes wrong initially and gets corrected, so sometimes the problems are temporary not permanent. I do not think this is a very valuable statement of mine, but I am not deeply worried about the technology at the moment, but I am not an engineer.

**Senator LUNDY**—In a previous Audit Office report into the IT outsourcing of three major contracts—I think it was conducted in about the year 2000—the Audit Office found that departments had not taken care to ensure that the IPPs and the MPPs had been reflected in the contracts. The Audit Office made a series of recommendations advising all agencies and departments to ensure that their IT contracts did impose those requirements on their contractors. Have you tested that within the current tender documentation that is now being responded to and are you satisfied that the successful contractor will be required to abide by those privacy laws?

**Prof. Fels**—We have not had access to any tender documents, and this is for probity reasons.

**Senator LUNDY**—Are you likely to be able even to ask this specific question to see how the tender documents treat the issue of responsibilities in relation to the privacy principles?

**Prof. Fels**—All I know is that we do not have access to them for probity reasons, and I do not know if there is anything more I can say on that. We just do not—

**Senator LUNDY**—You do not have any access to them? Just going back to the earlier points, how are you able to then test—

**Prof. Fels**—I missed your question?

**Senator LUNDY**—How are you able to test the veracity of how your accepted recommendations are being implemented as far as the tender documentation goes?

**Prof. Fels**—We could ask if there is some form of access we could have to this information that you have raised. I would be willing to ask the question about it. Also, as I said, we know there is a process under which the Defence Signals Directorate is going to have a careful look.

**Senator LUNDY**—That is more security rather than privacy, though. They do not tend to look at privacy per se. There is quite a formal standard for the security attributes of software and hardware that I think they will test the tender against. Privacy is slightly different because there is not a standard.

**Prof. Fels**—Yes, I agree.

**Senator LUNDY**—There are the privacy principles. One of the problems in other IT contracts was that where the contract did not adequately evoke them and create that requirement, whilst the Commonwealth is always responsible for it, there was confusion among the contractors in how they had to acquit themselves against those privacy principles that existed nationally.

**Prof. Fels**—I wonder if you would like to ask the government later today about that question, and we can at least put that question to them ourselves. But it would be even better if you do. I will be happy if you wanted to send us a question after that on notice or—

**Senator LUNDY**—I will certainly try and find now the reference to the Audit Office report in the past so you can have that.

**Prof. Fels**—I suppose another way of putting it is that we have made a number of recommendations on privacy, and a question could be asked about how much they have been taken up in the tender documents. That would be a reasonable question to ask.

**Senator LUNDY**—Yes. I remember trying to get that information myself for many years and also in the contracts once they were signed. The audit report was the *Implementation of whole-of-government information technology and infrastructure consolidation and outsourcing initiatives*. The year was 2000-01 and the tabling date was 6 September 2000. I have a general question: why have you not been given a copy of the tender documents to have a look at it for the purposes of assessing the privacy regulations?

**Prof. Fels**—We were told it was for probity reasons.

**Senator LUNDY**—What are the probity reasons that would somehow compromise the government if you had a look at those documents? Probity is a general issue. What is the potential conflict for you?

**Prof. Fels**—I do not particularly know. Maybe you could ask the department what their take on that question is. I do not know that I have got anything on that. I would be speculating on what the reasons are. We all know that there are rather strong probity requirements, a lack of a statutory basis and all that kind of thing. At the moment only the people responding to the tenders have been given access to them. Perhaps you could ask that question of the department.

**Senator LUNDY**—Thank you.

**Senator NETTLE**—Thank you for your submission. This is a question that I asked the department at estimates. There is a conference being held at the end of this month which is called Cards and Payments Australasia 2007. Ms Johnson from the Office of Access Card is presenting at that. I have got the documentation here promoting the conference and when I read out to her and she said, 'That is not what I told them I was going to talk about.' I want to read it out to you because I think it is a useful insight into how the industry is perceiving the access card and then I want you to comment on that.

The title of her speech is 'Towards a cashless Australasia' and it says that it will cover the retail implications as foreseen by project leaders. The blurb advertising it says, 'The question on everyone's mind in industry circles is will the private sector be able to get in on the act and tap into the benefits of the card's technology.' To me that makes it pretty clear what people are thinking. We had the Australian Bankers Association appear before us yesterday. When they were asked if they had an opinion on the personal side of the chip, whether it should be there and what should be on it, they said they did not have a view at all. We are a bit stuck in terms of getting an idea from industry about what ideas they may have, because of course there has been speculation on content and people's concern around it. I do not know if that is an area that you have looked into, but do you have any comments or views in relation to it?

**Prof. Fels**—We have generally seen the card as being about access to government services. We have had a huge number of suggestions about other uses of the card. It is true that there are a lot of people in the street that say, 'This is terrific. We'd like it to cover everything, including shopping lists and the works.' The private sector has been very interested. Our take from the beginning has been that it is extremely important that there be comprehensive legislation which limits what the card is about so that it would require parliamentary approval for major uses of the card. No doubt you know all of this but there is limited capacity on the card, and so it is not such an ambitious card that a lot can be done on it anyway.

As far as what will be on the card, we are doing a report on the consumer control bit of the card and that will address questions, but at the moment our broad approach is that there will not be massive capacity on the card to do really ambitious things. Again, I had a look at estimates but you have already said that the department disowned it. My take on it is that it is not about that. I have also thought that it is important that it is understood that this is not meant to be a national ID card for security purposes. Once you say that, many things follow from it about what it should and should not be.

**Senator NETTLE**—You talked about the capacity of the chip. I have a question in on notice with the department about the capacity of the chip, so if you are able to give us an answer in terms of how big the chip will be that would be good.

**Prof. Fels**—I think it is best if the department answers that. Everything I have heard suggests that it would be somewhat limited capacity.

**Senator NETTLE**—A number of times in the committee over the past three days people have raised the idea that the Queensland government is in discussions about whether they can use part of the chip for their drivers licence. I would have thought that you would need a fair bit of space for that. I am just trying to reconcile your answer on there not being much space

with what we have been hearing about the Queensland government wanting to put drivers licences on it. Maybe you are not in a position to be able to answer that.

**Prof. Fels**—You will have to send that one off to the department.

**Senator NETTLE**—That is fine. I want to go to the point that you were discussing with Senator Mason before in relation to ASIO and the view that you expressed around some regulations about their access to the database. I wanted to ask you whether that comment referred to the AFP and the state police as well, because we have not had the opportunity to find out how that is going to interact. My understanding of the legislation is that it would be overridden by any ASIO act, so if we tried to put anything into this legislation that restricted ASIO's access to the database, under its own legislation and guidelines it does not require a warrant to get access to information held by Commonwealth agencies. So even if we did something in this bill, my understanding is that it would not prevent that access. I could be wrong about that but I want to ask about that point.

**Prof. Fels**—I am not an expert on this but if the parliament made it clear in this bill that it overrode another piece of legislation, that would prevail. Whether you would get that past the government I do not know, but in principle you should be able to pass laws that say that no other law of the Commonwealth overrides this one and that would be valid.

**Senator NETTLE**—You are absolutely right. We are working off a document that says it is the other way around.

**Prof. Fels**—It is true that ASIO is different from the AFP. Also on the state and territory ones that you mentioned, again there is an interesting question as to whether or not you want to do anything in the legislation about state and territory police access, and whether you could constitutionally—I suspect you could constitutionally. There are tricky questions about whether, as a policy matter, you would want to override state police who may have serious matters where they need some information. Again, that would be up to the wisdom of the legislators.

**Senator NETTLE**—I agree with you that the parliament could ensure that there were restrictions on ASIO and other police forces to the database in this legislation. Following on from your previous comment to Senator Mason that you thought that there should be legislation that stipulated some limitations or restrictions on ASIO's access, would you recommend that that be in this legislation?

**Prof. Fels**—Our main view has been that there be cross-referencing of legislation so that as far as possible the public understands what the particular rights of access of ASIO and AFP are. It is a bit beyond me to comment and say what the rules of the game should be; I am just pointing to a possible legislative mechanism.

**Senator NETTLE**—Thank you.

**CHAIR**—I might follow up on that comment. You have spoken about ASIO, the AFP and now state and territory police forces. Just in general, we had evidence from Professor Greenleaf on Friday in Sydney, who argued that the Privacy Act was not an adequate protection to the privacy of information on the register. This is not just including law enforcement agencies such as the AFP or ASIO, but more generally. Professor Greenleaf

attached to his submission a whole list of information gathering powers from APRA, ASIC, the ATO, Centrelink, the ACCC—I note!—and so forth. These are quite comprehensive information gathering powers. He mentioned section 11.1(d) of the privacy principles, which is that ‘disclosure is required or authorised by or under law’. He said: ‘This is the exception that is capable of driving a pick-up truck through the register. The government has tried to hide it.’ I do not know about that. That is pretty colourful language, but his general thesis was that, with those sorts of powers in other legislation, all sorts of bodies might have access to the new databases. What is your view on that? Is the Privacy Act simply insufficient? You have considered that it might be in relation to ASIO and the AFP, but is it in relation to all of these other bodies as well?

**Prof. Fels**—I hesitate to give a legal opinion on it. Again, you would be best to ask the department what they think of it. Regarding the ACCC aspect of it, that is civil law. I know it is popularly thought of as criminal because of fines, but it is essentially civil. I would be a bit surprised if the ACCC and APRA had access to this data.

**CHAIR**—What about the ATO?

**Prof. Fels**—The ATO?

**CHAIR**—They are our next witnesses.

**Prof. Fels**—Maybe you could ask them. It has generally been said all the way through that the ATO does not get in on this game, but when you put the question to me I would prefer that you get a considered response from the department.

**CHAIR**—In relation to all of those bodies, I am asking you because I do not know the answer. We have received this submission from Professor Greenleaf and, again, I am just not sure of the veracity of it. I am not saying it is incorrect, I just do not know.

**Prof. Fels**—I am not sure. I was going to make the comment that there is already data matching by the ATO for social security purposes under the data matching act with a protocol approved the Privacy Commissioner. I had generally assumed that those set the limits on ATO and others in their ability to get into the system, but that should be clarified.

**CHAIR**—The committee would be interested to know whether these bodies have those powers in relation to this new database.

**Prof. Fels**—Yes.

**CHAIR**—As I said, it goes back to the more general question as to whether the Privacy Act is sufficient protection.

**Prof. Fels**—Maybe the legislation could impose specific limits so that access could only be for the stated purposes of the card.

**CHAIR**—Yes. That is not a bad suggestion.

**Prof. Fels**—There could be something along those lines.

**CHAIR**—The committee will think about that.

**Senator STOTT DESPOJA**—But obviously that would not cover ASIO and AFP—it is different from law enforcement. Is that what you mean?

**Prof. Fels**—Yes. I have the AFP and ASIO in a different box from all the others that have been mentioned.

**Senator STOTT DESPOJA**—The Privacy Act would override that anyway, so in those exceptional cases in the Privacy Act, apart from IPP 11 dealing with the law, there would still be room for other legislation to override this legislation anyway. But anything that prescribes the purposes and the access is a good start by me.

**CHAIR**—I would like to go to one other issue that Professor Greenleaf raised the other day. It is in relation to clause 57 of the bill, which covers unauthorised copying of access card number, photograph or signature. He argues that section 57 does not prevent electronic copying of the information on the chip; it prevents simply copying what is on the surface of the card. Again, this has been raised by one other submitter, but do you know—

**Prof. Fels**—I do not know the answer to that.

**CHAIR**—Are there any further questions?

**Senator FORSHAW**—I think that what I am going to raise with you has not been raised by other senators, but unfortunately I have had some other commitments and have not been here for the whole hearing. An area of concern amongst a range of areas of concerns that I have relates particularly to the operation of clauses 45 and 46. I have raised it with a range of other witnesses today, but I am still unclear. Currently a person—for example, a senior citizen—can produce their senior citizens card or something equivalent to that to obtain concessions and discounts out there in the private sector. It is very widespread, as you know. The explanatory memorandum and those two clauses of the bill go to this issue that you start from the premise that with this card there is a prohibition on it being required to be produced unless it is for one of the lawful purposes, which is a complete reverse of what currently applies with all other cards. It starts from that premise and then states that there are exceptions to that. I quote the bill:

For example, some service providers provide some of their services at discounted rates to pensioners or to persons who are entitled to particular kinds of Commonwealth concessions. Subparagraph 46(1)(d)(i) is intended to ensure that these service providers can continue to provide these discounted rates to persons who are entitled to the relevant concession.

What is troubling me is that the current system seems to work fairly well, because simply showing the card, which identifies the person and their status as a pensioner or whatever, is sufficient—they get their cheap movie ticket or whatever it is. This is going to be a different process because the definition of and provisions for exceptions in that section are very loose. It is an indefinable class that potentially can require the production of the access card in those circumstances.

I am interested in what comment you might make about that type of regime now being set up, which presumably would become widespread, and how people are going to know—not just the cardholder but the business—as to whether they are in or out and whether they can do it or not. It also says that it is not an offence to require them to produce the card, but the card does not indicate, on its surface at least, that the person may have the status of a senior, pensioner or whatever, so you then potentially have to read the card. That opens up a whole new area. Are all the retailers and everyone else going to have these readers and is that going to enable them to access information that they should not otherwise get? Should we have a

system whereby a card which is intended to be primarily an access card for accessing Commonwealth benefits is able to be used through an electronic process as some form of identification for other purposes? I am sorry about the longwinded commentary, but do you see what I am getting at? It really troubles me that there are no defined boundaries in a lot of this.

**Prof. Fels**—It is a philosophical issue. The technology is available so that it can be an access card for government services and have these other uses. We want to maximise the beneficial uses without generating bad uses, like it becoming a compulsory ID card or something like that. In some respects, technology comes to our assistance in this regard because, as you have implied, the readers may have the technology which means that they simply give a yes or no answer on whether the cardholder is eligible for the benefit without revealing the other data held on the card. That is the general idea behind it and apparently the technology is there.

**Senator FORSHAW**—That is what we have been told—sort of! We have also been told that you can possibly buy these readers at Dick Smith's, or somewhere like that, and it may be that somebody very quickly develops some mechanism, software or system whereby that is overridden. That is one concern.

**Prof. Fels**—Horror stories abound with new technology.

**Senator FORSHAW**—Overlaying all of this, it seems to me that we are undertaking a huge task to move from a simple production look at the card that has the data on it and away you go, to what seems to be in some ways a more sophisticated system that is going to operate in these sorts of circumstances.

**Prof. Fels**—If they are not already covered, you could make some of these abuses that you have in mind an offence under the law, either now, if you know what they are, or in future.

**Senator FORSHAW**—These sections do go to that, but this then leads to the question of really how realistic and how effective those offence related sections are going to be? At the end of the day, when people are used to the production of the old card, how are you going to ensure right across this country that you are not going to have the same pattern develop? It defeats the whole purpose of the concept of it being restricted to primarily an access card for government benefits. It is a conundrum in many ways.

**Prof. Fels**—Yes. The sanctions under the law are quite strong and I would have thought they are likely to have a fairly strong deterrent effect in themselves. There is a quite strong set of sanctions such that you would think twice about mixing it with this set of laws. That is a bit of a safeguard. Again, when you have a card brought in for access purposes and then it happens to have these other beneficial uses, it is hard to deny making some of them available.

**Senator FORSHAW**—Yes, but there are any one of a number of propositions that can be advanced. It is not my task to do that, but one that we have heard from the Department of Veterans' Affairs is that, in their area, the problem is probably overcome by information being on the card about their status. It will be a particular colour and it will have what is on there now. I do not hear that being said in regard to seniors. We were debating earlier the question of date of birth and so on.

**Prof. Fels**—These are difficult matters. Balancing acts are required in regard to quite a few of these decisions.

**Senator FORSHAW**—The other option is that you continue to have more than one card, but I am not asking you to support that. Thank you.

**Senator MOORE**—I am struggling with community awareness and understanding of what is going on. From what we have heard over the last couple of days it seems to me that your group has taken on the public face of the card. I have asked most of the people that have come before us about how they have engaged in the process and most of them have said that they made submissions to your group. From their perspective, that was how they got their views into the process. Leading on from that—and I know that people in your office will be looking at the *Hansard* to see what people said—there was also a view from people, who had particular concerns about quite specific issues on how it is going to work, that they did not get any answers. It was probably a case of it being the people who bother to make submissions are the ones who have the interest and the questions, but we have been seeing over the last couple of days people who are quite knowledgeable with long histories in the area of privacy and community awareness and who have given submissions to this group and also to yours. Most of their questions, as they presented to us, remain unanswered. I checked the website to see when you were set up and what you were set up to do and my understanding is that you are independent—that goes all the way through the process—and you were set up to address concerns over privacy issues related to the development of the access card. The ball was clearly in your court. Was it your role to answer the very specific questions such as, ‘How will this work?’, ‘Can it be copied?’, ‘Will it have creep?’ and some of the other things that come out? I do not mean you personally.

**Prof. Fels**—It is basically the role of the government. We have said that they have to gain the confidence of the community in this card by means of very full information and transparency and by a fairly big publicity campaign about what is involved in the card and so on, because public confidence is essential. As you are implying, this is a difficult question that you are raising. It is the primary responsibility of the government to explain things. When we consult with people, we give them information about our understanding of what is planned for the card. It is our responsibility to try to find out for ourselves what is involved in the card because it affects our recommendations. Also, there are a number of questions where the technology answer has to be known; there are certain ways out of some of the awkward problems that we are hearing about if we have really good technology. So we ask questions, but the short answer is that it is the government’s job to explain the card. We have had about 150 submissions and about 140 consultations, with another round coming up, on the registration paper, and our job is to reflect that to the government, including the fact that people do not understand it. We have mentioned in reports that, particularly in the early days, public understanding was pretty limited, as we all know. When we pick that up fairly strongly, even from the relatively well-informed groups that appear in front of us, we try to pass that on to government.

**Senator MOORE**—I will not get into the technological area because I just cannot. Listening to the evidence, we have heard that some people had philosophical objections. That was clear in the way they presented and what came through. But underneath the philosophical

issues, we have had really evidence from a number of people, such as that they do not think this will work because of certain reasons and they have asked, 'How will this work?' The *Hansard* of the evidence that we have had in the last two days contains quite specific questions. I have asked each time, 'What have you got back?' Consistently the answers that we have got back from people from different groups, and also on electronic issues, is, 'We have not got any answer back.' For my own peace of mind, and also for the process, I am trying to find out whose responsibility that is. They gave submissions to your group saying, 'These are our concerns about the privacy aspects.' Looking specifically at your job description, it deals with the issues around privacy. Yesterday someone from Electronic Frontiers Australia gave very detailed evidence about technologies here and overseas and about whether they would work and whether you would be able to put blockers and things like that on it. Did you give those submissions to the government in toto and then to the department?

**Prof. Fels**—Yes. All of the submissions are public. There may be a few for which they claim confidentiality.

**Senator MOORE**—Was it your understanding that the department would be getting back to people if they had particular issues?

**Prof. Fels**—I know that the department has been through all the submissions and had a careful look at them.

**Senator MOORE**—Sure. The crux point is: from your point of view in doing the work that you were doing as the public face of the process, did you think that these people would be getting a response to their issues?

**Prof. Fels**—From the department? I am not sure. I do not quite know the answer to that.

**Senator MOORE**—I will definitely be asking the department as well.

**Prof. Fels**—I do not think the department is issuing line-by-line responses to submissions or queries that come in through submissions to us. We try to pick up virtually all the issues that are raised and in some way address them.

**Senator MOORE**—Senator Mason referred to the evidence that we had in Sydney from Professor Greenleaf. In terms of process, there were very detailed longstanding issues about exactly how a process would operate in his submission.

**Prof. Fels**—Yes.

**Senator MOORE**—He gave us the understanding that he had given that information to your group.

**Prof. Fels**—Yes, that is right.

**Senator MOORE**—He also gave us the understanding that he had given that to the department.

**Prof. Fels**—Yes.

**Senator MOORE**—At this stage in our deliberations, when we are looking at the threshold issue before the first round of legislation comes, I would like to know the answers to the questions that he is raising. If they are without substance or if they are perhaps for a

future discussion, I would like to know that. But to the best of my knowledge I have not got answers back on those issues that were raised by him and by Liberty Victoria yesterday, who made quite specific statements about the evidence that they had given to different groups. I want to clarify that before I speak to the department your role in that.

**Prof. Fels**—Yes, that is right. I will make one extra comment. While it is the responsibility of the department, it is also true that we wade through all of these submissions. With some of them, like Professor Greenleaf's, we have tried to pick up where we think he is on to a substantial point.

**Senator MOORE**—In your opening statement, you alluded to a number of papers that you have in train. Do we have expected dates for those—in particular the governance paper?

**Prof. Fels**—The governance paper will be later on. It is probably the last one. I will give you an indication of the thinking. We are aiming for the governance paper—which is almost at the end of the line—to coincide with the second tranche of legislation.

**Senator MOORE**—Do we know that date?

**Prof. Fels**—I do not know what the date of the second tranche of legislation is. Maybe the department does.

**Senator STOTT DESPOJA**—The department would not tell me, but we will try again.

**Prof. Fels**—I am sure the new minister will make up his mind very quickly.

**Senator MOORE**—This is another philosophical issue, in that the governance of the process seems to me to be the threshold to the whole process. I understand what you said in response previously about the timeframes in which you are operating. It seems like we are passing something before we know how it is going to be governed. That is concerning, and that point has been raised on other days. I have quite a specific question on the evidence that you gave earlier about consumer choice, which has come up consistently in terms of giving people the ownership and consumer choice. It seems to me that the threshold to that is having informed consumer choice.

**Prof. Fels**—Yes.

**Senator MOORE**—It is my understanding that the department/government has worked out a process for how they are going to engage the community, and an idea that it is going to be quite a short-term interview with a photo and all that kind of stuff. That is all to do with budget and so on. I am unclear as how we are going to be able as a government to inform people thoroughly and individually about all the things that they have to know about before they sign up to this. We have been told that it is not compulsory, but it is if you want to have social welfare payments or Medicare, so it is kind of fallback compulsory. Interestingly, many of these threshold things—such as the signature, the photograph and the ID number—could, from the stuff you are giving to the government, well be consumer choice. We do not know yet what their decision will be. Having the card is a consumer choice. The second bit is what you are going to have on the card. If your recommendations are taken up, there could be another series of consumer choices.

**Prof. Fels**—Yes.

**Senator MOORE**—Has your group given any thought as to how that consumer choice could be informed?

**Prof. Fels**—No, we have not gone into that in detail. We have said along the way a few times that the issue you raise is very important, both the most general thing about informing the community but also in terms of the choices that have to be made. I have to say, in fairness, that the Department of Human Services has been working quite hard and—as far as I can tell—intelligently on thinking through all the issues involved in the physical side of registration. That has given me more confidence that they will come up with some fairly substantial measures to try to address your concerns on the public relations side and on informing the public. But that is just an expression of confidence. I do not lack confidence that they are going to make a serious effort. One of our very first recommendations was for a major public education campaign in multiple languages, plus online information, to assist with registration and understanding. There will probably have to be some kind of system under which there are different layers of information, some for people like Dr Greenleaf who want to know everything and others for those who just want to have a more shallow take on what it is roughly about.

**Senator MOORE**—Is there any expectation that your task force will have any ongoing role in giving advice about how that would operate, now that you have made your recommendation? Is there any consideration that the knowledge that you have gained by the work you have done could be used in the information campaign?

**Prof. Fels**—From memory, my general understanding from Mr Hockey when he appointed me was that it was initially for a couple of years and possibly for a couple of years after that, particularly during the registration period. In regard to recommendations on public information, at the moment we are sticking to slightly general exhortations to the government to address these things. We are emphasising the huge importance of that point that you were making, which is that if people have a choice there will have to be a serious attempt to educate the public and a huge amount of public discussion. We also recommended that the Privacy Commissioner should have a role in the development of public information and drawing up forms and so on.

**Senator MOORE**—I am sorry I missed the Privacy Commissioner's evidence, but I would have thought that would have been a threshold part of their job in terms of the process. But I saw that recommendation. You agree that they should have a role. Thank you.

**Senator WATSON**—I would like to take you through an everyday situation in a pharmacy. A lady goes into a pharmacy and gets a PBS script that is dispensed by the pharmacist and is then handed over to a dispensary assistant to do the computer work. Cash is collected from the lady, and she says, 'How far do I have to go to get to my concessional limit?' In providing that information to the client, does that dispensary assistant have access to who the other doctors she has seen are—other professionals, chiropractors, optometrists, physiotherapists and so on—or is there a blockage?

**Prof. Fels**—There would be a statement about the financial position, but there would not be a general linkage to Medicare type information. It is more specifically confined to the

transaction, as I understand it, and the pharmacy end of the transaction is not linked to wider Medicare details.

**Senator WATSON**—It is just confined to the PBS side?

**Prof. Fels**—Yes, that is my understanding.

**Senator WATSON**—This is very important, because in terms of health professionals there has to be a blockage at each stage; otherwise you are going to run into very significant privacy issues.

**Prof. Fels**—Yes, indeed.

**Senator WATSON**—Because the people that you are dealing with are not the doctors or the pharmacists. You are dealing with their assistants, their cashiers or their bookkeepers and just a simple unintended scrolling could, if we are not careful, reveal a whole host of personal information about whether somebody is suffering from diabetes or heart problems, has a football injury or all sorts of things. Have people raised this issue with you?

**Prof. Fels**—Yes. I will say something, and you may also wish to raise this with the department.

**Senator WATSON**—I raised it yesterday and one of the expert witnesses said that you might even need a separate PIN for each service to ensure that there is a complete blockage, which I thought would make the whole thing completely impractical.

**Prof. Fels**—My take on it has been that the technology allows the isolation of different uses of the card. If it is for pharmacy, then nothing else comes into it. If it is for Centrelink, nothing else comes into it. The ultimate one, just for your interest, is, say, transport concessions or something: there might be a reader that just does this very limited thing that says, 'Yes, you are eligible for this concession,' and there is nothing else to it—that is the one bit of information that you can get from that reader.

**Senator WATSON**—You are saying that, for the pharmacy person who collects the cash and does the necessary entry, the information can be blocked and they can see prescription items only?

**Prof. Fels**—That is my understanding, and I will correct it if I have got it wrong.

**Senator WATSON**—Could we get that clarified, because it is a very significant point. The other thing is: even if you limit it to pharmacy items only and the client asks, 'How much further can I go before I reach the end of my concession,' would the names of other pharmacies that provided services during that build-up also be in there?

**Prof. Fels**—My impression is that they would not be. The pharmacy that you go to would not know that you have been to another pharmacy, and in general the card will not be linked to electronic health records. It is a general point: the card will not be linked to electronic health records.

**Senator WATSON**—The card will contain information about how far you are up the concession list, though, to have that prescription dispensed.

**Prof. Fels**—There is a lot of data within agencies, and not that much on the card. I went into Medicare a while ago to check the system.

**Senator MOORE**—How long did you have to wait?

**Prof. Fels**—I did not take in my card or anything. They have huge amounts of information on you as to which doctor you have visited and all of that.

**Senator WATSON**—That is right.

**Prof. Fels**—That is of course held separately from this card. The card has limited information on the face and a bit more in the chip, and there is a bit you may want to put in, which you will control, and then the register more or less just reflects what is in the chip. It does not pick up the millions of transactions that you may or may not have done with Medicare, Centrelink or Veterans' Affairs.

**Senator WATSON**—I am trying to confine my question to a simple case, just to the health area, because I think there is a lot more information supposedly on the chip than you have suggested to me. You are suggesting that all this information is on the register, say, within the PBS system?

**Prof. Fels**—Yes. Generally—

**Senator WATSON**—Can you get a clarification in this particular case of the sort of information on the chip that can be accessed by a reader? Once it is on the chip you can access it by a reader unless there are very sophisticated blockages.

**Prof. Fels**—Yes. The information on the chip is set out specifically in the bill. Indeed, we thought it was quite important to recommend that the law should say what is on the chip, no more and no less, so you can get a guide to what is on the chip by carefully reading the law and also the guidance in that. There is not much about individual transactions. Yes, the individual transaction stuff go to the agencies and so on. There is a lot of that.

**Senator WATSON**—I do not have a problem with that.

**Prof. Fels**—There will not be a national storage system introduced now to pick up all of this information. The card is a mechanism, I suppose, to give you access to these benefits, and then, broadly speaking, there is enough information to facilitate your access. But the information on the card is not meant to be a record of what you are doing with a doctor or a pharmacist.

**Senator WATSON**—Thank you for that clarification, because we were advised otherwise yesterday by a so-called expert, who indicated that you would have to have separate PINs.

**Prof. Fels**—I see. I think that is not quite correct. I would suggest that you confirm that with the department.

**Senator FORSHAW**—That is not my understanding. My understanding is that the proposition that you should consider having separate PINs was to ensure that, where there needed to be access through use of the access card to one area and not another, you could have a series of PINs that would allow you to get into the Centrelink one here and into the Medicare one there. That is what I understood.

**Senator WATSON**—You could have 17 different cards and 17 different PINs.

**Senator FORSHAW**—Not necessarily. For most people it would be about three. I am not saying that I support this; I am just saying that was my understanding. If you go to an ATM

and use a MasterCard, you might be able to access three or four different accounts or any number of accounts, but the command that you have to put in is a different command each time, if you like. It is very simple, but you have to designate. You cannot just press one button and get all of the information about all of those accounts. You have to work your way through.

**Senator WATSON**—Yes, you can.

**Senator FORSHAW**—No, you can't.

**Senator WATSON**—You can get all your account balances.

**Senator FORSHAW**—Each time you have to do a separate transaction. If you want to use your Visa card to access your savings account, there is a separate process to access your Visa, to access Mastercard or to access any other linked cards. The one keycard may do the lot, but as you go into each one of those associated accounts, each one is a separate process. The machine asks if you want to do something else with it.

**Prof. Fels**—The card has flags to allow access to Medicare, Centrelink and the DVA, but you cannot access all through one number. The PIN is only for the customer controlled bit of the card. We have got a discussion paper out now that goes into the emergency and health data. In general terms, what we have raised is that the minimum information that is absolutely needed in an emergency should be in the card and there should be a big emphasis on minimising that information, because all sorts of people can get access to it. There is then another bit that is PIN controlled, if you want it to be—and most people would have a PIN control—where you have more personal data on it. For example, someone might want to have a few extra pieces of personal information, including medical, in their part of the card and that would be PIN protected so that, if the person is caught in an emergency, they cannot bust into that stuff; what they can do is bust into the core information that is relevant to an emergency, which information we are discussing with the Australian Medical Association and others at present.

**Senator FORSHAW**—Yesterday we heard from the Australian Bankers Association, and I am trying to recall precisely their concern. It related to, as I recall it, their concern about their right to be able to photocopy access cards and retain that. There are statements in the explanatory memorandum specifically to deal with banking because of their other obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. I think I recall that they may have raised this with you.

**Prof. Fels**—Yes.

**Senator FORSHAW**—They still had their concerns yesterday.

**Prof. Fels**—They may not get everything they want at the ABA, because privacy issues are fairly paramount. Also, we believe that they do not need to copy data for the money-laundering act and that kind of law. They may have claimed that they do. The advice we have had is that they do not need to copy the data for the money-laundering act.

**Senator FORSHAW**—Could you have a look at their comments from yesterday and, if there is something further, could you come back to us?

**Prof. Fels**—We will come back to you on that.

**Senator FORSHAW**—Obviously, they are one of the major sectors of the economy where people would be providing this card as a form of ID, either voluntarily or otherwise.

**CHAIR**—Are there any further questions for Professor Fels?

**Senator LUNDY**—I have the reference from that audit report that I would like to give to Professor Fels as well.

**CHAIR**—Do you want to refer to that publicly now?

**Senator LUNDY**—I did before. It is the implementation of the Whole-of-Government Information Technology Infrastructure Consolidation and Outsourcing Initiative audit report. It just references some of the specific privacy issues when looking at those previous major IT contracts of the Commonwealth government.

**CHAIR**—As there are no further questions, I thank Professor Fels and Professor Puplick for their attendance and assistance today. It has been very useful.

[4.52 pm]

**FARR, Mr Gregory Douglas, Second Commissioner of Taxation, Australian Taxation Office**

**GRANGER, Ms Jennifer Anne, Second Commissioner of Taxation, Australian Taxation Office**

**ROBINSON, Mr Geoffrey, Deputy Commissioner, Australian Taxation Office**

**THOMPSON, Mr Andrew, Director, Intelligence, Australian Taxation Office**

**CHAIR**—I welcome officers from the Australian Taxation Office. Before I invite my colleagues to ask questions, would anyone like to make an opening statement?

**Mr Farr**—No, we are here to be of whatever assistance we can, so we will go wherever the committee wishes to take us.

**CHAIR**—That is very game, Mr Farr. We will proceed to questions.

**Senator WATSON**—How does the Taxation Office get involved in this card?

**Mr Farr**—We are not involved as far as I am certainly aware. It has been clear from very early on in the discussion that the proposed uses of the card do not include Taxation Office uses.

**Senator WATSON**—That is what I thought.

**Mr Farr**—We really have no involvement at all.

**Senator WATSON**—Thanks very much.

**Senator MOORE**—Thank you for coming, Mr Farr. I am interested in the fact that it is a government access card and that, more particularly, one of the major issues put forward by the government for its need is to cut down on fraud. From an outsider's point of view, I assure you, it would seem to me that the issues of fraud would actually be of interest to the tax department. If there is one agency that deals with Australians, their ID and their information in terms of fraud, it would be the Taxation Office. I am interested, given that threshold position, that the major focus of this card is to stop fraud and to protect taxpayers' money, and also to provide identity for people accessing government services within that gamut. Why then is Tax not involved?

**Mr Farr**—I think that is a question of government policy.

**Senator MOORE**—Were you asked to be involved, Mr Farr?

**Mr Farr**—Not to my knowledge.

**Senator MOORE**—What about tax fraud? I do not know who called you but now that you are here, I am really interested in the process and in the issue of fraud as the major reason for this card being introduced. You already have a tax file number system for people who pay tax. I am also interested in whether there has been any interaction with the Taxation Office to see how the taxation identification number, which is to all intents and purposes something that impacts on everybody who earns money in Australia, will—if at all—interact with other forms of ID.

**Senator WATSON**—You would only be interested in taxation fraud and nothing else, not Centrelink fraud, wouldn't you?

**Ms Granger**—That is correct.

**Senator MOORE**—But family payments cross over both departments.

**CHAIR**—Mr Farr, I am not sure if you heard the question I asked of Professor Fels before. It was in relation to whether the Privacy Act is sufficient protection for citizens, given the creation of the new databases in relation to the access card. I quoted from a submission of Professor Greenleaf last Friday in Sydney. He made the point that, under the exception to the Privacy Act contained in paragraph (1)(d) of Information Privacy Principle No. 11, if a disclosure is required or authorised by or under law information may be sought from government databases. He attached to his submission—and I mentioned this to Professor Fels—a whole list of government agency coercive information gathering powers that included agencies such as APRA, ASIC, the ATO, the ACCC, Centrelink and other agencies. At present the ATO has these coercive information gathering powers. In relation to the biometric photos and, perhaps more importantly, the national register of information, would you have access to that information?

**Mr Farr**—I think that would depend on the drafting of the legislation, which I do not think anyone in the tax office has turned their mind to, so that is probably more a question for the department than for us.

**CHAIR**—Has the ATO made any submissions in relation to it?

**Mr Farr**—We have not made formal submissions that I am aware of. We have been involved in the periphery because we have some expertise around registration and things like that, and so sharing of our expertise with other agencies is common. But, as I said, it has been made very clear to us, right from the start really, that this was not a card that related to tax affairs, so we really have not turned our mind to it.

**CHAIR**—The concern of the committee was not so much that legislation be passed which specifically included a right for ASIO, the AFP or—for that matter—the ATO to gain access to the databases. Rather, its concern was more that if nothing was done in any case ASIO and the AFP would have access to information. In other words, if we did nothing or if the issue was not raised, by virtue of existing powers they would have access to these databases. Do you understand my concern?

**Mr Farr**—Yes, I understand.

**CHAIR**—In other words, if the parliament does nothing, you would have access to these databases. So what is your understanding if parliament does nothing: that you will not have access to these databases or you will?

**Mr Farr**—As I said, we really have not turned our mind to it.

**CHAIR**—How come you haven't, Mr Farr? This is a pretty big change? I am surprised that the ATO has not looked at this.

**Mr Farr**—I think you need to also take into account that a lot of the information—for example, Centrelink information—is available to us now, so in a sense we can just go to

Centrelink to get the information if we want to. I am not sure of the information that we would get directly from the access card. As I said, the information is available to us anyway.

**CHAIR**—That is exactly what the Director-General of ASIO said. But are you sure about that? The information will take a different form. For example—this does not relate to you but it relates to ASIO—the biometric photographs were not specifically available to ASIO. Do you see my point? I am surprised that no-one has turned their mind to it.

**Mr Farr**—As I said, I think it has just been made clear to us very early on that the card will not be used for tax related purposes. We also have access to the information in many other ways.

**CHAIR**—Well, you think you do. But you are not sure, though, are you?

**Mr Farr**—For defined purposes, for the purposes of tax administration—obviously there is that boundary around it—we have access to, say, Centrelink information or Medicare information.

**CHAIR**—But this is a new database?

**Mr Farr**—Sorry, I am not even familiar with the design of the card.

**Senator MOORE**—Neither are we. Do you have identity fraud in the taxation system?

**Ms Granger**—Yes, we do.

**Senator MOORE**—How does it work for tax?

**Ms Granger**—First of all, to put it in context, the main concern we have in relation to identity takeover or identity creation is, of course, around the privacy of individuals and their information; and, secondly, it is usually in relation to refund claims and fraud on refunds. We have reported a number of times—and Senator Watson, who is part of our Senate estimates committee, among others, has shown an interest in identity fraud in particular. To put it in context, our concern there is that, while the overall number of cases that we have detected is increasing—we are seeing that as an increasing component of identity as part of a refund fraud case—it is still very small numbers. We are talking about 100 or 120 cases in a current investigation that we have been looking at, just to give you the numbers.

The issue that we are particularly concerned about is that the vulnerabilities in the system nearly always tend to be around people guarding their information. We do put out alerts if we hear about attempts to get personal information from people. Particularly around tax time there tends to be some of that activity. We look at cases where we have detected attempts to commit refund fraud, or successful ones that are prosecuted, to see whether that means there is something we need to improve our systems on. An example that you may have seen in the media last year or the year before was when we became very concerned about some of the practices in some tax agents' premises, and that is of particular concern because a lot of client information is held there. We appealed to them about tightening procedures around staff use of their systems. We also started a process of upgrading the security of their access to our systems. Mr Farr can talk a bit more about that, but essentially it was moving away from a PIN password system of access and onto PKI as a more secure means of doing that. But, as part of that, we ran a fairly extensive campaign to remind people to check their controls, to routinely change some of their passwords if they were still on that system and to think about

events such as when staff leave and what they might need to recheck around their procedures. That gives you a little bit of a window. When we detect it, we refer it to the DPP. There have been prosecutions, and in some cases there have been jail sentences as a result.

**Senator MOORE**—The way that identity fraud operates is that someone would claim to be somebody else to get the refund, is that right?

**Ms Granger**—It can be that. We have seen in recent times a very small number of cases in which tax agents or their staff claim the refunds of former clients, and they are doing it on a broader scale. We have seen a bit of a change in pattern. Traditionally, one of the obvious ways of detecting this is that a refund looks right out of sync for a particular taxpayer. Recently, we have started to detect some attempts where there are multiple small claims across a number of clients. We have just started to pick that up with some other characteristics around where those refunds were being directed et cetera.

**Senator FORSHAW**—Going back to your answers to earlier questions, the Taxation Office is specifically not involved directly in the development of the access card. Do I take it from that that the ATO will not have any access to the access card register?

**Mr Farr**—I do not think we know the answer to that. That would be dependent on how the legislation is framed, and that is probably a question for the department rather than for us.

**Senator FORSHAW**—I wish you had not said that, Mr Farr. You see, I find it strange that you would not have at least a right to access it, and probably a need to access it, given that the access card register will be the primary—in fact, the only—source of identity proof at an official level for Australians generally. It is related to replacing the Medicare card, the seniors card and veterans' cards. The persons who hold those cards will generally have some connection with the tax system, even if they are retired or whatever, if only in the sense that the taxation department needs to know that they are not earning income and therefore not obliged to pay tax.

**Mr Farr**—I certainly did not say that we do not have access to some of that information. We have access to it now.

**Senator FORSHAW**—Yes. I am going to come to the access to the databases of the individual agencies, because in the explanatory memorandum it states that they will continue to exist. We are told it is the identity aspect of the access card registry which is the primary purpose here. It is to eliminate the fraud that goes on with the multiplicity of Medicare cards, in particular, out there that are bogus or whatever. You have a system of identification, which is the tax file number. There are very strict rules that it cannot be divulged, not even in parliament. If you stand up in parliament and divulge somebody's tax file number, you will get yourself into some strife, despite parliamentary privilege. But, as an agency, I would have thought that you or the government would see a need to ensure that a new system that is brought in using smart card technology, which is about identity, has a relationship with the tax office?

**Mr Farr**—Our primary identification that we use for tax related matters is the tax file number. We see that continuing. We do not see any change to that.

**Senator FORSHAW**—Yes, that will continue. There is no proposal that you are aware of to have a linkage between the ATO's tax file number system and the access card register?

**Mr Farr**—There is no proposal that I am aware of.

**Senator FORSHAW**—I do not want to debate it here and now, but it makes the arguments about reducing wide-scale fraud sound a bit less convincing to me. I do not necessarily expect you to comment on that. Do you see a need to have access to this beautiful new technology and this beautiful new register?

**Mr Farr**—As I said, we are working on the assumption that we will continue to use as our primary identifier the tax file number. Very early in the discussion it was decided by government that it would not extend to tax purposes.

**Senator FORSHAW**—When people do their tax returns and that, don't you have a database that has their Medicare numbers on it, in terms of their taxation file?

**Mr Farr**—Our computer can certainly link with the Medicare computer for either pre-filling of returns, which we do with e-tax, or for matching later on, but we do that successfully using the tax file number.

**Senator FORSHAW**—That is right. But this system is replacing the Medicare card. I understand that they will primarily use the existing Medicare numbers, but, if they are changing their system, why will that not have at least some relevance to the ATO?

**Mr Farr**—Without getting technical about it, because I am not capable of doing so anyway, it depends what identifier the computer systems are keyed on. There would be an identifier in the computer, and the two computers would talk to each other and we would be able to match on that. But primarily we would match on a tax file number. I am not aware of any proposal that we would use the access card number.

**Senator FORSHAW**—What is being put to us is that there is this reason that it will help reduce fraud, that we are using up-to-date technology, and that is the way the world is heading, but it also seems to me that it is relevant, if you are going to spend a lot of money—the government is going to spend so many billions of dollars over 10 years—

**Senator MOORE**—A lot.

**Senator FORSHAW**—If you are going to spend some \$3 billion or \$4 billion over 10 years, you want to get the maximum value out of that across whole of government. I would have thought that might include the tax office.

**Mr Farr**—It is a question for the government and ultimately the parliament.

**Senator FORSHAW**—Okay, thank you.

**Senator FIERRAVANTI-WELLS**—Your answers today just highlight a lot of the issues that are out there and the misconceptions about what this card is really all about. I think your evidence has certainly put to rest misconceptions that this will be out there and used for all sorts of things. Over the years I have had experience acting for the ATO, and when you talk about fraud, you certainly have your own ways of dealing with fraud internally and the specific issues that are associated with that. I think you would agree that the fraud we are really talking about here is Medicare and fraud specifically related to Medicare and those

sorts of issues. That is in effect what you are confirming here today, because that is really what this card is all about. From your perspective, you have seen or are aware of nothing that deviates from that objective of government; is that it in a nutshell?

**Mr Farr**—Absolutely. It has been made quite clear to us all the way down the line that that is the case.

**Senator FORSHAW**—I will just pick up that point. We are not arguing necessarily against that for the purposes of this question, but if the fraud that is committed is identity fraud—and identity is a rather important issue to the tax office—then I go back to my original question: why wouldn't the tax office have regard to what is intended to be the most accurate and up-to-date central register of identity in this country? You are going to continue to use your own?

**Mr Farr**—Well, as Ms Granger indicated, we have ways that we address identity fraud using our own processes, and we are finding them effective.

**Senator FIERRAVANTI-WELLS**—Just on that point, how many instances of identity fraud do you have in the tax office? You would not have too many people wanting to pay other people's taxes, that is for sure.

**Ms Granger**—That is a fairly rare occurrence.

**Senator FIERRAVANTI-WELLS**—Yes, I would think so.

**Senator FORSHAW**—Senator, do not mislead; I did not talk about identity fraud with respect to taxation. I was talking about the importance of identity in tax, which is a different thing. It is why you have a specific tax file number for every Australian, because it ultimately goes back to identification of the taxpayer, as distinct from fraud.

**Senator FIERRAVANTI-WELLS**—I was just asking a question about instances of identity fraud in the tax office and how you deal with it.

**Ms Granger**—I have just a couple of statistics that I thought you might be interested in. Taking the last financial year, as at 30 June about 30 per cent of the cases we had under investigation in our fraud investigation area had an identity component to them. That is about 120 cases. With respect to a context for that, we did about—

**Senator FIERRAVANTI-WELLS**—That is 30 per cent of 120?

**Ms Granger**—No, 120 is the 30 per cent. That is a snapshot at 30 June. For that financial year, about 10 per cent of our referrals to the Director of Public Prosecutions had an identity component to them—that is about 20 cases—and about 10 per cent of those were dealt with by the court. We are not talking about the same part of the process, but it is just to give you a sense at each part of that process. Having said that, obviously it is a very important reputation risk for us to manage, and that is why we invest time and resources in a relatively small number of cases. They have some quite serious penalties attached to them to deal with that firmly.

To put that in context, in the same year we did over 80,000 field activities in what we call active compliance, which is our audit and investigation activities generally. So they are small numbers, but it is very important for us to deal with. We have been flagging for some time our concerns around identity issues. We have been emphasising, as I mentioned earlier, some of

the educative things we are doing, but where we do detect cases of this nature, we always review what it means for what we have to strengthen around our systems.

I certainly want to leave with the committee two messages: one is that we are continually learning and adapting what we do, including what we invest in around our own technology. Also, the very strong educative focus to the community that we have will certainly strengthen our systems, but it is important that you also guard your personal information well, because often that is the risk that we cannot have control over.

**Senator WATSON**—Just thinking about what various people have said, I would have thought that the tax office would have a major interest in a situation where there is, say, a Centrelink fraud, to ensure that all sources of income, including Centrelink payments, would have been included in a taxable income somewhere along the line for a particular taxpayer. I would be surprised if there was not some sort of linkage between Centrelink, in terms of fraud, and the tax office. How else will you pick it up? Are you going to wait for court cases and just read it in the paper? That would seem fairly messy. One Commonwealth agency talking to another would help bring this non-disclosed income, if that is the case, to account somewhere.

**Ms Granger**—While I do not have statistics today, we do data matching processes with Centrelink, which Mr Farr referred to earlier. In fact, Centrelink report as part of their compliance results the outcomes of information from us; that helps them with fraud detection. Similarly, we have information from Centrelink. Some of it is around ensuring that people are getting appropriate benefits and some of it is around that issue of whether they are getting their returns accurate or not. So there are protocols for that and we do data match with Centrelink under a range of circumstances. As Mr Farr mentioned, the actual mechanics of how the systems talk to each other is probably a bit beyond both our scopes.

**CHAIR**—Senator Moore, do you have any further questions?

**Senator MOORE**—I just have one. You had that very detailed information. Do you have a dollar value on that fraud?

**Ms Granger**—No, I do not.

**Senator MOORE**—Can you obtain that for us?

**Ms Granger**—I can probably give you some snapshots of the cases for last year.

**Senator MOORE**—I just think it would be nice to have a snapshot if we are being bamboozled with figures; it would be useful as you have identified the small percentage.

**Ms Granger**—Yes. I will put the numbers against the statistics I gave you as best I can.

**Senator MOORE**—That would be great. Thank you very much.

**CHAIR**—There being no further questions, thank you Mr Farr and officers very much for your assistance this afternoon.

[5.21 pm]

**BYRNE, Ms Sarah Elisabeth Catharine, Legal Counsel, Australian Medical Association**

**HAIKERWAL, Dr Mukesh Chandra, President, Australian Medical Association**

**NESBITT, Ms Julia, Director, General Practice and E-Health Department, Australian Medical Association**

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

**Dr Haikerwal**—I would like to if I may. Thank you for providing the opportunity to me, on behalf of the AMA, to appear before this inquiry. I want to start by making it very clear that the AMA has not slammed the access card and has not condemned or rejected the access card. We have consistently stated very publicly that we support the concept of the access card and the technology that underpins it. It is with the process and policy that we have problems. The AMA's key concerns surrounding the issue of age and eligibility for the access card are well documented, most recently in our submission to this inquiry.

I would like to make it clear that in talking about the access card we are not talking rocket science. The solution has been achieved, implemented and managed successfully elsewhere in the world. Australia is not the first cab off the rank in relation to this solution—far from it. France has a similar system; 60 million people and around 500,000 health professions participate in France's access card system. It not only works; it represents the most proven longstanding solution. This system is called Sesam-Vitale, or open health. Other European countries have followed France and it remains the benchmark for Europe.

It works because its development involved extensive public and private consultation and because it established a separate statutory authority as the governance body. It was built upon and has built into it processes that fundamentally create trust. The trust has already, to some degree, been compromised in relation to the Australian access card. Trust must be restored if the Australian people are to realise the benefits of this technology. It is good technology. It can provide a level of security that does not currently exist. It can deliver more to Australians down the track, but a governance body at arm's length from government is fundamental to the trust necessary to realise future benefits.

While there is no doubt that there will be significant benefits to be derived through this technology in the future—for example, as a key to secure shared electronic patient records becoming a reality—the AMA remains adamant that the initial functionality of the access card must remain narrow. There is much misinformation circulating about this technology and its security. Our advice is that it is possible to make the system bullet proof, but no-one can give 100 per cent guarantees, and this applies to our banking and defence systems as well. Risk management systems are the solution.

The AMA is disappointed at some of the public discussion about the open section of the card. Earlier last week I talked to an emergency physician and he said that, when an unconscious patient presents to an emergency room, most of the time, 'I find myself trawling through every scrap of paper in the patient's wallet or handbag to find any information, any scrap of paper, that might help me save this person's life.' What the AMA does not understand

is why, if a person is willing to wear a medical bracelet or a necklace specifically to make sure critical medical information is available in an emergency, they would be unwilling to put the same information on an access card.

The significant level of misinformation around the access card is disturbing. We want the access card back on track. We want a well-informed public and parliament and we want the trust restored that will deliver community support for the access card. The processes around the legislation have not done this. Thank you once again for inviting the AMA. I will be happy to take questions with my team.

**CHAIR**—What you are saying is that amongst health professionals there is some concern about the access card. Can you briefly tell the committee what they are? Some have been played out in the press, and in the last sitting of the Senate the opposition raised issues about the age of eligibility for the access card and so forth. Can you explain to the committee what those concerns are?

**Dr Haikerwal**—The issue around the age limit is one. It is just a headline in the legislation, which is still very much up front that, if you are under 18, you cannot get a card unless you meet certain criteria. The headline really is that there is a limitation if you happen to be under 18. I know there was some work done last week to try to bring that to some sort of normality, but there is no reason why that could not be in the legislation. Indeed, the current Health Insurance Act does not quote any particular age for access to services. It is very important that that is reflected in this legislation, so that the young people who often struggle to get health care or do not want to present do not feel that there is another barrier in the way. I do not think that is a particularly major change, but it certainly gives more clarity, especially to younger people who have that access.

The other issue that is important is the privacy aspect around this. The privacy task force itself has raised similar concerns. Even in the second reading speech there is a comment, ‘We will bring in more legislation to address the privacy issues that have not been addressed.’ There is a real concern that that should be done up front rather than waiting for a second piece of legislation to come through to try to underpin the legislation.

**CHAIR**—Believe me, you are not the first witness to raise that issue.

**Senator FORSHAW**—With the changes to Medicare that have occurred in the last couple of years and the proposal that people in medical practices have a link direct to Medicare and are able to swipe the card and so on, are there any issues that arise out of the introduction of the access card as to how a normal GP practice, for instance, will function in the future?

**Dr Haikerwal**—In reality this is not really an issue as far as this particular part of the legislation is concerned. Currently, we have a system where, if a patient provides their bank details and pays a bill, they will get the rebate directly in their account within three days. What we are going to see coming in near 1 July will be that if you pay your account in full and swipe your Medicare card, you will get your rebate immediately in your account. The current systems will pay a doctor a cheque if you only pay the gap. This really does not make any difference to that system. Certainly the twin swiping—that is what we call it in shorthand—is something we support, because it puts great efficiencies into the system.

Obviously, the card—whether it is an access card or a Medicare card—will act as a person's Medicare account.

**Senator FORSHAW**—Have the changes brought in—twin swiping—in the last lot of legislation been taken up widely across the profession?

**Dr Haikerwal**—Twin swiping will be introduced. The contracts have just been signed off. Julia Nesbitt is my director of e-Health and general practice, so she has the technical details of where we are at with that. It has been signed off and agreed to as a good process.

**Ms Nesbitt**—It has not been rolled out yet. The first two companies to register with Medicare Australia have done so, but the expectation is that there will be roll-out midyear.

**Senator FORSHAW**—Do you expect that to be taken up widely across the profession?

**Ms Nesbitt**—We believe that the business case is very compelling for general practitioners and patients. We believe that the uptake will increase as soon as the providers of the system ensure that the system is integrated with practice software. It is our understanding that will not happen immediately, but it will be the key to the business case for uptake.

**Senator FORSHAW**—Am I right in assuming that you are going to have to acquire new software for an access card?

**Ms Nesbitt**—No.

**Senator FORSHAW**—You won't?

**Ms Nesbitt**—With respect to the improved system, in initial discussions with the department one of the principles we put forward is that the system should be future proofed. In that sense it had to be smartcard enabled so that this system could run with the current Medicare card on its own but, once the smart card technology came in, which seemed to be inevitable, it would simply adapt to it. The only requirement that we are aware of at this stage will be the terminal, which will be provided by the providers. We know of one bank, so they will be providing the updated EFTPOS machines. We expect those providers, if they have any business sense, will be negotiating with the medical software industry to integrate that system with medical software.

**Senator FORSHAW**—This is probably more in Senator Lundy's area. Currently the typical GP, in addition to dealing with Medicare, also presumably would have patients who may be veterans, seniors, workers' compensation claimants and so on. What impact would the new access card have where you currently have to link with or liaise with a range of different government departments? Will the proposed system enable you to use the access card of the patient to get into information or to verify information with Centrelink or DVA?

**Dr Haikerwal**—There is a potential for this to help us with those administrative processes—certainly eligibility for services with Medicare or Veterans' Affairs. There are government initiatives around providing services directly billed to people who are 15 and under, also to people who are health care card holders. There is a problem if somebody comes to a practice with a health care card—currently a piece of paper—which has a date that is not expired. The computer at Centrelink has said that is no longer eligible and therefore there is a disconnect. Therefore, if a patient is directly billed and the doctor is expecting the additional payment for bulkbilling to be paid, there is an expectation that will be paid in good faith. That

is the current situation. When eligibility checking became an issue maybe two years ago, we had a discussion with Minister Abbott and Minister Hockey and they cleared up the fact that the department would take responsibility for that. The real-time eligibility checking—you swipe the card to say that you have access to Medicare, obviously, but also access to the additional payment—means that can be done in real-time so that people's eligibility can be checked. If they are not entitled to that, you would know that at the time of the consultation.

**Ms Nesbitt**—The ability to check concession status is going to be available on the improved electronic system using the Medicare card. It will simply come back and advise 'yes' or 'no' concession status. This new system using the Medicare card will be able to tell you the person is Medicare eligible and the person is a concession cardholder. The access card is likely to give further information on whether this person has already used this item number and is still eligible—those sorts of things. We will have access to concession card status or concessional status under this new system coming out later this year as well.

**Senator MOORE**—Is that a new system but using the old card?

**Dr Haikerwal**—Yes. I will explain that. There are some items that you are entitled to claim only once in a year. This is one way of getting that feedback that has not been accessed by the patient elsewhere and is not a double claim.

**Senator FORSHAW**—What about the other part of the chip that will be available for personal information to be stored on it if the person so wishes? Would you envisage a role for medical practitioners to encourage people to put information on that and be involved in that, related to their health status? I am going back to your earlier example about a person who turns up in hospital who is unconscious.

**Dr Haikerwal**—The methodology that is used with a bracelet or a necklace is one where people obviously want other people to know this very important information should they run into trouble. There is no reason why the card itself could not carry such information. It would be important for there to be provision for that information to be put on in a manner that is reproducible and in a manner that is robust and that people can trust the information on it. That is the only discussion, together with an understanding that other things that may be private on that card are protected by the privacy, but certainly there is no reason not to have that.

**Senator FORSHAW**—What do you specifically envisage a doctor or a person employed in the practice would be entitled to do? Would they be able to enter the information on the card? I am not a computer expert here. You have a person who is diabetic or who has a severe allergy. It may be said that it is sensible to have that information stored on the card. In a real situation, what would you as a doctor envisage being able to do?

**Dr Haikerwal**—Penicillin allergy is quite common. It can be life threatening and it is important to know about it. Currently you are allowing people to know that you are penicillin allergic. The question is: what do you mean by that? When you have a discussion you find that they might have had a tummy upset or diarrhoea, which is quite common with penicillin but it is not really an allergy, whereas having a rash or having swelling and difficulty with breathing certainly is. Once you have confirmed the fact that somebody has a real allergy, that is the sort of information that could be put on the card by the doctor.

**Senator FORSHAW**—I am interested to know what you understand as being your rights, the patient's rights or the process to get that information put onto the card in electronic form?

**Ms Nesbitt**—The current process for MedicAlert is a system that we would support. The issue is around information that an emergency physician can trust. That is where it is critical. That system is basically where the person who has that sort of allergy takes the MedicAlert application form to the GP. MedicAlert will only issue a bracelet or necklace once the GP has verified the information on that form.

**Senator FORSHAW**—We had evidence from MedicAlert yesterday. I am not trying to interrupt you.

**Ms Nesbitt**—It is the same system. We do not see why the same system could not apply. The doctor does not put that information on, but a trusted organisation with information verified by the doctor puts that information on the card.

**Senator FORSHAW**—If it is determined that a patient is diabetic, has a severe allergy or suffer from hypertension or whatever, and the person agrees to have that information entered on their access card, and they have their access card with them, would you be able to say, 'Sign this form and go out and see the practice nurse or the counter staff and they will type that information into the system for you'? Is that possible?

**Dr Haikerwal**—It is certainly possible and it would be a reliable way of getting good information on to the card.

**Senator FORSHAW**—I am not proposing that; I am trying to understand how this private information gets on to their card.

**Dr Haikerwal**—We would expect to have a card reader so that we could read information. It may be possible to have a card writer, but then that increases the additional information that is then required. It could be done. It would be a robust manner of providing that information. Ideally, if there are agencies out there that can do that already and that are also robust, that might be another way of skinning the same cat.

**Senator FORSHAW**—Thank you.

**Senator MOORE**—I want to follow this up. Your submission is very clear on the points that you wish to bring forward. The issue around age is still being debated; it has been brought up a lot. In your opening statement you mentioned the issue of trust. I think that is critical as well. Can you give us some information about how you regain that and what has knocked it around? You were very general in your opening comment about how you believe as an organisation that trust has been lost in this process. I would like to get some idea about why you think that has happened for learning purposes for the future and also what you do to get it back, because it will fall over if people are not going to be confident in it.

**Dr Haikerwal**—From our point of view, we worked very closely with the departments when this was put together and worked with them around the arrangements for the card, the purpose of the card, the manner in which it could be implemented, and what the safeguards around the card would have to be. In other words, the privacy arrangements and the purpose of the card would have to be clear. The danger of cross-linking databases through the card had to be ironed out so that you would not get linkage of data that would be detrimental in terms

of knocking people's confidence in that system. If you have a system that is robust, people are going to put more of their important information either on the card or on a database that will be accessed by that card, especially around medical health records.

Unfortunately, when it came to the writing of the legislation and the presentation of the bill, many of those safeguards that we thought we had discussed were not in the legislation. We were asked to put in a submission to that process. We said: 'These are the real concerns that we have. We are not trying to be spoilers and scuttle this thing. We want to make sure that the card is something that is acceptable, that will provide good information, that is robust and has a privacy framework that is clear such that people can have confidence that their data is secure and the right people will see it and the wrong people will not see it.' Unfortunately the response to our submission was a direct attack on the AMA in the form of a press release that said we had got everything wrong.

In reality we still stand by what we said and our position was very much misrepresented at that time. That is why we continue to embark on this course. Importantly, it is not there to spoil the process but to say: 'These are the concerns. Here is a way of addressing it. Let's deal with this. Let's talk about this and let's get this right. Let's not wait for the next lot of legislation. Let's do it now.' If you leave it until the next lot of legislation, the stuffing will be knocked out of the confidence already and there will be less chance of people getting in. How do we build the trust by this process? This is a good process. Let us hear the evidence and let us put it together. If we can fix this up, let us fix it up.

**Senator MOORE**—I know you have been working very closely in this area for a long time.

**Ms Nesbitt**—Yes.

**Senator MOORE**—I am interested in your view.

**Ms Nesbitt**—With a great deal of experience in the AMA and certainly with the level of incredible expertise that we have to hand on e-health issues in Australia, we understand that trust is absolutely the basis for the success of those types of projects. As Dr Haikerwal said, we are very concerned about the age issue. To date, we have still not got a decent answer on why it is in there. There is no logical reason for it to be in there if the government is intent on maintaining status quo. That is what we are supporting—the status quo as currently applies to Medicare.

The fact that we cannot get a good answer as to why that is in there has caused problems. The rush to legislation on an issue that is so prone to controversy and an awful lot of misinformation has also disturbed us. As Dr Haikerwal has said, some of the misinformation out there could be very easily resolved if the processes of supplying that information were a bit more transparent. We think there is confusion around things like the biometric photo. It is not a photo. There is confusion around the open area of the card. There is a lot of trust being lost due to the process, the information that has been available and particularly in some sections of the legislation.

**Senator MOORE**—The response that we have been given to some of the issues that you have raised has been that the first lot of legislation is going to be coming in and then issues about how it is going to be used and governance, which is so important in your submission,

will be picked up in the second round of legislation. We have the department coming in later and we will continue on that. Is that the kind of response you have been getting, that the next lot will make it right?

**Dr Haikerwal**—Yes.

**Senator MOORE**—Or words to that effect?

**Ms Nesbitt**—Yes, that is right.

**Ms Byrne**—That is the response we have been getting in relation to some issues. On other issues we have heard of things like, ‘We don’t need to put that in the legislation because the technology does not work that way.’ That does not really offer a lot of comfort. It has been of concern to us because, as Ms Nesbitt has stated, we have considerable experience in this area. Ms Nesbitt’s experience in e-health goes back for many years and mine as a government lawyer goes back many years. I understand legislative drafting. We have been advocates for the card and we have been really constructive in the types of solutions that we have offered. They have been dead-batted back to us, which we find difficult to understand. There have been some straightforward fixes for this, and we do not feel that we are getting straight answers as to why they have not been adopted.

**Ms Nesbitt**—I will also add that confidence is waning as well. We cannot seem to get very basic things from the department. For instance, will the number on the surface of the card, if it is on the surface, be the same as the linking number—what we call the access number in the chip? All the advice that we have received from all of our incredible expertise is that these would be different numbers. In some sense, that allayed some of our concerns. We were only concerned about the number in the chip. But we hear today that there is uncertainty; that they may be the same number. That gives us real cause for concern, because it is not good security to have them both as the same number. There is this confusion even in the advice that we are getting as to how that will work. It is very difficult to even take a position when there is a lack of understanding in the department.

**Senator MOORE**—I have another question on the same point, which I have been asking many witnesses over the last couple of days. In the process of you seeking the information, there was the task force and there is also the role that your organisation already has with the government in an open information exchange. You have already told me that you are not confident based on some of the answers that you have got, but how do you get the answers? I wrote down the last one, about the number on the card, because we have heard about that before. Is the number on the card—and it could be in the card—going to be different from the one on the chip? I would have thought an answer to that would have been supplied.

We will put that to the department. I hope Senator Lundy has the terminology correct to ask that question, because I am sure I will get the numbers confused. It seems to me to be a question where you would get a ‘yes’, ‘no’ or ‘We are still working on it and we will get back to you,’ answer. I do not understand the confusion.

**Dr Haikerwal**—We are hoping to have a meeting with the architects of the system, as well as the department, at the iteration of our next meeting because it is important to get that answer.

**Senator MOORE**—But you do have on record that you are supportive of the card?

**Dr Haikerwal**—Yes.

**Senator MOORE**—You are not trying to undermine the card?

**Dr Haikerwal**—Yes.

**Senator MOORE**—For your sake I want to have that back on the record again.

**Dr Haikerwal**—Yes, absolutely.

**Senator WATSON**—I am interested in your opening remarks about the success of the health card that operates particularly in France and increasingly right across Europe. What are the similarities of that card to what we are proposing to introduce here in terms of technical safeguards to privacy? Is it technically possible to protect one's privacy across a range of health professions?

**Dr Haikerwal**—The Sesam-Vitale basically covers 900 million claims and reimbursements. There are about 48 million smartcards and 230 health software applications. We can table this document that explains it, which would be quite useful.

**Senator WATSON**—Thank you very much.

**Dr Haikerwal**—It has got the runs on the board and is doing the work of providing the services around health and welfare payments to a large number of people, with a large number of health professionals being involved. There are hundreds of thousands of health professionals involved and it has been working since 1998.

**Senator WATSON**—So the technology is there to do what the government wants to do?

**Dr Haikerwal**—Yes.

**Senator WATSON**—And the safeguards are there in Europe in terms of unauthorised access, so we are not at the threshold of technological change? That is what I wanted to satisfy myself about.

**Ms Nesbitt**—Basically we were saying that the technology exists. In fact, from the information that we have on Sesam-Vitale, it appears that what we are trying to do in terms of the technology and some of the processes will be an improvement on this. What we are saying is that there is an awful lot of this that does not need to be reinvented. I would be happy to investigate the security requirements around this technology and pass them on to you.

**Senator WATSON**—That would be good, and then we would have a benchmark with which to compare. Thank you.

**CHAIR**—Any further questions? Senator Nettle?

**Senator NETTLE**—I wanted to go back to the question that Senator Forshaw was asking you about MedicAlert. We heard from MedicAlert yesterday. Am I correct in understanding that your answer was that, if the health information on the personal side of the chip was put on in the same way that MedicAlert does, whereby GPs sign off on it, that would be fine? We do not have information on how that is going to operate yet.

**Ms Nesbitt**—That is right.

**Senator NETTLE**—I wanted to check with you on that. So the MedicAlert way where the GPs sign off it is fine. But what is your view when it comes to people putting on their own personal information about their medical conditions and it is not signed off by a GP?

**Dr Haikerwal**—There is a concern that there may be confusion about what somebody perceives as their particular problem, in that it may not necessarily be a problem. The example I gave was of penicillin, where a reaction may not necessarily be an allergic reaction. The same thing can also apply if somebody says, ‘What is your blood group?’ ‘I think it is B positive.’ We need to verify that before we stick that on, because you do not want to be getting the wrong blood. Having said that, when somebody presents to hospital, that sort of thing is cross-matched properly before you give them that. In a way it is a bad example, but it is also a good example. The information has to be verified before being placed on the card.

**Ms Nesbitt**—In terms of the two parts of the open section, there is nothing to control what the consumer wants to put on there, quite rightly. The information that the consumer puts on would have to be treated in the same way as the information the emergency physician digs out of a handbag in an emergency situation. You would have to take it in the same way that you would use that information now. But with the extra bit of verified information you do have at least some basic critical information and, again, all the information equivalent to “scraps of paper” really that the consumer puts on the card.

**Senator NETTLE**—Another issue that MedicAlert raised with us yesterday—and this might be more their arena than yours, but you might wish to comment—was people’s access to the information at the site of an accident. Their comment was to say that the bracelet is obviously there, and the other one requires the card reader and so on. It might be more their arena than yours, but I just wanted to give you the opportunity to comment on it if you wish to.

**Dr Haikerwal**—It is certainly much quicker to look at a necklace hanging around somebody’s neck than to find your card reader, which is hopefully plugged in and charged up so that if you are in an ambulance you can whack it through and get some information. It is not that real-time, but once you are in the hospital situation and there is probably a reader around you have more chance of being able to access that information. Obviously it is not written on the front as it would be on a necklace or a bracelet.

**Senator NETTLE**—Thank you.

**CHAIR**—Ms Nesbitt, do you have anything to say?

**Ms Nesbitt**—It is not either/or; it is both. It is having a bracelet and the access card information.

**Senator LUNDY**—I wanted to go back to the point about the chip number. We heard evidence previously about the chip number that, when the manufacturers supply the smartcards, they all have a proprietary chip number on them as part of the manufacturing process. The point was made that this is most likely to differ from the number assigned as an individual identifying number to participants. We really got no further than that, other than, ‘What was the relationship between the two numbers that would be used for the purposes of the search on the database?’ and ‘Would the number assigned override that chip number?’—all of the sorts of technical issues about the operation of the system that we have not been able

to find out any information on. The question to the AMA is: what do you think the ideal method of managing those unique identifying numbers is, if this access card is to serve a useful social purpose?

**Dr Haikerwal**—I will give you the first-blush answer, which is from a user point of view. Ms Nesbitt has some of the technical data. Firstly, there is a concern about what the number actually is. You are right. I had not even thought of this, but the actual chip itself has a separate number, an embedded number and a number on the front. So now we have possibly three numbers.

**Senator LUNDY**—And there might be more, depending on the design of the system. We do not know. Software has different protocols and design features that often assign an additional number anyway, so it is hard to tell.

**Dr Haikerwal**—Our key concern about the number—one or all of them—is the purpose for it. Currently for the Medicare card and the Medicare card number there is a defined purpose of that number, and therefore the question comes under the aegis of the privacy legislation. If you have a new number that is assigned in a brand-new database without any definition for it, the world is your oyster; you can do what you like. There is a concern about that being part of that trust component that I spoke of earlier. We need to narrow down what the purpose of it is going to be so that people can have confidence again that this will not be used in other ways of function creep.

**Senator LUNDY**—Thank you.

**Ms Nesbitt**—I am not sure if it has been raised today, but one of the issues is the encryption.

**Senator LUNDY**—It was raised in the Melbourne hearing.

**Ms Nesbitt**—In terms of the protection of that number, we really need a commitment from the government that the information held on the card and in the register be encrypted. Further protections such as the biometrics should not sit on the card. Why should they? There is no purpose to sit them on the card. There are a range of technical protections that would ultimately protect that number, as well as legislative protections on its use. The other protection that we are going to seek more advice on is ensuring that those numbers—the number on the surface and the linking number in the chip—are different. We understand that the number that is proposed to be on the surface of the card is an ISO format number; that is one protection. The other issue is that other information such as signatures and photos can be embedded in the chip, not on the surface, and protected by a PIN. As long as you do not have the biometrics there you do not have the means to link it. The biometrics can be held in the register.

**Senator LUNDY**—And not on the chip?

**Ms Nesbitt**—Yes.

**Senator LUNDY**—Do you think the biometric data should be held on the register and not on the chip?

**Ms Nesbitt**—Absolutely. There is absolutely no purpose for it to be held on the chip, because the biometrics are to prevent fraudulent access to duplicate cards. They have no other

purpose. It would also prevent any use of biometric software being able to read it off the card. That problem goes away if you shift the biometrics onto the register and out of the chip.

**Senator LUNDY**—Thank you.

**Senator MOORE**—Chair, I have something further. Just before we lose the doctors, I would be remiss not to put on record that the government's stated aim for the key uses of this card is to minimise and prevent fraud. The two areas most clearly identified are Centrelink, social security fraud, and Medicare fraud. It would be useful to have something on record from your perspective about Medicare fraud and your expectation of the impact of such a process on Medicare fraud, as it is an area that you have discussed and been on record about before.

**CHAIR**—Do you want to take that on notice?

**Dr Haikerwal**—Yes, I can take that on notice.

**Senator MOORE**—I am more than happy to do that. I just think that is important to have.

**CHAIR**—The committee would appreciate that. There being no further questions, I thank you very much for your assistance to the committee this afternoon.

[6.01 pm]

**HUGHES, Ms Joan, Chief Executive Officer, Carers Australia**

**CHAIR**—On behalf of the committee can I apologise to you all for having to sit at the back for so long. We greatly appreciate you being here, because your evidence is very important to us. Before I invite my colleagues to ask you questions, would you like to make an opening statement?

**Ms Hughes**—I would, thank you. In the interests of time, I am going to cut my presentation to you in half and I am happy, of course, to take questions at the end. Carers Australia is appearing before this inquiry on behalf of the family carers that we represent and others who provide support and assistance to people with disabilities, chronic conditions, mental illness and the frail aged in Australia. Carers Australia believes the access card has the potential benefit of removing the need for individuals to contact multiple Australian government agencies to update information or to, as many carers say to us, repeatedly provide the same details and identity documents. We have met with the task force twice in 2006 to discuss these issues.

While I sit here before you today Carers Australia are not experts in the technical and legal aspects of the access card, but we can provide very practical information to you that is provided by our colleagues in the state and territories carers associations who are our members. It is through this membership of carers associations that I give you the issues and concerns about the access card. I am sure you are aware that there are 2.6 million family carers across this nation and if we look at the number of people that they are supporting who have mental illness, chronic conditions, disabilities and who are frail, we are looking at probably a population of over five million people who could be affected by this access card, and that equates to a quarter of the population.

We have concerns about the access card, mainly around issues to do with registration. Even though the access card is not compulsory, many people with disabilities, chronic conditions, mental illness and the frail aged and their family carers must register for the access card to continue to receive their Australian government income support payments or when they are dealing with health service providers to bulk bill health care, to receive Medicare rebates and to receive PBS subsidised medicines or other health services. We know currently there are over 300,000 family carers receiving Centrelink payments, whether that is the carer allowance, the carer payment or both.

The main issues in terms of concerns from my network of carers associations are that we have issues around the registration, the carer identification, lost access cards or identity denial and we have issues around the provision of additional information for monitoring and updating personal information and, of course, more importantly, around the privacy issues. The first discussion paper of the Office of Consumer Privacy Task Force, Office of Access Card, indicated that all people registering for the access card will need to do this through attendance at a registration centre, either at a central agency, such as Centrelink or Medicare offices, or a mobile centre. This is where we think it presents difficulties for carers and the people for whom they provide care.

The people I represent and the people that they support have great needs regarding transport—and obviously you have heard that through the people that you represent. The need for special transport to attend the registration centre, whether it is a mobile centre or centrally located, is a big issue, especially in rural and remote areas. Again, this is very costly for family carers and the people that they support. Transport is often not easily available in remote and rural communities, and it is a great concern to us for our Indigenous family carers. In some instances it may be necessary for a mobile centre to attend the home of the person with the disability or who is frail aged to undertake the registration process or make alternative arrangements. To us that is a huge cost factor that may not have been thought about.

Many people with intellectual disabilities, acquired brain injury, mental illness, dementia, frail aged people and others in our community can often be traumatised when confronted with activities that are outside their normal routine, so we have great issues around the registration process and the promotion that is needed in order to make this a sensitive process and to take into account the needs of those people.

We have issues around documentation. Many aged people, Indigenous Australians and people who have migrated to this country will find it very difficult or impossible to provide original copies of birth certificates and other identity documents required to reach the value of 100 points for registration. This may be a difficulty for other populations, such as those people who have mental illnesses in our community.

We have issues around the photographic or biometric facial recognition. The access card includes the photographic recognition of the cardholder. We have looked at some of the evidence in the UK from the passport enrolment trial that indicates a much lower facial recognition success rate for people over 60 years or those with a physical impairment or a learning disability, so of course that is an issue for the people that we represent. Data indicated that in the UK if people were registered at a mobile centre the success rate dropped to 48 per cent and that poor lighting at mobile centres was considered to be a possible factor in this high identity denial rate. Although the task force has assured us that these issues will be resolved in the access card registration process, Carers Australia believes that it is essential that they are.

In terms of carer identification we are told that on the access card there will be other details to help authorised agencies to facilitate cardholders' access to benefits or entitlements together with the opportunity for each cardholder to add certain information which they want to have recorded in the customer controlled information. The access card will not automatically hold details about a person's caring responsibilities unless the cardholder is the recipient of a Centrelink carer related payment. As I said to you, Carers Australia estimates that around two million carers are not receiving a Centrelink carer related payment.

The task force's current discussion paper on voluntary and emergency information to be stored on the access card indicates that it has received strong support for emergency health and medical data to be included in the customer controlled area of the access card. Although there is limited capacity for the cardholder to record some emergency health or medical data on the card, Carers Australia believes the inclusion of carers' information together with an authority to represent the person with the disability in some instances is essential on the

access card of the person with a disability or the frail-aged Australian where the carer is providing most of the care. This information will assist services to alert the carer if the cardholder is involved in an accident or a similar emergency where they require care in the absence of the carer.

There are also service providers such as pharmacists who provide services or dispense prescriptions required by the cardholder to the carer in the cardholder's absence or the inability to access these services themselves. We have information about what could be included around the carer details—obviously their name, their contact details and the situations in which the carer can be contacted. It is fairly basic stuff.

To prevent identity fraud the carer information could also include carer recognition in terms of a photograph. However, Carers Australia believes that carers have the right to choose if and when they disclose their carer status. This includes carer information in three categories on the access card: the carer's status, identified because of the Centrelink income support payment; additional personal information the carer may wish to include; and additional carer information the carer may wish included on the card of the person or people for whom they provide care.

We have some issues around lost access cards or identity denial. Again, that relates a little bit to the biometric matching. I will not go through that in the interests of time. Unfortunately, Carers Australia has heard many incidences of family carer distress experienced because of Centrelink interactions and unexpected ceasing of their Centrelink carer related payments, so we want as much protection as possible in these cards. The necessity for, and the means of and issues in, providing duplicate cards for the people with a disability who are cognitively impaired and their family carers or authorised representatives does require some consideration, we think, by this committee. Carers Australia believes that the Australian government needs to include mechanisms for the provision of health, social and income support services for people with disabilities and the frail aged in these circumstances. They need to be in place prior to the full implementation of the card in 2010 after consultation with family carers and the people who represent them, like Carers Australia and the carers associations.

We have some issues around provision for additional information. We have got some issues around monitoring and updating. I will just pull out the essence there. Even though Carers Australia acknowledges the benefits of online information transfer it believes that many people with disabilities, the frail-aged and their carers with no, or limited, access to a computer and therefore an online portal at home will be disadvantaged, so these issues need to be factored in.

Lastly, in regard to privacy, we are aware that many individuals and organisations have expressed their concern that the introduction of the access card has the potential to compromise an individual's privacy. However, Carers Australia is aware of the difficulties that have arisen for family carers in regard to the interpretation of privacy, mental health and disability legislation. These difficulties relate to Centrelink payments, financial institutions and health care decision making. We believe that it is imperative that the Australian government address these issues within the operation of the access card.

Carers Australia asks the Australian government how it will balance the rights of family carers to act as advocates and supporters of the person for whom they provide care in relation to the privacy requirements, the right to choice and self-determination by people with disabilities, balanced with the need of some people with disabilities for protection and support, and the fact that many carers do not and cannot have the authorised representative status afforded through enduring powers of attorney or guardianship. The 'person responsible' status afforded to carers in some states and territories may be inadequate.

In summary, the key issues of concern to family carers of people with severe and profound disabilities, including cognitive impairment which impedes their decision making and mental illnesses, are: who will hold the access card or the person for whom the carer is providing care and how will this be determined; if people with religious and cultural objections to the access card or some of its functions are exempt from requiring an access card, how will the Australian government ensure that they are not disadvantaged in accessing and receiving health, social and income support services; how will the Australian government ensure the rights of carers in ensuring that the information collected is accurate and the information changes can be checked for accuracy; and will the carer and the person for whom they care have the right to request removal of their information from relevant databases?

**CHAIR**—Thank you. You mentioned the registration process, which holds difficulties for carers and for people with disabilities. Is the process, though, any worse than it currently is? There are always going to be problems I suspect, aren't there? Is the access card any worse or are there any greater difficulties with it than there would be with other cards?

**Ms Hughes**—I think it is important to make sure that that is factored in and that people have long lead times. It is one of those sensitive areas. If you are going to hasten the registration process, it is just a case of being cognisant of the importance of being sensitive to some of these people because they are housebound and they do find it difficult to get out of the house to do even their regular business. We are just saying it is something that really has to be factored in and we ask to have long lead times and to make sure that there are many options for people to register; and if they do not, that they are not disadvantaged, that there is some complaint system or a system of support. Organisations like ours could monitor this and help in the process should it go ahead.

**CHAIR**—Sure. You are right, it is a huge logistical exercise, just because of the sheer number of people; and not just the sheer number of people, but also the different characteristics and different requirements of different people. The people you represent are a subset which is not only an important one but also is much larger than people think. You mentioned five million people—

**Ms Hughes**—If you take the number of family carers and the people that they support, you are talking about a quarter of the population.

**CHAIR**—Yes, that is quite significant.

**Senator MOORE**—I have two points. I know that you have actually put all of these issues to the task force and to the department because of the relationship that you have there. I just want some feedback in terms of your confidence that they have been at least acknowledged.

**Ms Hughes**—Not so much from the department, but we have, as I said, had two meetings with Professor Fels and his team. They came and spoke to a group of carers associations to talk through some of the issues with us and we put our issues on the table. We feel as though the dialogue is there but we are not confident, I guess, that all of our issues have been taken up because they had not realised the enormity of the numbers of the people that we were representing as well as what their issues are regarding something as simple as even registering for an access card.

**Senator MOORE**—I think just to get it on record, with the client group about which you are talking, this is not a voluntary exercise, is it? These people will be needing social welfare and and/or Medicare support, so it is not voluntary.

**Ms Hughes**—No.

**Senator LUNDY**—Firstly, can I just say thank you for stressing those points of just the physical challenges of many carers and the frail-aged and others that they care for in getting to the registration point. We have heard a lot of evidence from other organisations about the logistical challenges that present. Have you had the opportunity to put to the government specifically visits to people who are immobile for whatever reason to go through that registration process?

**Ms Hughes**—We have put that in our submission but we have not actually costed that. I would think that that would be a logistical issue in a lot of the rural and remote areas. When I think about Carers Australia trying to support and service our Indigenous carers I know how difficult that is. That is a very important small population. There are ways around it but, because of the trust issue, you would have to have the right type of people doing that. Some of the people that we represent, as you know, are very vulnerable and marginalised and get very nervous about any sort of interference from governments. I think the promotional strategy has to be long term and, if it is all going to happen, it has to start quickly and go on for quite a period of time so that people get the information in a safe way delivered by people that they trust. Promoting it in that way could be a big issue.

**Senator LUNDY**—I do not know if you are the right person to ask, but I know that a lot of people being cared for can access some technological aids. I am thinking of some of the programs out there for technical aid for the disabled, that kind of thing. Has there been any suggestion by the department to your organisation that they will facilitate to the extent that it is possible for people to fill out their own forms and go through this process themselves, or—

**Ms Hughes**—We have not had any engagement. Are you asking whether that would be appropriate and possible?

**Senator LUNDY**—Yes.

**Ms Hughes**—I think you know that the whole program for the provision of aids for people with disabilities in our communities is so stretched anyway that I am not sure whether this whole system fits within that sort of charter.

**Senator LUNDY**—Why?

**Ms Hughes**—Because some of those people cannot even get things like motorised wheelchairs that would allow them to go to some registration booths. There is a big issue

around some of those services that could assist people to do this because they are so inadequately funded. I am not sure whether that answers your question.

**Senator LUNDY**—No, but the point was made with the Office of Indigenous Policy Coordination this morning that when big, new programs are introduced they can play a catalytic role in resolving some ongoing service difficulties or systemic problems in service delivery amongst different groups of people, so maybe this is one of those big projects that—

**Ms Hughes**—Are you saying it could be a way of getting appliances into people's households so they can register for an access card?

**Senator LUNDY**—The analogy I use is the GST and computerising bookkeeping for small businesses. It absolutely was a difference and the government did provide grants to small businesses for computer software. I think we have a precedent out there. With a big policy shift and implementation strategy it is not beyond the realms of possibility that that kind of support could be offered under the auspices of this roll-out. Anyway, it is just a thought and I wanted to draw to your attention what happened with the GST because I think it has some relevance in this context.

**Ms Hughes**—If this could somehow in a very lateral way assist in the provision of aids that would help people with disabilities to remain at home, then absolutely. The other issue is people's access to computers. We know that many of the people that we represent just cannot afford that within their household, so that could be another opportunity.

**Senator LUNDY**—Yes, and it might be that the provision of information technology allows them to in the first instance to be identified as wanting an access card. The GST thing is a bit lateral when you think about it, but the government found it was a necessity if they were actually going to get the level of compliance that they were demanding in the law. It is a similar thing. They want a level of compliance and these people will require these cards, so maybe there is space for a program to pay for whatever is required to facilitate that.

**Ms Hughes**—We had not thought about that angle, but it is a good one.

**Senator LUNDY**—I reckon. I will leave it with you. Thanks very much.

**CHAIR**—Ms Hughes, on behalf of the committee I thank you very much, not only for your patience but also for your testimony this afternoon. We appreciate it.

**Ms Hughes**—Thank you.

**Proceedings suspended from 6.22 pm to 6.42 pm**

**HARTLAND, Ms Kerri, Deputy Secretary, Office of Access Card, Department of Human Services**

**SCOTT, Ms Patricia, Secretary, Office of Access Card, Department of Human Services**

**CHAIR**—I call the committee to order. First of all I will apologise to Ms Scott and Ms Hartland. It has been a long day. I know that you were due to start about two hours ago but please accept my apologies on behalf of the committee. Do you have an opening statement?

**Ms Scott**—Yes, thank you. The other day we had numerous questions in the committee and we continued to get written questions submitted so we are gradually working our way through those. We are up to 188 questions from the committee and we are powering on as fast as we can. We will need a little bit of patience by the committee. There was a question from Senator Nettle as to whether Senator Fierravanti-Wells's name would fit on the card. I am pleased to say that it will.

**Senator NETTLE**—The other part to that was whether there was a number of character limit?

**Ms Scott**—It is around 26 characters. There will be some names—for instance, Sri Lankan names—that are extremely long so there will be a very good provision for a preferred name in the bill. Often people shorten their name to something that is a bit more manageable in day-to-day life; that was a good recommendation coming out of the task force which has been reflected in the bill. During today's proceedings a series of questions were put to Mr Paul O'Sullivan, Director-General of ASIO, by Senator Nettle which related to access which ASIO might have to information on the access card register. At one point Senator Nettle referred specifically to my earlier answers in Senate estimates. My answer was a verbatim quote on material from the Australian Government Solicitor. I have discussed this matter with Mr O'Sullivan today and our legal counsels have conferred. ASIO does not disagree with the statements I made at Senate estimates, as set out in *Hansard*. To confirm ASIO may ask DHS for information from the access card register. DHS has the discretion to give or not give that information to ASIO. If DHS does not give that information to ASIO, ASIO can only compel DHS to give that information to it in accordance with a search warrant pursuant to the ASIO Act 1979. The Director-General of Security has already outlined this morning significant safeguards and accountability mechanisms to which ASIO is subject. I hope that clarifies the matter.

**CHAIR**—I have a question about that. Is that any database set up in relation to the access card? Would that include a photographic database?

**Ms Scott**—Yes. I am talking about the databases in general.

**CHAIR**—The register and the photographic database?

**Ms Scott**—Yes.

**CHAIR**—I just wanted to make that clear. Thank you.

**Ms Scott**—We can be asked; I can deny; they can compel; but they can only compel with a search warrant.

**Senator NETTLE**—I will ask a follow-on from that? Perhaps we need to make the distinction about whether we are talking about AFP and ASIO.

**Ms Scott**—We definitely need to do that.

**Senator NETTLE**—Yes. In the AFP one it was a search warrant but in certain circumstances.

**Ms Scott**—I am about to go through those circumstances again. It is page 22.

**Senator NETTLE**—Do you need a warrant for ASIO, except in these circumstances? Are there exceptions for ASIO as well?

**Ms Scott**—In the case of the AFP, I indicated in my earlier testimony that if it is a matter of someone threatening their own life or threatening somebody else's life—do you remember that list that I went through—

**Senator NETTLE**—Yes.

**Ms Scott**—that relates to the AFP and that would relate to the state police, which was another subject of your questions.

**Senator NETTLE**—Yes.

**Ms Scott**—That relates to provisions under the Privacy Act. As the Director-General explained this morning, ASIO is not covered by the Privacy Act. That is the difference there. In each and every case people can ask; we can say no; and they can go out and get a search warrant. Generally speaking, we try to facilitate things when it clearly relates to someone threatening their life or whatever. We do have cases from time to time like that.

**CHAIR**—If ASIO comes to you, what protocols inform your decision about the exercise of your discretion?

**Ms Scott**—The Privacy Act helps us in relation to these matters. It clearly indicates what effectively is in the public interest. That is my terminology. I can only think of one instance in the last two and a half years where I have said, 'No, that does not look right. I am going to ask for a search warrant,' and I have, because it just appeared to be broader than I felt comfortable with, given the provisions of the act. That was relating to just one matter. We do take our responsibility very seriously and we will go down that path if we consider it to be necessary, but most of the time people approach us with very reasonable grounds and we try to facilitate their access when it relates to those matters that I have outlined earlier.

**Senator NETTLE**—I have some follow-on questions about that. You said that you have had one instance in two years where you said that they needed to obtain a search warrant. Does that mean that you have had a number of other requests—have they been from ASIO or from AFP—where you have said that seems reasonable? Is that what you are saying?

**Ms Scott**—I wanted to refer to the case where I had asked for a search warrant. I do not have at my fingertips how many other approaches we have had or where we have facilitated access.

**CHAIR**—Do you have a ballpark figure?

**Ms Scott**—I do not think that would be wise.

**CHAIR**—That is fine.

**Senator NETTLE**—Come back to us with that figure. You did go through that for me previously, so I do not feel the need to hear from you again about the example that you have already enumerated for me. I am interested in hearing about the one that you have agreed to take on notice, which is how many other instances you have had. I will go back to your answer where you were saying that you use the Privacy Act as your guidance for determining that. Because ASIO is exempt from the Privacy Act, I will just go back to that question. I know the Privacy Act and what that means in terms of AFP investigations in that you can in certain circumstances allow them that access, but how does it work for ASIO? To make it very clear, are there circumstances where ASIO could have access to the database following a request—so, you would look in the database on their behalf following a request—which would not require them to get a search warrant? Is that the discretion for you? Do you choose whether they need a search warrant or not, or are there any guidelines?

**Ms Scott**—I have not had an approach from ASIO to me in relation to these matters. I thought Mr O'Sullivan indicated this morning, in the very deft way that he did, about the variety of options that they have available to them, so I cannot refer to a specific case where ASIO has approached me. That is about as far as I can go on that one.

**Senator NETTLE**—That is fine. I would like to just finish one other thing on search warrants.

**CHAIR**—I have a follow-up as well.

**Senator NETTLE**—Given you are making the determination about whether they need a search warrant or not, who then decides whether they want the search warrant, because under the ASIO Act the minister can decide to issue the search warrant? Are we looking at the minister making the determination, which I would assume would be the Attorney-General, or are we looking at a magistrate, or at what level is it?

**Ms Scott**—My understanding is that under the ASIO Act 1979 it is the minister that issues the search warrant.

**CHAIR**—I have an issue on that. I am sorry for going backwards and forwards but I just want to clear this up. Did you hear Mr O'Sullivan's evidence this morning?

**Ms Scott**—Almost all of it. Certainly when Senator Nettle mentioned my evidence in particular, my ears pricked up.

**CHAIR**—He argued that he has access to this information in other ways in any case. I submitted that this is a new database which will include information such as biometric photographic information of potentially about 16 million Australians and that that is information that currently he does not have; certainly it is not easily accessible. The bottom line is that ASIO was to ask you for access to that biometric information. ASIO can get access to that information without a warrant, subject to your discretion. If you say yes, then they do not need to go to a minister or indeed, for that matter, a judicial officer to have access to it, do they?

**Ms Scott**—I am not too sure that I can add a whole lot more to what the director-general said.

**CHAIR**—Do you see the issue? Potentially with the way that technology is moving and ASIO's access to that information—this is not personal; I am not saying that it is you, but any secretary of the department—it is a pretty big call that ASIO will have access to a photographic database of 16 million Australians and basically access comes down to an administrative decision—not a political one and not a judicial one.

**Ms Scott**—My recollection is that the director-general was at some pains to impress upon the committee that he has to meet accountability mechanisms within his own arrangement. I think he referred to a section 20 that he is held accountable for.

**CHAIR**—He is, but the bottom line is the initial decision to have access to that database was administrative and not judicial or parliamentary. That is of concern to the committee. It is an issue and potentially it has all sorts of ramifications for privacy, particularly with the growth of biometric photographic evidence and the potential even for crowds to be scanned. This is going to happen one day. I am not trying to draw up some dystopia, but that is what concerns the committee.

**Senator NETTLE**—Even with the minister being the determinant of the warrant, that is no independent oversight, because under section 25 of the ASIO Act, which is the section that the director-general was referring to, it is him who makes the request to the minister and then the minister makes a determination about whether the search warrant is issued.

**CHAIR**—At least the minister is accountable to parliament.

**Senator NETTLE**—I would argue that we need more.

**CHAIR**—You are accountable to the minister and that is different. You are not accountable directly to parliament. Nonetheless, I just wanted to raise that. It was not personal, Ms Scott, and it was not having a go at the Director-General of ASIO, but that is the committee's concern.

**Senator NETTLE**—You said that you are not aware of any requests from ASIO. Do you mean that is since you have been secretary? Is that two and a half years?

**Ms Scott**—Yes, since 26 October 2004. I have not had a request made to me, but I also think the director-general indicated today that they are not necessarily reliant on that.

**Senator NETTLE**—They have other ways of getting this information. You are saying in the time that you have been secretary there has never been any request from ASIO. I am just interested if anyone has ever refused ASIO access and said that they have to get a search warrant?

**Ms Scott**—I did not actually say it the way that you have characterised it. I said I had not been approached for access.

**Senator NETTLE**—Has somebody else in the department been approached?

**Ms Scott**—No. I have already taken the question on notice about what had been approached. I was quite clear in my answer. The Chair asked what was the frequency of requests. Is that a reasonable summary?

**Senator NETTLE**—Yes.

**Ms Scott**—I indicated what we had done in relation to one matter where I had stipulated a search warrant would be required, and then you asked me questions, Senator Nettle, on whether I had received requests from ASIO and I indicated that I had not had a request made. I think your question now goes back to the Chair's questions about frequency of requests. I did not want you to misunderstand.

**Senator NETTLE**—What you are coming back to us with is how many requests you have had for access from ASIO and AFP.

**Ms Scott**—I said that I will take the question on notice.

**Senator NETTLE**—Can you do it on the basis of ASIO, AFP and then any state police?

**Ms Scott**—All I can do is take the question on notice. I cannot indicate what the answer will be.

**CHAIR**—There may be operational sensitivities, which I understand.

**Ms Scott**—That is right. I just simply want to take the question on notice.

**Senator NETTLE**—If you are able to separate into those agencies, that would be appreciated.

**CHAIR**—You were going to talk about state police.

**Ms Scott**—I would like to go back to Senator Fierravanti-Wells's name being on the card. I am pleased to say that it will be able to fit on.

**Senator NETTLE**—If it were two letters longer it would not fit.

**Senator FIERRAVANTI-WELLS**—Does that include the hyphen?

**Ms Scott**—Yes, it does.

**Senator FIERRAVANTI-WELLS**—I must say on that point that I have in the past had people questioning my Medicare access because of the fact that the name on the card did not equal me. I am very pleased to hear that.

**Ms Scott**—I am delighted. Senator Nettle asked a question about state police. The situation in relation to state police and whether they can access information on the access card register is similar to some degree to what we have already answered on the Australian Federal Police. The department can disclose the information in the register to state police where disclosure is allowed by the Privacy Act 1988—and I think I have stipulated all of those; this is the threat to life and so on—but there is nothing in the bill that authorises state police to have access to information in the register, so there is no requirement for us to hand the information over. In terms of physical access to the access card register, state police do not have access to the register and cannot trawl through the register looking for particular information or data. I hope that clarifies the matter.

**Senator NETTLE**—It is similar? If they say that they have a request and you say yes, then you will trawl for them? That is using my language. With these three agencies—ASIO, Federal Police and state police—you are taking on notice whether there have been requests. What I am not clear on is whether those requests have to all come through you, or can they

get access through some other part of the department? Is it that the only way that they can get access is if you sign off, or not?

**CHAIR**—Can you delegate your authority?

**Senator NETTLE**—Do ASIO, AFP or state police have access to the information.

**Senator MOORE**—Do you check the register, because there is no register now?

**CHAIR**—Order! Senator Nettle, can you rephrase your question so Ms Scott can answer?

**Senator NETTLE**—We went through this before and the former minister was indicating that there is no change to the access.

**Ms Scott**—That is correct.

**Senator NETTLE**—My question can relate to the current situation to inform us about the access card. Is the only way for state police, AFP and ASIO to get access to the information through you, or is there another way?

**Ms Scott**—I will take that on notice, but just to help you a little bit, we do get approaches from some police. There are some protocols between our agencies, so I will attempt to address those issues by taking the question on notice.

**Senator NETTLE**—You may have heard this morning in discussions with the AFP that we were talking about principle 11 of the Privacy Act. Principle 11(1)(e) states:

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency ... unless:

and, then there are the caveats. The final is:

e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of public revenue.

The AFP are getting back to me because they did not know. My question was that ‘reasonably necessary for the enforcement of the criminal law’ is not just when there is a threat to life or when there is a threat to injury. It is criminal law. That is across the board. So, they are coming back to me on that. They are getting advice on that. Do you have an answer to that in terms of how it relates to your current practices about whether those requests can be any aspect of the criminal law? I am assuming from what you said that is the case, because you have described a range of different scenarios, but I thought that would be worth checking with you, given that AFP are coming back with advice on that as well.

**Ms Scott**—AFP is well placed to answer that question because it is them that does the approach in the first place.

**Senator NETTLE**—But it is you that makes the decision.

**Ms Scott**—That is true. As I have indicated, in the course of two and a half years we have had to indicate that once. It did relate to a matter where judgment was required. There was a threat to life. There clearly was an investigation going on, but the question was how wide.

**Senator NETTLE**—You indicated before that, for you to make that determination, you look to the Privacy Act.

**Ms Scott**—Yes.

**Senator NETTLE**—That is why I am looking to the Privacy Act and saying that there is a clause which says ‘all criminal law’; so how do you interpret that one?

**Ms Scott**—On a case-by-case basis and after the AFP has approached us. That is why I think the AFP is well placed to answer that question.

**Senator NETTLE**—I am very happy to hear the answer from the AFP but it is you, as the secretary, who makes the decision about whether or not the AFP or others can have access to the database. That is your decision—we have established that—and you have told the committee that you use the Privacy Act for your guidelines. I am now looking at the Privacy Act and saying that refers to the enforcement of criminal law. To me, that is pretty broad. If I am reading it wrong, please let me know.

**Ms Scott**—I do not think that I can add anything to the answers that I have already provided on this topic. I am trying to be very clear and I do not want to leave any misunderstanding with the committee. The AFP are best placed to answer that part, and I have indicated the sort of circumstances in which—

**Senator NETTLE**—With respect, it is actually not the AFP in this. It is you making a decision about whether or not the AFP have access to your database. You have said you use the Privacy Act; that is what I am now asking you about because that is your guideline. I am not asking about individual cases.

**Ms Scott**—I know that you tried to explore a number of potential issues today with the federal agent from the AFP. We have to assess the case on a case-by-case basis.

**Senator NETTLE**—That is what you do. That is your job.

**Ms Scott**—That is right, and I do not think that I can add anything further to my answers. Chair, I was going to go on to some other matters.

**Senator NETTLE**—It really leaves me unclear as to how you are going to exercise this discretion.

**Ms Scott**—Maybe I could make it clear. There is not—contrary to what people claim sometimes—there is not unfettered access. I can be very clear about that.

**Senator NETTLE**—That does not provide me with any understanding of how you exercise your discretion. All you have told me is that you look at the Privacy Act as your guidance. I am now saying, here is the Privacy Act, here is what it says and I am asking you to tell me how it works.

**Ms Scott**—I think I have given you as clear an answer as I can.

**Senator NETTLE**—That leaves me entirely unclear as to how you exercise your discretion. All you have said to me is ‘the Privacy Act’. I have said to you, ‘How do you interpret the Privacy Act?’, and you have said, ‘I am not giving you any more information.’ That really does not help me in understanding this at all.

**Ms Scott**—We have to deal with each case on a case-by-case basis. Certainly the Privacy Commissioner can assist. For example, in the tsunami a question arose about whether we could utilise information available in the agencies to assist in the tsunami recovery, and the Privacy Commissioner’s advice was sought there. That is one source of information. I can

take legal counsel, and I would on some of these matters. I did on the case that I referred to earlier. It has to be done on a case-by-case basis. It is not like there is an easy, simple set of rules. Bali was different from anything else that we had encountered.

**Senator NETTLE**—Your answers do assist in some way because what you are doing is giving me examples that relate to the Privacy Act, principle 11(1)(c) of which states:

... necessary to prevent or lessen a serious and imminent threat to the life or health of the individual ...

The examples that you have given me about the tsunami and Bali clearly would fall into that category.

**Ms Scott**—Thank you.

**Senator NETTLE**—There are five exemptions there, and one of them relates to the enforcement of criminal law. That is the one that I am most interested in hearing from you.

**Ms Scott**—I got a question the other day.

**CHAIR**—How broad is that exemption?

**Senator NETTLE**—That is right. To me, it reads like all criminal law.

**Ms Scott**—No. I got a question the other day about state transit authority police. They did not give me a lot of detail, but the effect was: what if the state transport had video footage of someone doing damage to a train. Their question was would I see this as being a case. I would have to say I was not compelled by that case, or someone putting their feet on a seat, or leaving a bit of chewing gum behind. We would have to deal with every matter on their merits.

**Senator NETTLE**—That does help me. What you are describing to me is that you decide. You have said that you may take some legal advice on that, but it goes back to the original issue that I have. It is an administrative decision. You are not an ASIO officer. I do not know what your background is from before you were here.

**Ms Scott**—Central banker.

**Senator NETTLE**—I do not know what qualification that gives you to make these kinds of assessments, but that is for you to determine.

**CHAIR**—We have exhausted this line of inquiry. Is that all right?

**Senator NETTLE**—Yes, that is fine.

**CHAIR**—We will let Ms Scott move on. Is there anything else that you want to cover?

**Ms Scott**—I want to cover another three or four matters quickly which go to the questions you directly asked us.

**CHAIR**—Please do.

**Ms Scott**—Just in passing, I am aware in the course of the last two days you have heard instances where people have claimed that the bill is too soft with regard to privacy, and the same clause has been subject to criticism as being too hard, and section 57 neatly fits into that category. I did not have the opportunity to hear all of the testimony of the Office of the Privacy Commissioner but she has indicated some dissatisfaction with that because it does not go hard enough, and the federal agent and the Federal Police today said that it went too far. It

is apparent to us that we are trying to steer a reasonable course here. Clearly it is about balance, about privacy, convenience, security and cost, and that comes to your question, Chair, about the photograph on the card. If you lose a Medicare card anyone can pick it up and use it as if they are you. They can trade it and sell it and do whatever they like. We do know that there are instances of people trading in these cards and using these cards fraudulently. An access card with a photograph on it provides the card owner, the customer, with much more confidence about protection of their privacy, their identity, because it has got a photograph on it.

**CHAIR**—Are you sure about that?

**Ms Scott**—A Medicare card can be used by anybody and we know that it is. The access card has a clear photograph on the front. I know that KPMG in their business case went to some length to discuss why the photograph needed to be on the card. I am sorry that KPMG could not be here today, but one of them was briefing a Premier and the other one had some other meeting. That photograph is a significant deterrent for fraud against the Commonwealth, because there it is, there is the photograph. It is also a significant safeguard for someone pretending to be you, because it has your photograph on it.

**CHAIR**—But as I understand it, no access to welfare services would be provided unless the access card is placed into a reader in any case, so how is it going to assist with fraud?

**Ms Scott**—There are a couple of answers to that. Some of our providers will not require the card to be inserted. Certainly the agencies will be inserting the card. For example, allied health professionals sometimes provide services to our customers, and they will not need to place the card in the reader if the card has a photograph on it. Also, if you hop on a bus and you are an age pensioner, the card is clearly you, because there is your photograph on it.

**CHAIR**—As I understand it, if you want access to health services there needs to be a reader. With allied health professionals, if they choose to give services without a reader, and perhaps they may choose to, but in the end I am told the government plans to roll out readers everywhere and access to welfare services will not be available. With respect to concessions, there will not be concessions as Senator Forshaw keeps saying. The concession status will not be on the card in any case. I am still not convinced. We have heard Professor Fels's evidence today about the photograph. His view is now that it should be a matter of choice. I accept that some people want and perhaps even need a better form of ID. I accept that and I think the committee accepts that. From the evidence from the vets and the blind people I accept that, but I do not think that you can say that because some people need it you can justify the architecture of this entire process; you would agree with me on that? His solution to the issue that a card with a photograph, number and digitalised signature could become a de facto ID card or that it may well become one, it is tipping, for too many users, is that this should become a matter of choice; that people can choose.

**Senator MOORE**—Informed choice.

**CHAIR**—Yes, informed choice. They can choose to have a photograph on it, they can choose to have a number on the front and maybe even choose to have a digitalised signature. That would solve in one fell swoop so much of the contention about this becoming a de facto ID card. So much of the debate would be gone.

**Ms Scott**—I would have to say that I was surprised by the change in Professor Fels's position, because in the first report, report No. 1, on page 35, he indicated:

...and noting the Taskforce's position on this issue which, at this stage, supports the use of a mandatory photograph on the card, with the destruction of old photographs when new ones are taken for card reissue or replacement.

**CHAIR**—Above that he says that there is 'some merit in government revisiting this decision'.

**Ms Scott**—He did and the government did review the decision. This matter was considered carefully by government and the subject of a public report, which indicated that the photo on the card is essential to the business case. I would refer you to pages 16 and 17, because KPMG is of a view that this is a major deterrent to fraud. This could be photocopied. This is a cardboard card. There are no security features on it at all. This one is a repat card. There are no security features on it at all.

**CHAIR**—I accept this.

**Ms Scott**—We had evidence today before the committee about just how vulnerable our systems are. The audit office has indicated that 25 per cent of the cards at any time are leakage to the system because they are being used inappropriately. We know that there are even people who have had operations on the basis of other people's cards.

**CHAIR**—I accept all the things that you say. We did hear from the AFP today and when I put to them the same issues about payment only being made on the basis of the access card being swiped into a reader—and I do not think that I am misrepresenting the AFP; if I am, I am sure my colleagues will pick me up—he did not have a real answer to it. It is fair to say that the committee has not really heard definitive evidence that a photograph is necessary. I am not saying that is the committee's decision.

**Senator FORSHAW**—I would also add that increasingly identity fraud is not necessarily just related to people presenting a card where it does not have a photo on it. As I understand it, identity fraud can be perpetrated electronically. The sort of information that people who specialise in identity fraud use is not just photographic. I am not decrying what you have been saying about that.

**Ms Scott**—To be clear, the \$3 billion estimate from KPMG on Friday, which they said was a conservative estimate, is based on the identity fraud that they consider this card will address. There is certainly a lot more identity fraud out there. There are people not underdisclosing and not disclosing income and all sorts of things. They consider the photograph on the card to be essential to the business case, because it is not always the case that every benefit is going to be received after the card is inserted into the reader. We gave you the DVD, which showed people going into our agencies. But that is not the only place where these cards are utilised in order to get benefits.

**CHAIR**—We were told specifically that benefits will only be paid after those access cards were swiped. That was the evidence.

**Ms Scott**—State benefits, for example, a state benefit on a train or a bus—

**CHAIR**—That is a concession card now. Are you talking about concessions?

**Ms Scott**—It is both for concession cards. The cards that are being collapsed into this include a range of concession cards—the Safety Net concession card, the Prescribed Patient Cleft Palate and Cleft Palate Scheme concession card, the Prescribed Patient card.

**CHAIR**—The concession status is not going to be on the front of the card.

**Ms Scott**—I have to correct you. I have indicated in testimony before that for stable groups like age pensioners, veterans and self-funded retirees we have indicated that the customer will have the choice of colour card.

**CHAIR**—Did you say ‘choice’?

**Ms Scott**—Yes, but we would expect that a great deal of people will take them up. That is why we have illustrated that choice. In the DVD that we provided we clearly indicated that people who frequently make use of concessions and are stable in their status as concession cardholders would be able to have a colour card.

**Senator FORSHAW**—What do you mean ‘would be able to?’ Tell us, will they or will they not?

**Ms Scott**—Yes. They will be able to.

**Senator FORSHAW**—Will all veterans have a particular colour card?

**Ms Scott**—Yes. We expect that all gold card veteran holders—

**Senator FORSHAW**—We have to get away from these answers that say we expect this or that. We are trying to deal with this legislation and we need some certainty if possible about what the precise nature of these cards is going to be. Will the DVA people have their own tailored card, the pensioners have another one, and Centrelink clients have another one? Is that the proposal? This is the first time that I have really heard this being expanded out.

**Ms Scott**—I am happy to refer to my other part of the testimony. I am sure someone can look it up for me.

**Senator FORSHAW**—At that time we were being told that ‘we expect’ that they can perhaps have a different colour.

**Ms Scott**—Chair, had we the benefit of the DVD, a number of these issues would have gone away. On the DVD it clearly shows that veterans will be given a choice, but we expect that the gold card will be taken up by the great bulk of gold card veterans because they like the gold card. They like the recognition. If you go to the bill, there are all sorts of other elements that veterans have requested to be on their card, like ‘POW’ or whatever. The bills are very clear on this matter, as is the explanatory memorandum, as is the DVD.

**Senator FORSHAW**—We heard from Veterans’ today. Can you tell us the characteristic of the card that seniors will be able to obtain that on the face of it will indicate that they are a senior, as distinct from people like me who have a Medicare Card?

**Ms Scott**—Stable groups such as self-funded retirees, age pensioners and veterans. They tend to come into that category, their circumstances hardly ever change and they stay in that category.

**Senator FORSHAW**—Not the unemployed, for example?

**Ms Scott**—No. We discussed that previously at length. We will find the section.

**CHAIR**—We will let Senator Forshaw continue. Then I have some questions and then we will go to Senator Fierravanti-Wells.

**Senator FORSHAW**—I am waiting for the rest of the answer. As I understood where you were heading, you were going on to explain that we can expect that there are identifiable groups that will have their own style of an access card?

**Ms Scott**—If they wish. I expect the great bulk of that group will want it because they will find it extremely convenience to access third-party concessions.

**CHAIR**—This is about facilitating access to Commonwealth welfare. This card is about fighting fraud. We agree on that, don't we?

**Ms Scott**—These cards are also used to access a full range of other things.

**CHAIR**—We will get to that in a minute. You have mentioned allied health professionals. We are all aware that access to Commonwealth benefits will only be available when the card is swiped. That has been the evidence. Now you are talking about state concessions on rail authorities. We are moving way beyond Commonwealth access to welfare. We are talking about rail concessions and to justify the system with that.

**Senator FIERRAVANTI-WELLS**—What happens is, if you are a veteran, you have to show your card to get a concession card if you want to travel on a bus in New South Wales.

**CHAIR**—Do we have the entire architecture of this bill for that purpose?

**Senator FIERRAVANTI-WELLS**—No, but the point is that is one of the things already.

**CHAIR**—That is the point, though. You cannot justify the architecture of this bill on the basis of access to state concessions.

**Senator FIERRAVANTI-WELLS**—That is what happens now.

**CHAIR**—Does anyone disagree?

**Senator LUNDY**—We agree.

**Senator WATSON**—With respect, that is not the point. The point is that it provides an ancillary benefit that is an add-on to the main purpose of the card, which Ms Scott is trying to enunciate.

**Senator NETTLE**—It does not even provide that, though, because what we have heard in the evidence is that some people will have the gold concession card. The unemployed and young people will not. They will get the ancillary benefit, as you describe it, of the concession ticket only if the bus driver has a reader. That is what we need to get to from the secretary.

**CHAIR**—I will ask for those questions to be taken on notice, otherwise this will end up as a debate rather than a question forum. Does everyone agree on that?

**Senator NETTLE**—On the concession card status?

**CHAIR**—Yes, and in relation to my question on the photo.

**Senator MOORE**—There is one threshold one that I want to ask.

**CHAIR**—I am in the committee's hands on this.

**Senator MOORE**—I just want to see whether this is possible.

**Senator NETTLE**—The concession card issue, as we are indicating, is quite important. If we are getting answers back that satisfy that, then that is fine, but I am wary of leaving this if we are not going to get satisfactory answers.

**CHAIR**—The committee will take a break for a second.

**CHAIR**—That of itself is not enough, Ms Scott.

**Ms Scott**—I am sorry, I did not hear that, Senator.

**CHAIR**—This is about facilitating access to Commonwealth welfare. This card is about that and fighting fraud. We agree on that, don't we?

**Ms Scott**—These cards are also used to access a full range of other benefits.

**CHAIR**—Let us get to that in a minute. You have mentioned allied health professionals, and we are all aware that access to Commonwealth benefits will only be available when the card is swiped. That has been the evidence. Now you are talking about state concessions on rail authorities. We are moving way beyond Commonwealth access to welfare. Now we are talking about rail concessions and justifying the system on that.

**Senator FIERRAVANTI-WELLS**—What happens is, if you are veteran, you have to show your card to get a concession if you want to travel on a bus in New South Wales.

**CHAIR**—But do we have the entire architecture of this bill for that purpose?

**Senator FIERRAVANTI-WELLS**—No, but the point is that that is one of the things already.

**CHAIR**—That is the point. You cannot justify the architecture of this bill on the basis of access to state concessions.

**Senator FIERRAVANTI-WELLS**—But that is what happens now.

**CHAIR**—Does anyone disagree?

**Senator LUNDY**—We agree.

**Senator WATSON**—With respect, Chair, that is not the point. The point is that it provides an ancillary benefit which is an add-on to the main purpose of the card, which, with respect, Ms Scott is trying to enunciate.

**Senator NETTLE**—It does not even provide that, though. We have heard in the evidence that some people will have the gold concession card but the unemployed and young people will not. The ancillary benefit, as you describe it, of the concession ticket, they will only get if the bus driver has a reader. That is what we need to get from the secretary.

**Ms Scott**—I am trying to find the right thing that I think will be persuasive for you. We did go through the concessions and the stable groups on 16 February at about page 20 in the testimony.

**Senator NETTLE**—We went through it twice, actually.

**CHAIR**—We will let Ms Scott talk. Ms Scott, you have the call.

**Ms Scott**—I have an extract from the KPMG report entitled ‘Why the photo is needed on the face of the card’. It goes for five paragraphs.

**CHAIR**—Would you like to table it?

**Ms Scott**—I am happy to table it. Maybe that will assist the committee.

**CHAIR**—Does that mention the option of choosing to have a photograph?

**Ms Scott**—No, it does not.

**CHAIR**—It does not have the Fels approach?

**Ms Scott**—No. I think at one stage in their report, which is quite lengthy, they did have a discussion on it. I will try and find you the reference. If I cannot locate it within our time before you today, we can make it available to the committee tomorrow.

**Senator FORSHAW**—Do you have a page number?

**Ms Scott**—Page 20—16 February.

**Senator MOORE**—I have two questions that are vaguely on this subject. One is to do with the definition of fraud and whether in fact the KPMG or any other report has defined exactly where the savings in relation to fraud are going to be. This is a general question, but I am asking it at this point because, if we are looking at this card as being a protection against fraud—and we have been through this issue and we are stuck with concessions—I am interested to see whether the KPMG report gives any indication of the savings involved through identity fraud of concessions. If you want to take that on notice, that is fine.

My other question is to do with the architecture. Today with Professor Fels we discussed the issue of informed choice around whether you want the photograph, the number and the signature, either on the card itself or on the chip. I want to know whether the architecture allows that, so that, if that were a possibility, your card is there and you as cardholder could say: ‘I want the card because I want to access Medicare or welfare. I choose for my photograph, signature and number to be on the chip.’ I want to know whether that is possible—not whether you support it or not, but whether it is possible in the architecture of the card.

**Ms Scott**—I will try and cover your answer, but I remember there was a question from Senator Forshaw today to another witness. It went to this whole issue of what we absolutely need in order to provide the benefits. I am probably not getting you word perfect, Senator Forshaw, but the premise of the question was along the lines that there are clear weaknesses in the current Medicare card, and I think there is some acceptance of that generally. I think Senator Forshaw’s question was: why don’t we set up the access card for just Medicare? It was not quite a case of talking to the TV, but I wished you had asked that of me.

**Senator FORSHAW**—Consider it asked.

**Ms Scott**—We have to register 16.7 million people to create an access card that will cover all 17 current cards, and we would also have to register 16.7 million people to do the access card if it only covered the Medicare card. We would incur all of the costs associated with registration and a great proportion of the costs associated with the other processes, and yet it would only provide one service, whereas we are effectively extending it to all these other

services. I thought that got somewhere near answering Senator Moore's question, but perhaps you will have to remind me.

**Senator MOORE**—I want to know: based on our discussion with Professor Fels this morning, should we look at the possibility of those elements being on the chip but not on the card? Can that be done architecturally?

**Ms Scott**—It can certainly be architecturally done. But just on the signature, which is another part that the chair asked us about last Friday, we do have services that are provided by allied health professionals—for example, to veterans—where the person providing the service requires the signature of the veteran.

**Senator MOORE**—Sure.

**Ms Scott**—Those sorts of invoices or whatever you want to call them are submitted then to Veterans' Affairs. We have 50 million forms circulating through our agencies where people sign for things. We would not require the digitised signature to be checked in all 50 million cases, but we would certainly like to have the digitised signature so that it provides a higher level of security than we currently have. This is why the AFP has placed such value on the photograph and the signature. After Professor Fels's question as to whether we need the signature, we went back to the agencies and specifically asked them, 'Why do you need a signature?' They came back and said that this is an important antifraud device, just as the photograph is an important antifraud device. Architecturally it can be done, but all of the things that take these security features off leave us with the cost and fewer benefits. It takes away some of the essentials for the business case and I think it takes away some of the convenience. I think it takes away some of the protections for people's identities that come with the card.

**CHAIR**—Convenience should be a matter of choice for the individual. But that is another issue.

**Senator MOORE**—The question about the fraud numbers is critical to the business case. I think we would be asking for—

**Ms Scott**—There is a section in the report. It starts around 3.4.3 and they go through and talk about the gains that are going to be achieved. They say:

The biggest gains are likely to be in the following areas:

- Substantial reduction in the opportunity to set up false identities
- Preventing the use of someone else's card to claim you are that person for obtaining an entitlement ...

And in the case of pharmaceutical benefits, that is not an insignificant reduction that people can achieve. The general copayment at the moment is \$30.70.

**Senator MOORE**—Pharmaceutical benefits would only be available through pharmacies, I would think—

**Ms Scott**—Yes.

**Senator MOORE**—which would have to have a reader.

**Ms Scott**—You have a reader. The question we are talking about is, and I am going back to your question about where was the fraud—

**Senator MOORE**—I am trying to find that because the business case, which is the basis of the issue around fraud, is based on savings that KPMG has identified. I am still trying to refine in my mind whether they have come up with data as to exactly where the fraud is and costed the fraud. My original question was in relation to our previous discussion when we were talking about the areas that could be of benefit to the Commonwealth. We ended up in a heated discussion about concessions—which we often do, and not only in this committee—and I was interested as to whether the KPMG business case has been able to say that X amount of the proposed savings of Y amount would be through concessions.

**Ms Scott**—A representative of KPMG gave evidence on Friday—

**Senator MOORE**—They did not give us detail.

**Ms Scott**—which he had to truncate because of time. I think some of that material will go to your answer. Would you like me to keep on going to the next area?

**Senator MOORE**—Yes.

**Ms Scott**—It continues:

- Reductions of claims for MBS and PBS concessions and safety nets based on inaccurate concession information
- An immediate reduction in the number of people claiming Centrelink benefits
- Reduction of fraudulent claims for benefits from Centrelink through non-disclosure of changed personal circumstances.

**Senator MOORE**—Are there dollar values beside each of those headings?

**Ms Scott**—They have arrived at an estimate.

**Senator MOORE**—That is right, because they only—

**Ms Scott**—We have had questions on notice on this—

**Senator MOORE**—Yes, you have.

**Ms Scott**—I think from—

**Senator MOORE**—Everybody.

**Ms Scott**—Senator Nettle—maybe I am not attributing it to the right senator—where they have asked us, almost, how many double identities we have in our system. Well, if we knew exactly how many double identities we had in our system we would not have them because we would have weeded them out.

As soon as you get into the area of fraud, you must be into estimates. It is a bit like estimating how many businesses there are out there. People take an estimate of it. In the GST days—and I am sure Senator Watson remembers this—people estimated that there were so many businesses, and then when we went out with the GST there were many more businesses. We have to take an estimate. KPMG went about this as well as they could. They drew on information from the agencies and on international experience.

It is a tiny proportion of the total \$1 trillion that will be spent over the 10 years, where KPMG thinks we will recover 0.3 per cent. That is a very small recovery given overseas examples. Chris Jordan went through this on Friday; he was suggesting that the figures could be much higher and I think he said four and five per cent. So KPMG, who are not normally seen as wild figures, said that the \$3 billion figure should be seen as a conservative estimate.

**Senator MOORE**—That is exactly my point—that we have been told, consistently, throughout this discussion, about what the KPMG estimate of fraud and identity fraud is. We have a piece of legislation before us, the major benefit of which to all of us is going to be saving fraud in our community. That has been clear; we all agreed on that; there is no disagreement. Consistently, when we have asked to have refined figures around even their estimates, we do not get anything beyond a statement that the conservative estimate is the bulk figure.

**Ms Scott**—To be fair to KPMG, Mr Jordan, in a very brief time, went through a range of figures on Friday—

**Senator MOORE**—They were not as clear as I wanted. We have not got the *Hansard* back yet, so I am not exactly sure. But we were trying to find out, just in terms of our debate, on what basis KPMG claimed the major savings that are before this committee. And to the best of my understanding the only business case that we have for this whole project is that one KPMG inquiry. I think that is right.

**CHAIR**—I think so, for argument's sake. And AFP has also—

**Senator MOORE**—AFP may have; I am sorry, I missed their evidence today. But we are not going to get the figures and it disappoints me—with Centrelink in particular, where we should have quite clear figures on their fraud database on exactly how much of their annual fraud they attribute to identity fraud. That is something that should be able to be got. I had a quick look at our database and I could not find it easily. Is that available, Ms Scott?

**Ms Scott**—I think we have been asked a very substantial number of questions—

**Senator MOORE**—You sure have.

**Ms Scott**—about this, and we have answered a number. I do not want to try and take the time to find it now—

**Senator MOORE**—No, do not take it now.

**Ms Scott**—but we have provided a series of answers. The KPMG business case was done after there had been a taskforce, involving, I think, 14 departments, that looked at the case for having an access card. Then the government determined that they wanted an independent assessment of a business case. So it was not as though we were only reliant on the KPMG business case.

**Senator MOORE**—We are not going to get the concession figure about what the expectation of concession fraud is?

**Ms Scott**—On page—I am going to say 16, but somebody will correct me—of the report, there is a reference to an audit office examination of the health care concession card, which is one of the more common cards, where they said—based not on our department, but on

departmental evidence—that at any one time 25 per cent of the health care cards should not have been utilised because those cards should have been voided.

When the card is inserted in a reader at one of our agencies, we will be able to update that card and indicate that that person is no longer concessional. It will be the same when the card is inserted at a doctor's surgery or a pharmacy.

In Mr Jordan's answer, there is about a page and a bit—possibly more—that goes to fraud and leakage. I take it they will be tabling that very soon. That goes to—

**Senator MOORE**—That does not answer my question. We have more than we had that day, but it does not provide the refinement I was hoping for in regard to the business case.

**Ms Scott**—I have it now: annual savings of approximately \$125 million to \$250 million, mainly relating to reductions in identity related fraud and abuse of concessions.

**Senator MOORE**—What does identity related fraud and abuse of concessions mean? It tells me that there is an expectation that those things are occurring; it does not tell me on what those figures are based or whether they are medical or transport concessions. They are bulk figures, and I accept that they are the figures that were used. It does not tell me where the key savings will be made or how the figures were calculated—but it seems I am not going to get that.

**Senator LUNDY**—I have a number of questions about the technical attributes of the smartcard proposal, but firstly I would like to follow up a point raised by the Medic Alert Foundation yesterday in Melbourne. The Medic Alert Foundation operate a not-for-profit system of bracelets with a personal identification number that is linked to a database that can provide those attending wearers of the medic alert bracelet with critical health information. The foundation are concerned about their viability if this card contains health information. What assurances can DHS give Medic Alert that their viability will not be threatened? Have you bothered to consult with them at all?

**Ms Scott**—The Fels task force, as you know, is investigating the right approach to the voluntary data issue. I do know that Medic Alert was one of the groups that was consulted—

**Senator LUNDY**—We did see their submission. I want to know whether the department consulted with them.

**Ms Scott**—and I think they did attend a meeting of 40 or 50 different representatives—and someone will correct me before the evening is out if I have that wrong. The government has not determined its final position on the approach to voluntary information on the card. In fact, Senator Campbell was reported last week as indicating that he has a very open mind on it. At this stage, no assurance has been given to Medic Alert; mind you, no decision has been taken either. That is the subject of work by the task force.

**Senator LUNDY**—Is it likely that a decision will be made about that before we actually debate the bill in the parliament?

**Ms Scott**—The issue of how the voluntary system will work will relate to the second bill, not this bill.

**Senator LUNDY**—So when we debate this bill we will not know what the status of health information is, if any, on the card?

**Ms Scott**—The only health information that will be placed on the chip of the card is information that the individual wants to put on. There are some small classification systems that relates to veterans, and they are set out in the bill, but leaving those aside—and I think that is neither here nor there—the Commonwealth is not going to have any health information on the surface of the card, on the chip or in the register. That issue does not need to be resolved now.

**Senator LUNDY**—Going back to my first point: can you give assurances to Medic Alert that their viability will not be threatened?

**Ms Scott**—I thought I had answered that.

**Senator LUNDY**—In relation to this bill, I think you can probably give that assurance.

**Ms Scott**—That is right. This bill does not go to that issue, so I cannot see any impact that this bill would have on Medic Alert.

**Senator LUNDY**—The other issue about Medic Alert, which I will raise with you in anticipation of any potential threat from the next bill—it is a bit speculative, but bear with me—is that Medic Alert provides the service for children; this card will not. To what degree have you taken into account any possible threat to Medic Alert's viability, particularly given the essential service it provides for children in notifying of illnesses or chronic conditions?

**Ms Scott**—I know that Professor Fels's task force has been giving this matter consideration, and there is a specific section in their discussion paper that was released a couple of weeks ago that goes directly to the issue of the role third parties like Medic Alert could play in this process. No definitive decision has been made within government about that operation. It is all for the future. It is all the subject of consultation, and Medic Alert is an active part of that consultation process. I know that Professor Puplick is particularly mindful of the role they currently play.

In relation to younger children, the current arrangements would be in place for them. Young children are not expected to have a card. In some Indigenous communities, Medicare cards are currently issued for individual children. If that is necessary we will issue a very cut-down access card, but it is not going to be the general case that a two-year-old or a five-year-old would have an access card.

**Senator LUNDY**—That answer tells me that you are at least contemplating issuing access cards for young children.

**Ms Scott**—A very small number of people currently require a card; I have some figures in one of these folders. In the debate regarding under-18s we looked at all the data relating to very young children accessing benefits almost in their own right. We have special arrangements now in remote Indigenous communities where people sometimes have special requirements relating to Medicare cards.

This goes to some questions Senator Moore asked today about communication and registration strategies. I have checked with Medicare. They have advised me that approximately 98 per cent of Indigenous people in the Northern Territory, which is obviously

the region with the highest proportion of Indigenous people, are enrolled in Medicare. The figure had been low for many years, and they went through a very deliberate strategy of visiting every community and every outstation, having dedicated officers visiting every health care centre, staying with the doctors, ensuring that people were enrolled. That is why we are confident that we can have special arrangements in those communities. The government requires with any major education campaign that we have specifically targeted information to Indigenous groups. When we advertised some of the basic features of the card, we did use Indigenous media in that process.

**Senator LUNDY**—What would be the specific criteria for the issuing of the card to young children?

**Ms Scott**—The government has released guidelines. There have been two press releases on this. I am happy to table this. Currently 2.9 per cent of 15-year-olds have a Medicare card, but for 9-year-olds we are down to one per cent. That is predominantly about people in Indigenous communities. I would be happy to table the guidelines which have been released.

**Senator LUNDY**—That would be helpful. We also had some discussion earlier today about the registration process for people with disabilities and for carers. Senator Moore, did you cover that in your questions? We are interested in the detail of how you would propose to send out people to register—particularly frail aged people, people in palliative care, all that sort of thing. Moving them is just not an option.

**Ms Scott**—No—we won't even attempt to do that. The DVD indicated that there is no interest in having people in palliative care go through an interview process or be photographed. There is no interest in having a rigorous process for the frail aged. People in high care facilities will not be subject to the interview and the photograph. We want them to continue to have access not only to services but to benefits. Part of Professor Fels's role in the registration discussion paper process is to help the government identify other groups. For the record, people in palliative care, the frail aged and people in high care nursing homes are clearly groups that we have indicated would not be the subject of a rigorous interview or a photograph. We will have mobile units visiting people. Other vulnerable groups will need special arrangements. We have had lengthy discussions with Centrelink about homeless people. Centrelink has an outreach service now and for people who have mental illness we will have to make arrangements. Centrelink has a very good network of social workers. These people are in contact with our agencies. Getting back to Medic Alert, there were two representatives at the forum on 15 December. They are closely involved in our consultative process.

**Senator LUNDY**—I want to ask some questions about the existing Commonwealth databases. It is stated often that this will be completely separate and will not have any relationships with any of those existing databases. Could you tell me how many existing databases there are within Human Services that contain information of a service nature that the users of the Commonwealth services currently access?

**Ms Scott**—We have six agencies within Human Services, and Veterans' Affairs is also a participating agency, so you consider that there are seven agencies. I can imagine that the committee might think that that means that there are seven databases, but there are not.

**Senator LUNDY**—We know that is not true.

**Ms Scott**—No, there are not. There are many, many more. There is a legislative requirement in the case of Medicare to have a separate database for the Pharmaceutical Benefits Scheme and the medical benefits scheme, so there are two completely separate systems there. I think at one stage I was briefed that Medicare was in the process of rationalising how many completely separate systems operated. I cannot recall what it was going down to, but my recollection is that it started at 27.

**Senator LUNDY**—That is one agency.

**Ms Scott**—Now you are going to ask me about the others. I will take that question on notice. It is going to be a number considerably larger than 27, but I do not know how much larger.

**Senator LUNDY**—I would appreciate that. I just want to ask some general questions about the operation of this system. The way I understand it is that this database will be operating independently but, when people are identified by virtue of the registration database, then each of those agencies just draws into their existing services and databases. Thinking of the architecture of the system and informed by evidence from CSC, who have tendered for the systems integration contract, can you tell me whether the language that the new registration database uses to find information—that is, the metadata—is of the same standard as any of those existing databases, just by chance?

**Ms Scott**—I am not going to comment on any tender that has been submitted. I am not going to refer to who the tenderers are. I am not going to refer to any text that they have provided. I am not going to give any indication of the tendering processes.

**CHAIR**—I understand that, Ms Scott.

**Ms Scott**—Senator Lundy, could you compress your questioning into a format which does not require me commenting—

**Senator LUNDY**—Just delete the reference to CSC then.

**Ms Scott**—Could you just help me. I got distracted by that because I know I have got probity advisers watching back at the farm who will have my guts for garters if I—

**Senator LUNDY**—My question is: presuming the department has chosen a metadata standard for the registration database, can you tell me whether any of the existing databases have the same metadata standard? It is not that hard.

**Ms Scott**—Because we are in the tendering process, I just do not want to find that I have given a signal to one firm that disadvantages others. So I do want to be very careful with this.

**Senator LUNDY**—Sure.

**Ms Scott**—This is not about a wholesale modification to the existing systems that are in the agencies—

**Senator LUNDY**—I appreciate that.

**Ms Scott**—As you indicated in the preface to your question, this is not about megadata and bringing things together, but there will be an interface—obviously for change of address or

for new people; for example, if people had three children and then they had four, data records would have to change. Clearly, we are working to ensure that that interface will work with each of the agencies. There is going to be a design validation phase, and that is set out in the public document providing an overview of the tendering process; and we will be working with the agencies.

**Senator LUNDY**—When you talk about the interface, I am sort of latching onto metadata standards as the example of how that interface is managed, so I am interpreting what you are saying as: whatever that interface is, whether it includes a similar metadata standard or not, it will allow that database to have some interoperability to allow basic things like address, kids added and things across the agency.

**Ms Scott**—That is right. We are working to ISO standards, and—

**Senator LUNDY**—What ISO standard? Are you able to identify that?

**Ms Scott**—We will attempt to find that as we go through. We will be looking at common message format in terms of the length of fields, for example.

**Senator LUNDY**—Who in your organisation, in the department, is working on those technical issues? I appreciate it is very important information for informing the tender documents, but who have you got working on those issues and what is their general brief, given that getting these kinds of things right is absolutely essential to the whole thing being responded to effectively by the market?

**Ms Scott**—In answering one of the questions today, a federal agent from the AFP made reference to working groups existing now. I think he was saying that the AFP is on the implementation group, the security group and the legal group. We have working groups that involve the agencies, we have working groups that involve the security agencies and I have the assistance of the chief technology architect and the staff of the Office of Access Card working on that. So we have been able to draw on the expertise of each of the agencies. We also have access to Booz Allen Hamilton's international experts on technology issues. They act as our lead adviser and they have technologists whom we are drawing on who have had experience in other smartcard projects.

**Ms Johnson**—Ms Scott has provided an overview of the various teams and working groups associated with defining the requirements for the access card system. It has been a collaborative effort between the Office of Access Card and DHS agency representatives, through the various working groups. That includes the technical working group and the security working group, which have representatives from across the DHS agencies, as well as the AFP and other agencies. In addition, we have drawn on Booz Allen Hamilton, our lead adviser in this field. That collective effort has informed the business requirements for the overall system design.

**Senator LUNDY**—Can you list all of the consultants that you have engaged for the purposes of the architecture, the technology, of the system?

**Ms Johnson**—We will take that on notice.

**Ms Scott**—I thought that sounded straightforward. Can you ask it again? I was expecting to sit back in my chair and relax for a while.

**Senator LUNDY**—All of the consultants that you have engaged to advise—

**Ms Scott**—You want to know the number?

**Senator LUNDY**—Yes, and how much they are paid.

**CHAIR**—This is not really an estimates hearing, Senator Lundy.

**Senator LUNDY**—I know, but—

**CHAIR**—Ms Scott, are you happy to provide that? It is a little bit outside the terms of reference.

**Senator LUNDY**—I want to see if any of the same advisers are being used that were used in the federal government's previous IT outsourcing. They came away with a lot of money and gave some pretty bad advice, so I thought I had better check.

**CHAIR**—Ms Scott, if you are happy to answer the question, you may, but it is slightly outside the terms of reference.

**Senator LUNDY**—We know that Booz Allen Hamilton is one of them.

**Senator FORSHAW**—Is it a long list?

**Ms Scott**—Imagine walking around with this information in your head!

**CHAIR**—I am surprised you do not, Ms Scott, in fact.

**Senator FORSHAW**—It might be on a little microchip somewhere, buried away on an access card. Plug it in and turn it on.

**Ms Scott**—I am quietly confident that I am going to find something.

**Senator LUNDY**—I might keep going. If you come to it that would be terrific.

**Ms Scott**—I will see what I can do.

**Senator LUNDY**—I think we need to keep moving. In that context, as the chief technology architect—your title is very impressive, Ms Johnson—whom have you got working on specifically that interoperability or interface issue between the new database and all of the existing databases?

**Ms Johnson**—We have DHS agency representatives and Booz Allen Hamilton, together with Office of Access Card technical experts. I should add that we also have the Defence Signals Directorate.

**Senator LUNDY**—Why are they involved?

**Ms Johnson**—The Defence Signals Directorate will be involved in providing security certification to the system.

**Senator LUNDY**—To the new system?

**Ms Johnson**—Correct.

**Senator LUNDY**—Are you aware of the status of the security rating of all the existing databases and systems? Have you had an audit done?

**Ms Johnson**—I have not had an audit done of all the agencies' security ratings.

**Senator LUNDY**—Have you asked the DSD if they have audited the security status of all of those existing systems recently?

**Ms Scott**—I am going to go confidently forward. My recollection certainly is that Centrelink's database is security rated and Medicare's database is security rated. I am pretty confident that the Child Support Agency's database is security rated. I would be surprised if the Commonwealth Rehabilitation Service is at the same level of security ratings as Medicare and Centrelink, given that there is very little risk.

**Senator LUNDY**—Can I just follow through with that security question? Because there is going to be interface with those databases and the new databases, does that mean that all the existing databases will have to have their security audited and brought up to a higher standard commensurate with the new risk that will exist because it interfaces with this new database?

**Ms Johnson**—The access card system does not integrate with the agency systems.

**Senator LUNDY**—No; it interfaces, though.

**Ms Johnson**—There are updates which are provided from the access card system to the agencies so it is not an integration with the agencies' systems. The security certification relates to the access card system and the architecture of the access card system, including the interfaces.

**Senator LUNDY**—So what you are telling me is that the access card database can interface with the existing databases and tell them to change certain data fields within their records but it cannot go the other way.

**Ms Johnson**—Perhaps if I explain the process it might be useful—

**Senator LUNDY**—Yes, sure.

**Ms Johnson**—and then we will get back to the other issue. The access card system will provide updates to details in the agencies' systems. The format of those updates is an agreed standard. The way in which those updates are then transformed into the agencies' own systems happens on the agency side. So there is no direct connection between the access card systems and each of the individual agencies. It happens through an update layer. Where the agencies' databases or systems change—for example, a Centrelink customer changes their address—that address change happens in the agencies' systems and an update is made to the access card system in the same agreed format.

**Senator LUNDY**—What additional resources, if any, are being provided to the agencies to facilitate that work?

**Ms Johnson**—Which work would that be?

**Senator LUNDY**—The receipt of an agreed standard form of updates from the registration database.

**Ms Johnson**—Just to be clear, are you talking about the development of those interfaces?

**Senator LUNDY**—No, just the work process of receiving them from the registration database and then incorporating them into the existing agency databases.

**Ms Johnson**—We will be funding them to do that.

**Ms Scott**—Yes, we will be funding them to do that. There is quite a reasonable diagram in the public overview document of the access card procurement process that goes to the access card architecture, and there is a reference there to the integration layer and the information update server that you might find. I am happy to table that for you.

**Senator LUNDY**—Thank you very much. I would now like to ask some questions about the interoperability of the access card itself and standards being used for the chip.

**Senator FORSHAW**—Before you do that, Ms Scott, I think that you have now found that other information that Senator Lundy was asking about on the consultants.

**Ms Scott**—Senator, would you like the whole document or just the relevant diagram?

**Senator LUNDY**—The whole document.

**CHAIR**—You are tendering it? Thank you.

**Ms Scott**—Yes. It is on page 8.

**CHAIR**—Senator Watson, you have a quick question.

**Senator WATSON**—Should the government agree with the emerging view of Professor Fels that the photograph, signature and the number be optional, would you expect a large number of people operating in, as you term it, ‘other environments’ such as state transport, registering a car, applying for a passport or obtaining airline tickets to suddenly say, ‘The card is not as much use to me in some environments and therefore I require a re-issue’? Would you expect a high number of people in that category, people who have been frightened in the first case as a result of all the hype about the access card and deciding to not have that information as an option then coming back to you saying, ‘We would like the full information.’ If I were a frequent traveller on rail and I was a disadvantaged person, I might feel that I was missing out on some benefits.

**Ms Scott**—That is right. Going back to the issue of balance, if we start taking features off this card it starts to come back to this very weak card we have got now. KPMG were very emphatic that it needs a photograph, and we need a number. Just go through the numbers scenario, Senator: the average age of a veteran, last time I looked it up, is 84 years of age. If they want to write to or ring up the Department of Veterans’ Affairs, they need to have a number easily accessible that they can quote. Almost all of these current cards have numbers on them and we would need a number on the access card—it is on the back—so that people if they ring up or write to us have a number that they can easily find on the card. Our call centre traffic requires people to provide a number otherwise we have got to ask them a series of questions. So rather than adding to convenience we would have to say, ‘So, Mr Mason, what is your date of birth?’ There would be secret questions with secret answers and all of that sort of stuff. We are going to have to do secret questions with secret answers as well anyway but it is going to be a longer process if we do not have a number that we can quickly go to. The CRN number will still apply in Centrelink and the DVA number will still apply but this number would allow people to undertake their transactions a lot faster. Some of our providers need to have a number. I think that the card will have substantially less value both in terms of the fraud it will be able to save us from if we do not have a photograph. In terms of

convenience, if you start taking the signature, the number and the photograph off, then we are left with the very basic, poorly functioning card we have got now.

**Ms Hartland**—Another effect might be that people will write down the number somewhere else. If it is not on the front of the card, they might write it down somewhere else, which is not very secure or private. We would be concerned about that. If there are a whole lot of things that are optional and you have to explain the pros and cons of all of those things—and I think this gets to one part of your question—one of the concerns would be that an elderly person may think their date of birth is optional, their photo is optional and their signature is optional, and you would have to explain all of that. I think people may get very confused. I think there are a number of convenience issues that would need to be very clearly explained.

**CHAIR**—So compulsion would make life easier, Ms Hartland? I think you should speak to Professor Fels. We have already had a debate on this but I am happy that you referred to it.

**Ms Scott**—I just refer to the case he presented in report No. 1.

**CHAIR**—But his view has changed, Ms Scott.

**Ms Scott**—That was news to me—

**CHAIR**—Check the *Hansard*.

**Ms Scott**—That was news to me today, Chair.

**CHAIR**—Yes, believe me, under questioning it changed.

**Senator LUNDY**—With regard to the interoperability of the smartcard technology, we heard in previous evidence that a standard had to be identified for the smartcard technology. What is the standard and what were the attributes of that standard that led to the decision of the particular standard of smartcard?

**Ms Johnson**—We are looking at a number of standards in relation to the smartcard. We are basing our solution on standards that are established. No part of the solution that we are taking has not been done many times over elsewhere in the world. We are using ISO 7816 for the card itself, and we are basing our design on a number of elements of the EMV standard for bank smartcards. You may know that EMV was initially developed by Europay, Mastercard and Visa in the mid-1990s to provide a global standard for issuing an acceptance of financial smartcards. So, in terms of interoperability, we have in fact identified the standards that our card will be designed upon.

**Senator LUNDY**—Given the level of specificity regarding the purpose of this card—that is, it is not an ID card; it is about accessing services—what is the motivation for choosing a card that is arguably one of the most interoperable as far as standards go in the world? Is that because you anticipate the expanded use of the private part of the card in the future? What is the policy motivation behind it?

**Ms Scott**—I return to our earlier discussion about concessions when we talked about stable groups and concessions. There are some groups where people come on and off concessions very frequently—Newstart and so on. People might have a casual job picking strawberries and then become unemployed three months later and be on benefits. There is no point in

giving them a coloured card because their concessional status changes all the time. This is the particular group that may end up with a card at the moment that is issued for 13 weeks or whatever—some are issued for longer—and they are accessing benefits when maybe they should not be. The advantage with having a card that has a chip in it is that it can be updated and then, as people seek to get different benefits, you will be able to establish that in fact they are no longer concessional.

We have talked about docking the card and seeing that it is concessional. We do not really want to see another proliferation of smartcard readers so that when you shop you have your normal smartcard reader and then you have a second smartcard reader and even a third one. We are seeking to adopt the standard that is going to be right throughout Australia so that this is convenient for customers and for businesses. That is the basic argument: proliferation will be everywhere.

**Senator LUNDY**—To what extent have you discussed with business their ambitions?

**Ms Scott**—Ambitions?

**Senator LUNDY**—Their ambitions for this smartcard—that is, their commercial aspirations for using it. We had Sony, who have not tendered, before us in Sydney and they gave some indication that there was a great deal of interest—not by them specifically but by others—in quite entrepreneurial endeavours to use the smartcard for services to be delivered, and that people or companies could quite easily purchase the application development software through a licence and create new services for these cards. Do you know what I am talking about?

**Ms Scott**—I think I do. We know that there are a lot of ambitious firms that want to win tenders. We know that there are a lot of firms—

**Senator LUNDY**—Separate to that.

**Ms Scott**—We also know that there are clearly organisations and businesses that see the card either assisting them or not assisting them. For example, the Australian Bankers Association made a submission to you and they made a submission to us. I mentioned clause 57, about which they have an issue, and we talked about balance and so on.

At one stage I think Minister Hockey was reported as saying that, in relation to the individual person's part of the chip, over time he would not be surprised if people saw opportunities for offering services that people might find attractive. To be perfectly frank, I am just trying to get the card delivered in the time I am told to and to the standards I am required to. I will be more than satisfied if we accomplish that. The early passage of the bill is my first aim in life and I am seriously uninterested at this stage in ambitious businesses that are likely to make their way to my door. I would just like to get this project delivered and delivered well.

**Senator LUNDY**—Sure, but is part of the government's policy to make sure that space is available for future entrepreneurial initiatives?

**Ms Scott**—We have gone out to the market stipulating the minimum size of the chip. We will be making a decision about the size of the chip that we will use. We know that algorithms and security features do improve over time, so we want the capacity to do upgrades. We do

not want a situation like when you buy a computer and then you do not have any capacity to upgrade the security software. But it is not a major driver for us to provide, at taxpayers' expense, business opportunities. What drives us is a project that can be delivered on time and on budget. So I would not put a high priority on that particular aspect.

**Senator LUNDY**—But is there an amount of space on the chip that you have to leave aside?

**Ms Scott**—That will depend upon the size of the chip.

**Senator LUNDY**—So you have not made that decision?

**Ms Scott**—If we go with 64kb, a fair slice of the chip will be taken up already. That is why we have stipulated a minimum of 64kb.

**Senator LUNDY**—So is there a maximum?

**Ms Scott**—We have said minimum. We have not stipulated maximum, but that will be part of the tender process.

**Senator LUNDY**—You still did not answer my question.

**Ms Scott**—I am sure I did.

**Senator FORSHAW**—Will this be a five-minute argument or the full half hour?

**Senator LUNDY**—In the space on the chip, is there a minimum set aside for private purposes?

**Ms Scott**—Depending upon the operational systems, there will clearly be capacity for private use. We were thinking, in approximate terms, about a third, but that will depend upon how we go in the tendering process. If we have a proposition put to us about enhanced security, we may well want to utilise some of that capacity, but we obviously do want to leave some space for private use.

**Senator LUNDY**—Thank you, that is a much better answer.

**Ms Scott**—We aim to please, Senator.

**Senator FORSHAW**—I have a question on that, which deals with this other issue that I have been asking people about most of the day. Do you have an estimate of how many of these readers will actually—

**Senator LUNDY**—That was my next question, Senator Forshaw. Well anticipated.

**Senator FORSHAW**—Sorry; can I ask it anyway?

**Senator LUNDY**—By all means.

**Senator FORSHAW**—How many readers will ultimately be out there, and what will the split be between government agencies—

**Senator LUNDY**—How will they be managed? Will they be registered? Will users have to be registered?

**Ms Scott**—There will be approximately 50,000 readers for the service delivery agencies, for pharmacists and doctors—

**Senator FORSHAW**—Pharmacists and doctors are included in the 50,000?

**Ms Scott**—Yes, that is correct.

**Senator MOORE**—I am keen on the allied health professionals, and I want to know whether they are in there as well.

**Ms Scott**—Yes, I am going to have to look up another document. And in relation to businesses, in reference to Senator Lundy's earlier question, the use of EMV standards means that with a change to the software smartcard-activated readers in businesses will be able to see the concessional status. But we are not proposing to pay for those readers, because businesses have their own commercial grounds for having those readers. Basically all the credit cards and debit cards of banks are going to the EMV system and are progressively being rolled out. I think I showed you my ANZ smartcard last time we met or the time before that. So all the banks are in the process of transitioning to this international standard. Otherwise if you are overseas you will not be able to use the old technology.

**Senator LUNDY**—As a quick follow-up: with readers being able to be used by businesses—although they will have to purchase them themselves—will those businesses have to purchase the application development software to enable their readers to access that concession information? And who makes the money from that?

**Ms Scott**—I am going to pause for a moment, because I want to check one little issue. I think we indicated on our first day in Senate estimates, through Ms Hartland's opening statement, that there were five procurement processes. We have two running at the moment and they are effectively—

**Senator LUNDY**—That is the card and the systems innovation.

**Ms Scott**—That is right. We have three to go. One of those is the transaction delivery provider.

**Senator LUNDY**—Interesting.

**Ms Scott**—That process has not gone out to tender yet.

**Senator LUNDY**—So you can talk about it then? If you have not got a tender out there—

**Ms Scott**—I can talk about it generally. I would not want businesses to start planning on the basis that this is hard and fast, because we are still doing preliminary work.

**Senator LUNDY**—I think if they read that comment in the context of everything you are about to say, you will be fine.

**Ms Scott**—I just wish that every bit of evidence I gave was read in context.

**Senator LUNDY**—This is the wrong place to expect that, I suppose. The transaction delivery provider—

**Ms Johnson**—The transaction delivery provider accreditation process is a similar process to Medicare eClaiming.

**Senator LUNDY**—Is that a contact for software specifically, or is it for hardware as well?

**Ms Johnson**—That is an accreditation process. Just recapping: part of the systems integrator procurement is the development of software to run on the terminals. That is public

information. The card's management issue after the procurement activity is the transaction delivery provider accreditation process, similar to Medicare eClaiming, which is an accreditation process for those organisations who operate terminals and networks.

**Senator LUNDY**—So they have access to the database?

**Ms Johnson**—The fourth one is procurement for the terminals and infrastructure.

**Senator LUNDY**—What about businesses that do not have access to the database but want to be able to just access concessional status on the card and so do not need to be linked to the database?

**Ms Johnson**—No business will have access to the database.

**Senator LUNDY**—I know that.

**Ms Johnson**—Businesses that wish to offer discounts will be able to obtain an access card approved reader, which will be a simple handheld reader that will only read the concessional status. It is not the case that any reader will be able to access and read the access card.

**Senator LUNDY**—Hallelujah!

**Ms Scott**—That is the offline and now we are going to go online.

**Senator LUNDY**—One more thing about the offline system: is the provision of those readers through the transaction delivery provider accreditation tender?

**Ms Johnson**—No. Those readers will be provided through the infrastructure and terminal procurement. The accreditation process is accrediting the terminals that run the software.

**Senator LUNDY**—So it is separate?

**Ms Johnson**—Yes.

**Senator LUNDY**—Will there be a licensing fee for those businesses getting the offline reader?

**Ms Scott**—Because we are now getting to the speculative part, I just want to make sure—

**Senator LUNDY**—No. It is basic facts about the nature of this system. I do not think it is complicated at all.

**Ms Scott**—And I want to be clear so there is no potential for misunderstanding, so if you will just bear with me.

**Ms Johnson**—There will be 50,000 terminals that will be used by service providers, covering GPs, pharmacists, specialists, hospitals and the agencies.

**Senator LUNDY**—And allied health?

**Ms Johnson**—I will take that one on notice.

**Senator LUNDY**—I want to go back to the five tenders you mentioned.

**Ms Johnson**—Five procurement activities, one of which is the registration process.

**Ms Scott**—We can go through the five again, if you like.

**Senator LUNDY**—Registration process; that is the fifth, yes. In terms of models of outsourcing, there is a great deal of strength in the system separating out these tenders and not

locking them all into one giant service provider, which is where a lot of the problems occurred with previous IT outsourcing tenders. I know you are probably aware of some of that experience.

**Ms Scott**—Yes, we are. We asked the Audit Office to give a presentation—it went for about two hours—to the Office of Access Card and other senior staff on why large projects fail. We have had speakers talk to us about projects around Australia that have not worked out. We have looked at international case studies and, as you will see from the overview document, even within the card issuance tender we have tried not to have a lock in with one provider. We have a 60-40 arrangement, so the most that one provider can provide is 60 per cent of the card arrangements. We do not want to find that we are reliant on one person who had a fire in their factory and we cannot start or we cannot continue.

**Senator LUNDY**—It is sound practice and I am pleased to hear that you have gone to lengths to learn from some of the mistakes of the past. Can I go back to my question now about the offline readers. What is the process of making them available? You mentioned that they will have to basically get a special one from the agency. What will the costs of that be to the business and will a software licensing fee be involved? Will that all go to perhaps the transaction delivery provider for the accreditation contract? I just want to know who gets the money, if any, from providing that equipment to businesses—who gets an obvious commercial benefit. I have some questions about costs as well. While you are sorting that out I do not know if Ms Hartland is able to answer those.

**Ms Scott**—This is going to costs?

**Senator LUNDY**—They are general questions about costs. Ms Hartland, I do not know if you can help me, but I have one question I am particularly interested in. I presume you would have great difficulty in giving me indicative costs of each of those tenders.

**Ms Hartland**—Yes.

**Ms Scott**—Yes, that is right. It is for the same reason that we have outlined—

**Senator LUNDY**—Okay. Can I ask you whether or not—

**Ms Scott**—I thought we were—

**CHAIR**—Ms Scott, are you addressing the previous question?

**Ms Scott**—I am, and I am trying to do it in a way that my technologists do not think I am going to make a blunder but in a way that I think would convey to the committee the process. So they are going to whisper in my ear as I go. I am sorry I do not have one with me—I thought I did—but there are simple devices which are validators. You just insert a card and it reads ‘C for concessional’. We have got examples of those.

**Ms Johnson**—They are about credit card size.

**Ms Scott**—They are very small, and I am sorry I do not have them with me but we have brought them along to almost every other hearing. They were used at the Atlanta Olympics and at all sort of places where, for privacy, you insert the card and the concessional status would be visible. Then there are the USB type readers that you can buy at Dick Smith’s. That is a very simple little device with a cord into it. You whack it into your computer, you insert

the card and so on. It would not read all parts of the chip. Then there is the smartcard reader that businesses will have because credit cards and debit cards are going smartcard—Ms Johnson is about to chip in any second now, so that is why I am looking at her. Those machines, the normal EFTPOS machines, will need to have software—

**Ms Johnson**—A software application running on the terminal to actually read the card.

**Ms Scott**—We will have an accreditation procurement process associated with that, not dissimilar to what we have gone through with Medicare eClaiming, so we have got practice in that. Then there are the readers in the doctors, the pharmacists, the specialists and the hospitals. They will have readers, and then there is the more sophisticated reader for the agencies. The agencies, the doctors, pharmacists, specialists and hospital readers are 50,000. How many businesses are out there using EFTPOS? We have had very preliminary discussions—and I think this goes to one of the other questions—with providers in that field about that. We happen to know a fair bit about this because of the lead-up work that went into Medicare eClaiming. How many people will choose to go out and get a little Dick Smith USB reader or how many people will have computers that have USB readers in them already is up to individual choice. I hope that is clear.

**Senator LUNDY**—It has helped. Ms Johnson, with respect to the software that would be needed to be provided to business to allow their EFTPOS machines to read the smartcard, will the department or the contractor derive a revenue stream for licensing fees for that software?

**Ms Johnson**—The systems integrator develops the software that runs on the terminals that reads the cards. The way in which that software is distributed out to the terminals is over networks, which are run by a range of different organisations. The process by which the software is delivered down to the terminals is the subject of a procurement exercise.

**Senator LUNDY**—They can do that. They can send them a disk. They can send it by radiowaves. It does not matter how they get it. What will they charge for it?

**Ms Scott**—This will be part of the procurement process.

**Senator LUNDY**—I am not asking how much. I am asking: will they charge a licensing fee, will it be open source or will it be distributed gratis from the department—open source being free?

**Ms Scott**—Chair, these are very good questions but they are getting us a quite a bit away from the bill. We are not up to that stage of the procurement process, so it is probably the case—

**Senator LUNDY**—Okay, we will leave it.

**Ms Scott**—that it might be best to pause there.

**Senator LUNDY**—I will ask the minister in the debate. There are a couple of things about general cost questions. Have you benchmarked the cost of current card related fraud?

**Ms Scott**—Our card related fraud?

**Senator LUNDY**—Yes.

**Ms Scott**—Benchmarked it against what?

**Senator LUNDY**—Do you have a cost against what it is costing you at the moment?

**Ms Scott**—We have estimates about what it is costing. I have answered questions to Senator Moore tonight about what KPMG thinks relates to fraud related to this. We gave those answers earlier.

**Senator LUNDY**—Is it more or less than the total estimated budget of this project?

**Ms Scott**—The fraud savings would be more than the cost of the project.

**Senator MOORE**—Over what period of time?

**Ms Scott**—I have used the standard 10 years. Even just on eyeing the figures, the net present value would be still very positive.

**Senator LUNDY**—KPMG talk about saving maybe \$1.6 billion to \$10 billion over a three-year period.

**Ms Scott**—No, it is \$1.6 billion to \$3 billion over a 10-year period. In their evidence on Friday—I appreciate that you were held up by planes, Senator—KPMG described even the \$3 billion number as conservative.

**Senator WATSON**—\$3 billion over what period?

**Ms Scott**—That was \$3 billion over 10 years. But KPMG was at lengths to explain that they considered that to be a conservative number, that that was 0.3 of one per cent of the trillion dollars that will be distributed and that they thought that somewhere between one per cent and three per cent could be the eventual savings. They just wanted to err on the side of caution.

**Senator LUNDY**—What protections do you have in place to ensure that variations to the five contracts that you will be letting will not blow out those costs? How are you keeping them in check, particularly with the uncertainty of the registration process?

**Ms Scott**—We look forward to the passage of the bill so that we can go into the design validation phase with considerable confidence about what is required. The staging of the tendering process revolves around the passage of the bills and there is a design validation phase that allows us to do any finetuning. The overview document that I provided to you earlier at page 13 goes to lengths about contractor performance and the provisions that we have in the draft contract about what happens if the contractor breaches confidentiality, breaches law, breaches privacy, recklessly commits a wrongful act, acts negligently—and it goes on for pages.

**Senator LUNDY**—Excellent. And what is the sanction? Do they lose the contract?

**Ms Scott**—It is also set out there.

**Senator LUNDY**—Are there financial penalties that you take off your progress payment, basically?

**Ms Scott**—In relation to some of them there is unlimited liability for damages. In other cases the department will be able to call on a financial guarantee. Other ones will have remedies against the contractor's parent under the parent company guarantee. The department will be able to claim against the contractor's various insurance policies required by the

department. The department will also have the right to terminate the agreement and exercise right of step-in. The document goes on for pages on this.

**Senator LUNDY**—Can you provide that to the committee?

**Ms Hartland**—That is actually in the documents we provided.

**Ms Scott**—And these documents are all in the public domain.

**Senator LUNDY**—Will the serial number of the chip be used for any reference in the database or for any other purpose?

**Ms Scott**—No.

**Senator LUNDY**—Will you be recording it in the database?

**Ms Scott**—No.

#### **Proceedings suspended from 9.05 pm to 9.15 pm**

**Senator LUNDY**—An issue was raised by Electronic Frontiers Australia. They stated that if all of the information that is on a card is protected by a PIN, to be readable, it is impossible to separate part thereof without having a PIN inside a PIN. Do you understand what I mean? So you either have PIN-protected stuff or not, but, for the PIN-protected information, you cannot separate that further through a reader. What are the technological possibilities of having a PIN inside a PIN for this issue?

**Ms Johnson**—On the issue of the protection of the data on the chip: there are number of ways in which that data is protected. The PIN is but one of those. So the PIN can relate to data that is on the chip. It relates to the fields that are on the chip. There is also the issue of the reader. The reader will not read everything that is on the chip either. We have a mutual authentication that happens between the reader and the chip. So our design enables some fields to be protected by a PIN and other fields not to be protected by the PIN.

**Senator LUNDY**—So it is either PIN protected or not. Can you have more than one PIN to protect different areas? No?

**Ms Scott**—No. Some readers will be able to read more than other readers. Not all readers are the same.

**Senator LUNDY**—Right. But what if you want to put very personal stuff on there, like all your MP3s, and you do not want anyone else to see that, no matter what kind of reader they have?

**Ms Scott**—This is in your own little space?

**Senator LUNDY**—Yes.

**Ms Scott**—That goes back to the whole issue of voluntary information, which is the subject of Professor Fels's task force discussion paper, and he—

**Senator LUNDY**—So you have not resolved that yet?

**Ms Scott**—No, and we do not need to resolve that for this bill.

**Senator FIERRAVANTI-WELLS**—Ms Scott, I just want to take you back to the document you gave us about the issue of the photograph, the document that you distributed. I had a look at that. In short, there seem to be four—

**Ms Scott**—I am sorry, Senator. I have a copy now. In our enthusiasm, we handed over our copy.

**Senator FIERRAVANTI-WELLS**—Thank you. I want to summarise the need or the justification for the photograph. If I read the document carefully, I find four reasons: (1) authentication; (2) because not all providers in the system will have the technology which is capable of reading the photographic ID, it is important that this card have a photograph on it; otherwise people who take their card to a place that does not have the requisite reader will be denied access to services. That is it in a nutshell, is it not, Ms Scott?

**Ms Scott**—It is authentication. While we are going to be providing readers, as KPMG says there, it might be the case that with the doctors and the pharmacists and the specialists, one of the hardest things in our service area is we can take a horse to water but we cannot necessarily make it drink. For example, over many years the government has tried to bring online technology into some businesses, and they resist it. If you have got a card with your photograph on it, there is no doubt that it is you and you are entitled to the benefit.

**Senator FIERRAVANTI-WELLS**—Then, of course, there is the option of the consumer being able to choose to provide the card as proof of their identity in other environments, such as what we were talking about before. People can use it to get concessions and things like that. In the end the person—the individual—has the feeling that if it has got their photo on it, it cannot be used by somebody else.

**Ms Scott**—That is right.

**Senator FIERRAVANTI-WELLS**—In the end there is that peace of mind for the user.

**Ms Scott**—That is right. KPMG said that this would be privacy enhancing for the individual, that it would be security enhancing for the individual and that it would act as a significant deterrent. As I said, if you drop your Medicare card, it is possible for other people to on-sell it or use it. If you drop an access card, it is your card. People can attempt to tamper with it, but there are security features on the card. The card provides greater confidence to providers, taxpayers and customers.

**Senator FIERRAVANTI-WELLS**—Is some sort of data attached to the KPMG report? Have they done some research that backs up their assertions? If that data has not been provided already, could it be made available?

**Ms Scott**—What we will do is provide a fuller explanation. We have given you an extract from the business case. We have come along with lots of material, and we try to be succinct. But we will provide a fuller explanation of the benefits of having a photograph on the card.

**Senator FIERRAVANTI-WELLS**—It is important, because we have heard throughout this debate so much hype about the photograph and problems and this and that. I think you need to put this to bed and put it forward. I have no objection to it myself, but I think other people have tried to mount a case against it in circumstances where assertions have been made, which I think are unfounded. I think that is very important from your perspective.

**Ms Scott**—I have only four copies of this document, which might be useful. It has been published by the Queensland government's Department of Tourism, Racing and Fair Trading Incorporating Liquor Licensing. It is quite a useful document—I am sorry I do not have more—

**CHAIR**—That is all right. We will accept it.

**Ms Scott**—We will provide more copies tomorrow. The reason this document might go to your question is that it shows for each state the cards that are out there now, issued by the states, that contain photographs. One of the points that ministers have made about this card is that the amount of information that is going to be on the surface of the card, even with the photograph, is less than the information contained on a state driver's licence.

**Senator FIERRAVANTI-WELLS**—And most of these have been in existence for periods of time?

**Ms Scott**—That is right. I appreciate that there has been sensitivity about this issue, but this is one of the features that our contact with our customers suggests that they value.

**CHAIR**—Ms Scott, the question is not so much the benefit from the photograph, as Professor Fels reminded us, it is whether the photograph should be compulsory, which is a different question. And that is the sticking point.

**Ms Scott**—Okay. We will go back—

**CHAIR**—That is your question. You can answer Senator Fierravanti-Wells's question, but that will not satisfy the committee. The question is: compulsory?

**Senator FIERRAVANTI-WELLS**—It may not satisfy some members of the committee, Senator Mason. This issue has been dealt with at state level by governments across the political spectrum, I assume, and for all these cards it must be compulsory for the photograph to be on them.

**Ms Scott**—That is correct.

**Senator FIERRAVANTI-WELLS**—So I guess there has been a basis for compulsion and a case made for compulsion in those cases. If we are going to be consistent across the spectrum, let us look at the case for compulsion here and look at a degree of consistency across the board. That is the point.

**Ms Scott**—I will try to delve into the business case to look at that, and I can go back to KPMG and ask them: what are the consequences of making the photograph optional? I will ask them that and we might be able to look at some scenarios. But certainly they did deal with this and came to a very clear conclusion that it was essential. They also dealt with the case of whether there could be two cards, a social services card and a Medicare card, and came to the view again that the benefits of having the one card and the efficiencies you get from having one card and the convenience you have with one card meant that it was a better proposition for all concerned than having two cards. I will find that material in the case and present that as well.

**Ms Hartland**—The KPMG business case actually does go through the options. It goes through options of: the concessional holders only; no photo required on the chip or on the face

of the card, but the consumer being asked for a photo ID; the photo on the chip only; the photo on the face but not on the chip. It actually sets out all of those. We will package all that—

**Senator MOORE**—That is the business case we have not seen.

**Ms Hartland**—No, this is the public—

**Ms Scott**—This is the public one.

**Senator MOORE**—We have asked for the full business case. You have tabled segments of the business case, but not that.

**Ms Scott**—We have tabled this document and we are happy to table it again.

**Senator MOORE**—So that is the full business case?

**Ms Scott**—This is the public extract—

**Senator MOORE**—Yes, that is what I meant: it is the public extract.

**Ms Scott**—Well, it is the extract that relates to the questions that we are being asked.

**Senator MOORE**—But in terms of what we have consistently asked for from the start of this discussion through estimates, which was the business case, there is no further data available today than there was in the public extract that we were able to see a few weeks ago. Is that right?

**Ms Scott**—Yes, but Chris Jordan's material that he provided on Friday, which I do not think every senator had the benefit of hearing, provided more information.

**Senator MOORE**—Which is the *Hansard* transcript.

**Ms Scott**—It is the *Hansard* transcript at this point—not that we have got the *Hansard*; not that I am complaining—but there is also his public statement. As I indicated earlier, because of the brevity of the time available he was not able to go through all of it.

**Senator MOORE**—Did he table that statement?

**Senator WATSON**—Can we have that statement? Can you table that full statement?

**Ms Scott**—He was tabling it, Senator. Given it is his statement, I think it is probably better that he tables it.

**Senator MOORE**—No-one here has any argument about our concerns about the brevity of the time; we are all in agreement on that one. I heard Mr Jordan. I have got the little bit this afternoon from the *Hansard*. I am just wanting to clarify whether the statement that Mr Jordan had was then fully tabled to the committee.

**Ms Scott**—I understood his intention was to table it for the committee. It may not be the case that he has tabled it. He was explaining to me as we left on Friday that he had a number of commitments this week, as did Ms Westacott. We are happy to check.

**Senator MOORE**—It is just a point we need to follow up on, because we do not know whether that has been done yet. It might be very useful.

**Ms Scott**—That is right. We will find the relevant parts of the business case, and we will go back to KPMG and ask them: what is the consequence of removing the photo from the

surface of the card? Also, we will provide in evidence the written advice that I have had from the agencies about why the card number is so essential. I know you forewarned us, Senator, so I am not complaining, but in some ways this debate seems to be going back to places where we feel that we have been before.

**CHAIR**—I am going to open up the questions on this. Senator Fierravanti-Wells had her go. I am going to have a go as well myself. Have you finished yet, Senator?

**Senator FIERRAVANTI-WELLS**—I just have one more question.

**CHAIR**—Okay. Senator Fierravanti-Wells has another go, and then I have a go.

**Senator FIERRAVANTI-WELLS**—We had some people who gave evidence on Friday on this, but I wonder if you have this information, and that is about the usage of access cards around the world. You have obviously done some work on that and its various formations and permutations around the world, in particular the ones that have the propensity to have photographs on them—other cards around the world similar to this one, and I assume that most of them have a photograph on them. So if you do have that evidence I think that that would be useful.

**Ms Scott**—Okay. We will include that too, Senator. We will take that on notice.

**CHAIR**—The structure of the debate, Ms Scott, that Professor Fels adopted was like this: the core issues of facilitating access to Commonwealth benefits—

**Ms Scott**—I am sorry; I do have a small hearing problem.

**CHAIR**—The legislation, the explanatory memorandum and the government material all say the core issues here are to facilitate access to Commonwealth services and to fight fraud. They are the two core issues. It says it in the legislation and it says it in the explanatory memorandum. So, when you are examining the issue of the photograph, those two core issues are the primary issues to look at. When you are looking to facilitate access to Commonwealth services, that has to be in the light that access will not be granted to Commonwealth services until a card goes into a reader.

**Ms Scott**—That is right, and the question is—

**CHAIR**—All right? Hold on; let me finish. And then the second core issue is fighting fraud, which we have touched on. An issue such as convenience for certain people in certain contexts is an ancillary and not a core issue. Let me make that clear: it is an ancillary and not a core issue, and to attempt to justify the architecture of this act based on convenience or ancillary issues will not wash. It has to be based on one of those two core issues. Now, is that clear? I want to make that very clear. Is that clear? That is the Professor Fels approach, and he is adopting the two core issues that the government itself has spelt out. In that context, he says the way around this is to adopt the motif of choice.

**Ms Scott**—Senator—

**CHAIR**—So, when you are doing your research to answer Senator Fierravanti-Wells's questions, if you could structure it that way or at least address those issues I would be grateful.

**Ms Scott**—As I indicated earlier, Professor Fels had not indicated previously his change of heart or mind or whatever it is.

**CHAIR**—It changed this afternoon.

**Ms Scott**—It changed this afternoon. So, we were not anticipating that development but, as a consequence, we are happy to turn to this matter now. It may be the characterisation that you would like us to look at—

**CHAIR**—No, that is in the bill itself.

**Ms Scott**—I understand that. Just to be clear, you want us to look at access to Commonwealth services and the implication of not having a photo on the card, or making it voluntary, and the implications for fraud of not having the photo on the card but having it voluntary and—

**CHAIR**—Let me restate it: the justification for the photograph has to be found in the two core issues—that is, either fighting fraud, and you have addressed that, and I acknowledge that; you have tried to address that—

**Ms Scott**—Thank you.

**CHAIR**—and Senator Moore has asked questions, and I accept that. Indeed, the AFP touched on it too. I accept that. The other one is facilitating access to Commonwealth services, given that benefits will not be paid unless the card goes into a reader.

**Ms Scott**—Yes, that is right but there are different readers, as we have indicated earlier.

**CHAIR**—Maybe so. That will have to be examined in toto. That is my point. There are different readers but the question is why then you need a photograph on the front.

**Senator FIERRAVANTI-WELLS**—I thought that that is what they are saying: not all providers will have readers. Are we at cross-purposes here?

**Ms Scott**—No, we are not.

**CHAIR**—Maybe not. Let us not go to that—we could be here all night. If you can address those issues about different readers and different photographs, that is fine. The justification for the photograph has to be very clear—it has to be based on either fighting fraud or facilitating access to government services.

**Ms Scott**—I understand, Senator. But you will understand that we did not anticipate Professor Fels's development today.

**CHAIR**—He was under severe questioning, Ms Scott, and he succumbed. He was quite happy.

**Senator WATSON**—It was an emerging view, I think.

**CHAIR**—He was quite happy to suggest that he thought that in fact choice would be a better way around it. I am not in any way—

**Senator WATSON**—I do not think he was hung up on it.

**CHAIR**—No, he was not hung up on it.

**Senator WATSON**—He said it was an emerging view, not the final view.

**CHAIR**—Yes. Read the transcript. ‘Choice’ is what he said.

**Ms Scott**—We will look forward to reading the transcript and we will provide you with the information that you have requested.

**CHAIR**—Thank you.

**Senator FIERRAVANTI-WELLS**—If that premise is based on the fact that everybody has a reader then you have a choice, but if you have a situation where not everybody has a reader then that is the obvious reason you have to have a photograph. Otherwise, you will turn up and you will not be able to access because the person where you are trying to access does not have a reader.

**CHAIR**—The government has said that everyone will have to have a reader.

**Ms Scott**—No, that is not—

**CHAIR**—Ms Scott, we are going to go backwards and forwards. A claim for Commonwealth benefits has to go through a reader. I am happy to debate this all night.

**Senator FIERRAVANTI-WELLS**—Who made that assertion? Is that evidence that has been given?

**CHAIR**—Yes. It is in the papers; that is the problem. We are going to have to get around this.

**Ms Scott**—I referred earlier to allied health professionals, and I think I referred tonight to DVA circumstances. We are not talking about ancillary convenience services. Chair, we will answer the questions as you have asked. We are trying to be clear. As the document we tabled earlier this evening says, and as Senator Fierravanti-Wells has drawn the committee’s attention to, it will not be the case that there are universal readers—we will be providing 50,000 readers. There is sure to be some provider who will choose to not activate the reader. As I said, you can take horses to water but you cannot make all of them drink.

**CHAIR**—Do we justify the architecture of the act on that? Is that sufficient justification?

**Ms Scott**—We are not interested in reducing access to services and we are not interested in reducing access to benefits.

**CHAIR**—Sure, but if you are trying to justify the architecture of the act on that, Ms Scott—

**Ms Scott**—I am not.

**CHAIR**—This is the problem. You need something substantial. And that is what we have asked for. Senator Moore has asked for it.

**Ms Scott**—I do not want to keep repeating the point: it is probably just the case that we need to provide a fuller explanation of why we consider the photograph to be so imperative to the project.

**CHAIR**—Thank you.

**Senator NETTLE**—I would like to start by going through evidence you have given this evening, and asking for clarification on a lot of things. So we are going to have to go back over some other things. And then I have pages of questions. Let us start with the concession

cards, because that is where we are now. You have talked about permanent versus transient concession cards. I do not know whether you can do this now or on notice but I am interested in what the mix is between the permanent and the transient.

**Ms Scott**—I think there are 1.92 million age pensioners and I would expect almost all of those to take up the choice of a coloured card or a clearly identified card. There are self-funded retirees. I will have one of my colleagues check this but from memory there are about 250,000. They are eligible for some benefits. There are all the veterans—458,000 DVA beneficiaries, a significant number of whom will end up being eligible for stable, clearly identified cards which reflect their concession status if they wish.

**Senator NETTLE**—Can you give us a figure for transient?

**Ms Scott**—The figure I have is a little bit dated.

**Senator NETTLE**—Just an idea, please.

**Ms Scott**—Let us say around 400,000.

**Senator NETTLE**—Is that the main transient?

**Ms Scott**—Let us take disability support pensioners. There are about 700,000 of those, but they can vary. We are not proposing to include that group in the stable group. That would be the largest group. Then you have got parenting payment, single, and much smaller numbers for parenting payment, partner.

**Senator NETTLE**—I think we have covered most of the stuff that I wanted to ask about in respect of authorised readers, and you have described the way that businesses need to get that nod to read concession card status. Sorry, but before we finish that: is there a figure for students and young people?

**Ms Scott**—Let us go with youth allowance. It is 350,000 or thereabouts, and I am taking all these numbers as being ‘around’.

**Senator NETTLE**—Yes, that is fine.

**Ms Scott**—I think at one stage we worked out that the stable group would be 40 or 50 per cent. It was something like that. It was a significant proportion of the total of the concession cards out there in the system. A lot of those non-stable concession cards are really for a transient population.

**Senator NETTLE**—I accept that. I just wanted to get an idea of the numbers, and you have given me that; I appreciate that. Let us go back to the concession card and businesses needing to get readers to check concession card status. I am aware that one of the major cinema chains is indicating that, because of the complications involved, they are contemplating the idea of no longer having concessions.

**Ms Scott**—Sorry, Senator, but what are you referring to? Is this information that is in the public domain or not?

**Senator NETTLE**—I am not sure if it is in the public domain.

**Ms Scott**—I have not seen any sign of this and I do get daily reports. I am not aware of any chain or anyone saying they will not be providing ongoing concessions. The government is

not interested in seeing a reduction in concessions. In fact, it is clear that they want concessions to continue. They simply want to ensure that the benefits that they provide go to the right people. So there should not be any diminution of concessions. I am not aware of any public statement that suggests there would be. Senator, if you have some information that you can share I would be happy to look into the matter.

**Senator NETTLE**—Okay. I cannot do that right now because I am not sure at this stage that it is in the public domain. They are still considering it—like everyone is still considering it—because they need to know how it is going to work for them to be able to deal with it.

**Ms Scott**—We have done industry briefings on this. We have had no concern expressed to us about this matter.

**Senator NETTLE**—Would that include similar operators in the industry briefing?

**Ms Scott**—I am going to say that we have had discussions with the Retail Traders Association. I will just get that checked out.

**Senator NETTLE**—All right. On those figures you were giving me before it looks like what you are saying is around half the people with a concession status would have it on the card and the other half would need a reader.

**Ms Scott**—They would not necessarily need a reader. There would be—

**Senator NETTLE**—No, I mean in order to access their concession status at somewhere other than a Commonwealth agency.

**Ms Scott**—I am just going to get a calculator. I want to make sure that I am not misleading.

**Senator NETTLE**—I am happy to come back to that if you want to keep going. I will leave my question on that until we are able to have accuracy. Who was it you mentioned before about the lead technology advisers?

**Ms Scott**—Booz Allen Hamilton.

**Senator NETTLE**—You called them the lead advisers.

**Ms Scott**—That is right.

**Senator NETTLE**—I am just making sure I have got the title right. Was that lead adviser on technology?

**Ms Scott**—They were just described as the lead adviser. They are predominantly helping us on the technology side. They have got some international experience in smartcard projects, and they are assisting us in this early design analysis.

**Senator NETTLE**—They are an American company; is that right?

**Ms Scott**—I am going to say they are an international firm. They do have operations here in Australia. I think their headquarters are in Sydney.

**Senator NETTLE**—I understand that they are a major contractor for the CIA and the NSA.

**Ms Scott**—I would not be surprised if they are a major contractor for many different government organisations right around the world.

**Senator NETTLE**—I am just checking I have got the right people.

**Ms Scott**—Senator, I cannot answer that question on the CIA.

**Senator NETTLE**—I am not asking you; it was not actually even a question.

**Ms Scott**—We did not employ them on the basis that they were—

**Senator NETTLE**—You have given me the name and I appreciate that, because it has allowed me to find out they are a major contractor for the CIA and the NSA; that at least three of their four former vice-presidents previously served as intelligence agency directors, including the head of the CIA during the Clinton administration; that the former CIA deputy director recently referred to them as ‘the shadow intelligence community’; that this year their senior vice-president became the new Director of National Intelligence; that more than 1,000 former military and intelligence officials have worked for the firm; and that last month the Republican chair of the US Congress’s House Committee on Oversight and Government Reform accused them of being involved in a significant conflict of interest in relation to a homeland security department contract. That is what I have been able to find out in the hour and a half or so since you indicated they were your lead advisers. I am just wondering, given community concerns about the access card becoming an identity card, whether they are the best advisers for the project.

**Ms Scott**—They have gone through a rigorous procurement process, and we actually did not have as the criteria any of the things you mentioned at all. So I would have to say I consider that extraneous material.

**Senator NETTLE**—I am not suggesting that you should determine on the basis of that, but my issue went to community concerns around it being an ID card and a database.

**Ms Scott**—I would not be surprised if any major firm—we could probably pick every major accounting firm in Australia—at some stage, somewhere around the world, has worked with some security administration. It would just be the way of the world. I mean, we employ Acumen. I have not checked who the Department of Defence employs. But we did not employ them because of their credentials in that area; we employed them because of their credentials in delivering and advising on smartcard projects. So that information is actually extraneous to our choices.

**Senator NETTLE**—Sure. They look like a pretty major player, but that is okay. I wanted to ask you about community concerns on that issue.

**Ms Scott**—We are getting very little correspondence, and I cannot recall letters written about Booz Allen Hamilton. In the previous department I was in, there used to be about 10,000 letters annually on cat and dog fur, but I would have to say that I cannot recall letters on this subject.

**Senator NETTLE**—Maybe I could just draw your attention to the comment last month by the chair of that particular US Congress committee, about them being involved in a significant conflict of interest. Obviously that is just a comment by a chair at this stage, but I wanted to draw that to your attention in relation to my question and ask whether you are concerned that

they have been accused of conflict of interest. I accept it is an accusation at this time, but I am just drawing that to your attention.

**Senator FIERRAVANTI-WELLS**—Ms Scott has said those were not the parameters of the tender. To sling some sort of accusation just to put it on the record so that tomorrow you can run out and cast an ineffective aspersion is wrong.

**CHAIR**—Order!

**Senator FIERRAVANTI-WELLS**—Mr Chair, I have an objection to this. Ms Scott has said the tender is very clear. There were certain parameters. I think it is really unfair of Senator Nettle to come in here and cast aspersions and accusations. In fairness, as Ms Scott has said, these were the parameters of the tender, and I think it is grossly unfair to come in here and make assertions and aspersions based on something that had absolutely nothing to do with the contract that was awarded—just for the sake of slinging a bit of mud.

**CHAIR**—I will listen closely to the questions.

**Senator NETTLE**—For the senator's information: it was not me that put it in the public realm. It was the Republican chair of the US Congress oversight committee. I just thought it was important that was clear.

**CHAIR**—All right. Please ask your questions to Ms Scott. It is getting late.

**Senator NETTLE**—Okay. I will now go to the issue about the fraud estimates.

**Ms Scott**—Senator, they have been involved in up to 20 smartcard projects around the world, and that was one of the aspects that we were interested in.

**Senator NETTLE**—I am aware of that, and that makes them the lead advisor.

**Senator FIERRAVANTI-WELLS**—Given what Senator Nettle has said, for the purpose of this inquiry can we include what the tender was, so we know that it was a clearly defined, limited process?

**Ms Scott**—Yes. Senator, I think your question was: what were our evaluation criteria, what was the process. We will be happy to table that.

**Senator FIERRAVANTI-WELLS**—Thank you—so that the things can be looked at in context.

**Senator NETTLE**—Maybe there is not an answer coming, but did you wish to make any comment in relation to that accusation about the conflict of interest?

**Ms Scott**—Senator, I have already indicated it seems extraneous to what we went through as a process.

**Senator NETTLE**—Okay. I will move on then to questions around fraud estimates. I know you are coming back with some more information in relation to that issue. When I asked this question of the Australian Federal Police—

**CHAIR**—Is this a new line of inquiry? Ms Scott has taken these questions on notice.

**Senator NETTLE**—Yes, but I did not interrupt when people had questions, so I have a list of questions.

**CHAIR**—I just do not want to repeat the debate again, that is all. I am just trying to save time.

**Senator NETTLE**—No, no.

**CHAIR**—All right, Senator Nettle. Go ahead and I will listen closely.

**Senator NETTLE**—I know you are coming back with answers on notice in relation to this. I thought it was important to let you know, as I let the Australian Federal Police know—because they are coming back to us—about the media release that was put out last week by Senator Ellison, in his capacity as the Minister for Justice and Customs, and the Attorney-General, in which they use the \$1 billion figure for identity theft. I have been trying to grapple with that. The other one I mentioned to the Australian Federal Police was again from the Minister for Justice and Customs, but it is an old one. It is November 2003: the SIRCA report, the \$1.1 billion. When you are coming back with answers, I wanted to draw those to your attention. If you are specifically able to address why the discrepancy in what the new minister was saying last week—\$1 billion—to the KPMG \$3 billion, I think that would be helpful for the committee.

**Ms Scott**—Just to help me, was the \$1 billion figure an annual figure?

**Senator NETTLE**—Yes.

**Ms Scott**—I think I can give you your answer straightaway. The \$3 billion is over 10 years and it is a very conservative estimate. I think I can save a tree by not writing it down!

**Senator NETTLE**—You were coming back anyway before I asked anything. I thought it was helpful—that you would be aware of those comments we have made.

**Ms Scott**—That is the answer.

**Senator NETTLE**—I am still going through earlier comments you made today. You were talking to Senator Lundy about some children who would get cards.

**Ms Scott**—That is right. We tabled the guidelines that have been issued by the government for the issuance of cards to those under the age of 18. There have been two press releases on this matter.

**Senator NETTLE**—Thank you. I have heard what you have said. I am not actually asking you excess to that. My question is: will they have photos on the cards?

**Ms Scott**—No.

**Senator NETTLE**—Will there be a photo in either the chip or the database?

**Ms Scott**—No. Sorry, let me just check. I had better clarify that. The hour of the night was getting to me. In the earlier discussion you referred me to I said that in some Indigenous communities very young children can be issued Medicare cards currently in their own right. I am sorry, in answering your question I had in my mind little children. Our working assumption is that we are not interested in taking photographs of any little children. There is no point. We are not interested in that at all for any card. For people who are accessing a benefit like Youth Allowance, we are looking at whether we should have almost like a student card—some schools and universities issue a simpler card—than the access card itself. At this stage we are still exploring that. We have not come to a definitive view, but we are certainly

not interested and are not contemplating that for anyone under the age of 15. That matter is still under consideration.

**Senator NETTLE**—All right. Is that something you anticipate would be dealt with in the second bill? I am just getting an idea of the time frame for the consideration of that matter.

**Ms Scott**—It is certainly something that has not been resolved. The guidelines are not guidelines issued under ministerial prerogative. There are ministerial guidelines, and we are required to adhere to those. I suspect we would do the same regarding the photograph. That is why we have that part in the bill. My legal counsel is going to whisper in my ear any second now and tell me which part of the bill it is that relates to ministerial guidelines. It is clause 8. I am not contemplating—again, it is another working assumption—that we would put that in the bill. Our system operates in many areas with ministerial guidelines; that is how I would say the bulk of the social security system operates, and we were not proposing to have that in the next tranche. It is something that a guideline would cover quite adequately.

**Senator NETTLE**—I hear what you are saying in terms of not putting it in the bill, but I am wondering whether we will know of a decision before a debate.

**Ms Scott**—Yes. Before the second bill, yes, I would be confident that we would do that. We would like to tie down as much detail as possible. We are waiting on our consultative processes to finish and we are waiting on Professor Fels's consultative processes to finish, and we would like to tie that down as soon as possible.

**Senator NETTLE**—Right at the beginning of your evidence you talked about clause 57 and I think you were raising issues that the AFP had made in relation to that. I just wanted to take you to that one and then to another clause that was raised in evidence relating to copying of the access card photograph and signature. A few times now in the inquiry the comment has been made that there are offences that relate to the copying or taking of information on the surface of the card, but at this stage—I asked Attorney-General's this as well—my reading of it, which could be totally wrong, is that there are not offences that relate to the copying of information on the chip or in the database. I wonder, firstly, if my understanding is correct and, if so, the question I asked Attorney-General's is: why are there offences for what is on the card but not what is in the chip and the database?

**CHAIR**—Electronic copying?

**Senator NETTLE**—Yes. Actually, the offence is more than just electronic copying, because it is photocopying not with consent, so it is copying generally.

**Ms Scott**—It sounds like this is going to be a straightforward answer: bill No. 2.

**Senator NETTLE**—It will be in that?

**Ms Scott**—Yes, we will be looking at that provision for bill No. 2.

**CHAIR**—Why wasn't it in this bill?

**Ms Scott**—This has been a reasonably ambitious task to achieve in this time frame, Senator. We want to have the benefit of Professor Fels's work on the privacy provisions, on the privacy impact assessment work, to inform the following parts of the bill.

**CHAIR**—Ms Scott, that is an oversight though, really—not to outlaw electronic copying—if I may say so. Wouldn't you agree? I am not blaming you personally, Ms Scott, but that is an oversight, I have to say.

**Ms Scott**—Senator, if I had my druthers we would try to have as much in this first bill as we could, but if we are going to consult with people—

**CHAIR**—Ms Scott, that is skirting around the question. Copying on the card is outlawed; that is fine.

**Ms Scott**—That is right.

**CHAIR**—Electronic copying is not outlawed and, quite frankly, it should have been in the same provision or the next subsection, and it obviously was forgotten.

**Ms Scott**—If I may take a moment to confer, Chair?

**CHAIR**—Yes, fine.

**Ms Scott**—Page 63 of the explanatory memorandum refers to matters not dealt with in this bill—there is a list of them there—and that includes protection of information.

**CHAIR**—I am not quite sure that covers it.

**Ms Scott**—We have also indicated in other places that we will require an appeal process to be in the second bill.

**CHAIR**—I accept that.

**Ms Scott**—It is on the same page.

**CHAIR**—I know that.

**Ms Scott**—I am just drawing your attention to the extra bit.

**CHAIR**—That is a legal process. We are talking here about the offence of electronic copying not being included in the principal legislation. And you are telling me this was not an oversight—that this was all part of the plan?

**Ms Scott**—I want to make three things clear. We need the second part of the bill—

**CHAIR**—I agree; but we are supposed to report before we see it.

**Ms Scott**—We have done this bill in order to be able to build basic features of the system. Those parts that we do not absolutely have to do now, we are leaving until the second bill.

**CHAIR**—So you deliberately did not put the offence in? Is that right?

**Ms Scott**—It clearly indicates on page 63 that issues relating to the protection of information are going to be covered in the second bill.

**CHAIR**—Why, then, did you cover the piece about the information on the face of the card?

**Ms Scott**—Because that is the most sensitive area that people are asking for us to address in this bill.

**CHAIR**—But it is not the most dangerous part. The dangerous part is the electronic copying.

**Ms Scott**—Electronic copying of the database would, of course, be related to the Crimes Act—and there would be protections there—but, in relation to the chip, that would be covered in the second bill.

**CHAIR**—So you are saying that was deliberately left until the second part? Is that what you are telling the committee?

**Ms Scott**—This exposure draft was out for a month.

**CHAIR**—You are not answering my question. All right, let us move on.

**Ms Scott**—Ask it again and I will be emphatic. How is that?

**CHAIR**—The provision in relation to the copying of electronic material had been considered and it was then decided to deliberately put it in the second bill?

**Ms Scott**—We went through all the things, deliberately, that needed to be in this bill and then we looked at the things that could be deferred to the second bill.

**CHAIR**—Please answer yes or no to my question. Did you deliberately—

**Ms Scott**—It is a variation on what you said.

**CHAIR**—Let me say it again. If you want to debate this, that is fine, but I want a clear answer. I am happy to move on, but if you want to debate it—

**Ms Scott**—No, I do not.

**CHAIR**—Was the issue of electronic copying considered and deliberately included in the second bill? Yes or no? It is a very simple question. Was it considered or not? Why don't we move on?

**Senator NETTLE**—No, I think we are nearly getting an answer.

**Ms Scott**—I am trying to be clear. We considered all the things that needed to be in this bill, and by—

**CHAIR**—That is not answering my question, and you know that.

**Ms Scott**—I am trying to be helpful.

**CHAIR**—With the greatest respect, I have asked about a specific provision and you are not answering the question. I am happy to move on, but I do not want wriggle room here. Are you telling this committee that the department had considered the issue of electronic copying and had deliberately decided to put it in the second bill? Yes or no?

**Ms Scott**—Yes. If you want to characterise it that way, yes.

**CHAIR**—You deliberately considered the provision of electronic copying and you deliberately decided to put it in the second bill?

**Ms Scott**—We have been asked questions on that.

**CHAIR**—And you said yes. Okay. If you say yes, that is fine.

**Ms Scott**—That is fine. I am happy to say yes.

**Senator NETTLE**—Do you want to give your longer explanation of how that came to be?

**Ms Scott**—I indicated earlier that we are very constrained by time here. The government have stipulated that they want the project to commence in 2008, and they have indicated that they would like the registrations process to be largely completed by 2010. We need to tender for a system, build the system, design the system and plan the registration process. We have tried to achieve what the community, through the consultative process, asked us to do, which was to give the broad architecture, the purpose of the card, the purpose of the chip and the purpose of the registration process. They also asked us for some prohibitions on the use of the card, and we have done that in this bill.

**Senator NETTLE**—It is that issue around the protection of information that is rightly on the EM. We have got the protection of some information in this bill and some information in the other bill, which is why the committee is struggling.

**Ms Scott**—It is also indicated on page 63—and we have indicated this a number of times—that the process in relation to complex carer situations—

**Senator NETTLE**—Is in the second bill, yes.

**Ms Scott**—We know they are an important part of our client base; we just simply cannot cover every issue in this bill in the time frame.

**CHAIR**—That goes for both of us.

**Senator NETTLE**—I want to go to some of the clauses that were mentioned this morning, but before I do that I want to go back to your answer about the card you were looking at for 15- to 18-year-olds. You described it as having less information than the access card might have. Is that a new card or is that—

**Ms Scott**—A variation.

**Senator NETTLE**—In the way that the veterans' card is a variation?

**Ms Scott**—Yes. That is a good way to look at it.

**Senator NETTLE**—Another clause that was mentioned today was clause 54. I asked Attorney-General's about this one. This is about the secretary requiring people to give up their card if the secretary suspects on reasonable grounds that it is obtained by means of false or misleading statement, information or document. This is where we think you have got your card in the wrong way and you have got to give it back. This has got a two-year offence. In a circumstance where the secretary's suspicion is wrong, this offence comes into play well before one would determine that, because if the decision is made you have got to give the card back or you are in for two years. At some point down the track it might be found that that was a mistake, for whatever reason. My question goes to what happens to the entitlements. If this person is required under this offence to hand over their card and therefore cannot get access to any of their health and medical benefits, and then subsequently a decision is made to say, 'Whoops; we got that wrong,' I am guessing that that person has missed their benefits for that period of time. Am I right?

**Ms Scott**—The issue of cancellations and suspensions is covered also on page 63. It says there that apart from the review mechanism and privacy issues there are a number of other matters not dealt with by this bill and they include suspensions and cancellation of registrations on the card.

**Senator NETTLE**—I am aware of that. What I am asking about is section 54 of the current bill and the operations of that.

**Ms Scott**—My understanding of the reason why this is there is, in part, that the ownership of the card is vested in the cardholder. You can do with the card as you will but, even though it is owned by you, the purpose of this clause is to say that if you are using it for unlawful purposes you can be asked to give the card back. So it relates to the ownership issue in part, and that is why it is in here: for fullness. How the cancellation, suspension and appeals processes will work will be in the second bill.

**Senator NETTLE**—I accept that that is what you are planning to do.

**Ms Scott**—That is the rationale for why it is there.

**Senator NETTLE**—I think that people can look at this and say, ‘Oh, I wouldn’t get any benefits and there’s no explanation as to whether I could get it back or rectified,’ and I think that how that clause is to be implemented has the potential to be of concern to people. I accept that you have said that you will deal with it later, that we will see it in the second bill. I am just highlighting that I think it does create some difficulties by having this one here but the other issues dealt with later.

**CHAIR**—Senator Nettle, do you have many further questions?

**Senator NETTLE**—I have quite a few areas to cover. Each one does not have much to it, but I could easily go for half an hour to 45 minutes. And that is putting lots of my questions on notice; I literally have pages of them here. I will put a lot of them on notice. All I am touching on now are those areas that have already been raised. I have other areas to cover which we have not even talked about; all I am doing now are the questions that have been raised in the inquiry. I will try to do each of them briefly and I think we are getting through them.

**Ms Scott**—Chair, when would we be required to provide the further evidence and the answers to the committee? I am conscious that we have had, I think, 188 questions given to us since the inquiry started. We want to be answering the questions as much as possible, but it is almost as though we will be answering questions until Christmas. I wonder whether there is a substantial number—we got another 25 today—and whether there is a priority that individual senators would like to apply to their own questions.

**Senator NETTLE**—All my questions come from evidence we have received since last time I saw you. That is why I have more. I put in a lot to start with, and I put them in a priority order and will ask you later about when I can expect the answers to those. But all of these actually relate to the evidence we have received.

**CHAIR**—The secretary has just reminded me that we really need the answers to questions by Friday.

**Ms Scott**—By Friday?

**CHAIR**—Yes, for the purpose of drafting a report due by Thursday of next week. The report has to be circulated on Monday. Ms Scott, obviously this is no criticism of you or of the committee, but the bottom line is that the government has put this timetable on us and we just have to try to meet it. I do not know any other way of doing it.

**Senator MOORE**—And we have all complained about it.

**CHAIR**—The secretary has just whispered in my ear that it is unrealistic to expect the department to do that, but we have to do the best we can.

**Ms Scott**—If there is any way you could indicate a priority for your questions I would appreciate it, but it is just going to be unfeasible for us to answer, say, 220 or 230 questions between now and Friday.

**Senator NETTLE**—I am not looking at the order. Another issue raised, I think when we were talking with Professor Fels, was the size of the chip. I have asked that on notice before.

**Ms Scott**—And we gave some discussion earlier this evening.

**Senator NETTLE**—I heard that. About a third of it for personal—

**Ms Scott**—The minimum chip size is 64 kilobytes.

**Senator NETTLE**—The context in which I was asking that of Professor Fels is that on a number of occasions during the inquiry we have had people raise the issue of the Queensland government and there being discussions about putting their drivers licences onto the personal part of the chip. We have not had any submission from the Queensland government and cannot ask them about that, so I am asking you. When I asked Professor Fels about that he said that the chip will be quite small and that he did not think that kind of thing could be done. Are you in discussions with the Queensland government about that and what are you able to tell us?

**Ms Scott**—I think we had some questions on this in Senate estimates. I think Minister Campbell at that time indicated that he knew the relevant minister, Minister Lucas.

**Senator NETTLE**—Yes, he indicated discussions.

**Ms Scott**—We indicated that we had had discussions with them about standards. The answer is no.

**Senator NETTLE**—The answer is no to the drivers licence and yes to the standards—is that right?

**Ms Scott**—Yes, we have had discussions about standards. No, there have been no discussions about putting the Queensland drivers licence into the personal part of the chip.

**Senator NETTLE**—Another issue that we had raised, I think yesterday, was about address changes. The government's comments were that if you do it once it is done across the board. We had a submission yesterday which asked about what happens if it is entered incorrectly. If you do the one change and you contact the one place for the change of address and that is done incorrectly, what are the consequences of that? Does the incorrect address get spread across departments? This was in a submission that we had yesterday and I wanted to ask you how that would work.

**Ms Scott**—At registration when they are first giving the information to us, they will be given a read-out at the end. We will ask them to carefully go through it and we will step them through it. Then, effectively, they will authorise that it is fine. In relation to when they ring up and go through identifying themselves, answering secret questions and so on and giving their card number, we will put the change of address into the system. Our normal operation is that

we would then advise someone in writing that a change of address has occurred. We will say over the telephone: 'You will receive a letter to say that your address has been updated in the system.' We will indicate that. I think that acts as a check. We will read through the address over the telephone to the person.

My address in the white pages is actually wrong. I have not complained, but it is actually wrong. I know that these mistakes can occur. But we will have checks and balances on this. Writing it out will be one check. Reading it out over the phone will be another check. We are not interested in making mistakes in the system.

**Senator NETTLE**—I accept that.

**Senator MOORE**—I just want to follow up on that in terms of this confirmation of information, which is a key part of maintaining the record. Current practice with someone like Centrelink is as you described it. When you do something, you should receive a letter. The problem is that, if the address is wrong, the letter does not arrive. That is an issue.

**Ms Scott**—We can go through the scenario. I would ring and say, 'My name is Patricia Scott,' and give you my card number. You ask me a secret question and I give you a secret answer. You then say to me, 'So, Patricia, what is your new address?' I say, 'It is 24 Chauncey Crescent, Richardson.' Then you would say, 'Have I got this right: 24 Chauncey Crescent, Richardson?' You would spell it out. So you have heard it. You would read from the screen what you have typed in. Then you would say to me: 'Now, Patricia, we have that address and we will be sending you a letter to confirm that address. If you do not hear back from us, please ring again.' I would have thought that was a reasonable set of checks and balances in the system.

**Senator MOORE**—Sure, but that is about current process. Under the new system I would receive a letter back saying, 'This is to confirm the conversation we had.' I know this is detailed, but it is in terms of how it goes. Will there be a paragraph in there that says, 'Your address has now been changed for all purposes for the following agencies,' for reaffirmation? It is just a process in terms of clarity of the whole thing.

**Ms Scott**—We have not got to drafting individual letters, but it makes eminent sense that we would indicate that.

**Senator MOORE**—It is just reaffirming to the person.

**Ms Scott**—That is right. We want to save people time—

**Senator MOORE**—I am happy with that.

**Ms Scott**—so the idea that we would include a paragraph like that would make sense. I agree wholeheartedly.

**Senator MOORE**—So you would minimise the change and actually reconfirm it?

**Ms Scott**—Yes.

**Senator NETTLE**—I will go to the AFP again. They were talking about section 72, which is about authorisations by the secretary. You have the Commonwealth officer and the participating agency—

**Ms Scott**—I am sorry; did you say that this arose today?

**Senator NETTLE**—Yes. When the AFP appeared, they questioned whether clause 72 applied to them or not. I thought I would ask you that because they did not know.

**Ms Scott**—We do not have the advantage of the *Hansard* and I did not hear all the AFP's testimony, but I understand from a colleague that the AFP indicated that they do not expect to be an authorised person for the purposes of this legislation. That is also our expectation, so I think we concur with the answer they gave you today.

**Senator NETTLE**—I accept it is hard when you do not have the *Hansard*. They were trying to work out whether offences in the bill related to them in terms of—

**Ms Scott**—Is this the Federal Police?

**Senator NETTLE**—Yes. They were trying to work out if the offences related to them in terms of access and that if they were an authorised person, they would not.

**Ms Scott**—The answer to that is, yes, they will be covered by this. Could you ask your question again? I think the answer is an emphatic yes, but I want to get the terms right in your question. If you have it written down that would help.

**Senator NETTLE**—I do not have it written down; I am recalling what they said. They were concerned about offences in the bill and whether they related to them.

**Ms Scott**—Yes, it will relate to them.

**Senator NETTLE**—They put it to the committee that they were having difficulty determining whether clause 72 applied to them. They asserted today that if they were prescribed or authorised then the offences would not relate to them because they were unclear about it.

**Ms Scott**—I think my emphatic yes holds.

**Senator NETTLE**—In clause 72(1)(a) you are talking about participating agencies, 72(1)(b) is about Commonwealth officers prescribed by the regulations and 72(1)(c) is about an individual prescribed by the regulations. In the foreword of your submission there is a very long list of all the departments you have consulted with. I will put on notice for you tell us about their involvement because obviously we have not spoken with all of them. I accept what you say that the AFP are not a participating authority and this is covered by clause 72(1)(a), but 72(1)(b) and 72(1)(c) allow the secretary to appoint in writing a whole range of other people as authorised persons. How do you envisage subclauses (b) and (c) will operate?

**Ms Scott**—Page 61 of the EM gives some examples.

**Senator NETTLE**—Where are the examples? I am skimming it.

**Ms Scott**—Doctors and pharmacists.

**Senator NETTLE**—Okay. I am always wary of these. The examples are these good guys—doctors and pharmacists. Is that the extent of the examples or are they broader than that? I am sure everyone agrees that doctors and pharmacists are part of the system.

**Senator MOORE**—Allied health professionals.

**Senator NETTLE**—Allied health professionals would be another area. How extensive is the example list?

**Ms Scott**—Page 61 also sets out the limitations on this. It has to be prescribed by regulations if the person is outside a Commonwealth officer in a participating agency. My discretion is quite limited.

**Senator NETTLE**—Can you point me to that bit?

**Ms Scott**—It is in the last paragraph of page 61:

Under this clause, the Secretary will be able to appoint Commonwealth officers to be authorised persons. However, the Secretary—

that is, me—

will not be able to appoint Commonwealth officers who are not in a participating agency—

that is, the agencies as set out—

unless such officers are prescribed by the regulations.

**Senator NETTLE**—Okay. So we will wait and see what is in the regulations.

**Ms Scott**—Yes. That is right. We have not got to the regulations yet, so it is a bit—

**Senator NETTLE**—Yes. Perhaps what I can ask you to do is review the *Hansard* of the AFP's evidence—

**Ms Scott**—I will.

**Senator NETTLE**—because they talked about the fact that it might potentially curb their powers to investigate fraud, for example.

**Ms Scott**—Although I did hear a snippet of that—I have to say the day has been rather busy; I have been doing a few other things—I was surprised because, in terms of fraud and criminal investigations, I cannot see why they would not be in a position to—

**Senator NETTLE**—Have access.

**Ms Scott**—have access.

**Senator NETTLE**—Yes.

**Ms Scott**—It goes back to our discussion right at the start about the Privacy Act. Clearly, there is not an intention on our part to limit access. This is supposed to be fighting fraud; why would we limiting access for the AFP? So I just wonder whether that reflected a misunderstanding on their part.

**Senator NETTLE**—I will leave that to you to look at the *Hansard*.

**Ms Scott**—We have had discussions with them about that. This all goes back to the question of balance—some people wanting to have a little bit more and other people wanting—

**Senator NETTLE**—I am very happy leave it at you looking at the transcript of what they said and getting back to us.

**Ms Scott**—Yes, all right.

**Senator NETTLE**—And I imagine that agencies like the Department of Immigration and Citizenship and like Customs may have similar issues in relation to being involved in fraud

investigations. So, if I could ask you to include them in your answers, that would be appreciated

**Ms Scott**—Yes, okay.

**Senator NETTLE**—Another thing that was raised—I think it was on Friday—was the issue around the emergency payments proposal for the card. In your submission you talk about how there is a number associated with that and it is not going to be a personal account number.

**Ms Scott**—Yes.

**Senator NETTLE**—This question is a technical one. I have asked a couple of people this. It might just be that I am misunderstanding this, but you talk about two ways to get the cash—either directly or through an ATM; ‘transfer the deposited funds to such accounts as they choose’, that is the wording on page 84 of your submission. If you are going to transfer money into a bank account, I do not understand how you can do that without having the bank account number. If this is intended to have that capacity, where is the bank account number going to be stored?

**Ms Scott**—I think I can give your answer, but I just want to check with one of my colleagues as I am worried I might not be firing on all cylinders. The money does not go into your account; it goes into—let us call it DHS’s account. The card you have, and we know you have that card and we are confident you have got that card, we can, through back-end systems at the bank, activate that. If that card is inserted in a machine, that card will be able to draw say \$200 from our account. That would mean, in an emergency situation, if people lost their money or the government was going to make a one-off payment to them, they would be able to access that.

**Senator NETTLE**—So long as they have their card.

**Ms Scott**—Yes, that is right, as long as they have their card.

**Senator NETTLE**—As long as the card is not blown away or—

**Ms Scott**—Yes. I think I might have said in earlier testimony, in Innisfail, the inability of people to function those first couple of days was affected by their inability to get cash.

**Senator NETTLE**—So we need them to have the card and for the electricity to be working so that the ATM works and for the bank to be able to do the back-end systems. I accept what you are saying.

**Ms Scott**—This is not an ad for Woolworths, but my recollection of Innisfail—I visited there about two or three days later—was that Woolworths were still able to do EFTPOS transactions, but one of the banks was still knee deep in water and had trouble opening its safe. This is not a perfect world we are living in, but we consider this will give us greater flexibility.

**Senator NETTLE**—Thank you. On page 74 of your submission, you talk about exemptions for people having photos, and we were talking a little bit about that, about the frail and those in institutions. You have in there the example of people who are in prison. I want to ask you about that one. Having worked with people who have just been released from

prison, I know they need access to benefits straightaway because they do not have housing or employment or anything. I wonder if you can explain to me—I accept what you are saying that you put them in an exception category—how that is going to work to ensure that, upon release, they are able to access benefits.

**Ms Scott**—We are right onto this issue right now. I spent not last Friday, because I was with you last Friday, but the Friday before at Silverwater prison. I was speaking to senior people from correctional services in New South Wales about people's access to benefits when they are released. Centrelink has a prisoner prerelease program that works very well, but Medicare probably is not operating to the same good effect. We have asked Medicare to get a wriggle on.

I spoke to some social workers at Silverwater, and I was able to sit in on one of the interviews with an inmate who was about to be released. So I have heard firsthand the difficulty that when you go into prison, of course you do not have private property, and when you are released you definitely want to have access to benefits. Often you have all sorts of things to sort out in your life. I know that Professor Puplick has also gone to the Darlinghurst office of Centrelink to talk to their social workers on their prerelease program.

We are on top of the issue. We do want to have pre-release arrangements in place. We have started talking to at least one correctional authority on this. So we will need to make arrangements for that. I can't give you the definitive answer, but we do think Centrelink's arrangement is state-of-the-art, and we would like it to operate more generally. In New South Wales, Centrelink has a protocol and a memorandum of understanding between two organisations specifying time frames, and so on.

**Senator NETTLE**—Between them and corrective services.

**Ms Scott**—Yes. We are actively looking at this issue. I note that Professor Puplick is very keen to explore it as well. I think there are about 25,000 people in prison at any time around Australia. The prison population is more than that in the course of the year because some people are just moving through. So it is not an insignificant part of the community.

**Senator NETTLE**—I don't know if that is one I can say, 'Take this on notice' because I don't know what your time frame is.

**Ms Scott**—If we take that on notice, I am only going to give you a short answer, saying, 'We are looking into it.'

**Senator NETTLE**—Maybe if I just flag with you that I am going to keep asking about that one.

**Ms Scott**—I am anticipating that we will have a second Senate inquiry.

**Senator NETTLE**—I will go to domestic violence now. Again, this is one which you address on page 70 of your submission. In about the end of the paragraph on that page you talk about having to advise agencies of domestic violence concerns. Because it is plural there—'advise agencies' my question is: do you need to advise each of the agencies?

**Ms Scott**—I think this is due to the fact that we had to do this at speed. You are right—you only need to advise one agency. A number of our agencies are very practised in this area. The Child Support Agency has to be very conscious about people's addresses because that

information has to be very carefully protected. Centrelink, similarly, is conscious that when they ask some people for addresses, there is often great nervousness about it. We were discussing recently how we structure the interview and how we train our registration staff to pick up on those nuances about people being worried about handing over their residential address. The Child Support Agency have a sort of a system of classifications—how restricted the address becomes. We have given the example about the witness protection program, but we would have a classification system for the addresses as well.

**Senator NETTLE**—So the expectation is that you let one agency know of the domestic violence—

**Ms Scott**—That is right: ‘I left my home last night and I am very reluctant to hand over my new address to you. I am staying in a women’s refuge. I want you to be very careful.’ We would then put a flag on that. That is now restricted information. It is not going to be generally available. We are familiar with those processes. I have had the general manager from the Child Support Agency brief me on how they go through this process. So we will be building that into the system.

**Senator NETTLE**—Thanks. In the Liberty Victoria submission that we received yesterday afternoon, they talk about the issue of domestic violence. I don’t know if you want to take this on notice. On paragraph 37 they talk about domestic violence:

The requirement for them to be registered and the time it would take to have a bureaucratic discretion exercised in their favour to remove their registration or for it to be modified would compromise their safety.

**Ms Scott**—I don’t know whether we have that one with us at the moment. We are waiting as the submissions come up. I will have to rely on your reading of it.

**Senator NETTLE**—Paragraph 37 says:

People subject to domestic violence, especially women, will be particularly vulnerable because of the operation of the bill. The requirement for them to be registered and the time it would take for them to have a bureaucratic discretion exercised in their favour to remove their registration or for it to be modified would compromise their safety.

**Ms Scott**—We will move very very quickly on this. We do 60,000 changes of address a week in Centrelink. It is an amazingly mobile population. So we have to move very quickly on these changes of address anyway, because some effects, like rental assistance, can affect their payments. We are not into delaying things. We will move very quickly on that.

**Senator NETTLE**—I am most familiar with the department of immigration and sometimes they say, ‘You have to do it in this time frame.’

**Ms Scott**—Yes, I understand.

**Senator NETTLE**—If you have one of those, that would be handy.

**Ms Scott**—I will see what I can find out about how quickly our agencies do change of address now. I will take that on notice.

**Senator NETTLE**—It is not so much the change of address as domestic violence—

**Ms Scott**—So it is the reclassification. If someone rings up and says—

**Senator NETTLE**—'Take the address off.'

**Ms Scott**—'I want the address protected at a high level of protection', how quickly does it happen? We will try to get that information for you.

**Senator NETTLE**—Thank you. While I am on the Liberty Victoria submission, they raised at the end of their submission the issue of name ownership. They talk about that in paragraph 40. It is kind of a general comment around this idea that people apparently own their names and that some of the provisions in the bill, clauses 18 and 31, where there is some discretion around—

**Ms Scott**—Is this about offensive names?

**Senator NETTLE**—That is right.

**Ms Scott**—We have taken the advice of the task force on this and have used the provision that is in New South Wales legislation on births, deaths and marriages. Versions of it are replicated right around the country.

**Senator NETTLE**—The Liberty Victoria submission quotes the Births, Deaths and Marriages Registration Act of New South Wales to make a different point, so I am interested that you say that. Again, it is a question that I am happy for you to take on notice.

**Ms Scott**—I will take it on notice if you like. We will look at that issue.

**Senator NETTLE**—If you could look at that and address what Liberty Victoria raised in their submission, that would be appreciated. The submission from the Office of the Privacy Commissioner talks about how the gender identifier is now 'sex'; is that right?

**Ms Scott**—Yes, we use the term 'sex'.

**Senator NETTLE**—They raised the issue of transgender individuals. I wanted to ask you whether consultation had occurred about that and how that issue was intended to be dealt with.

**Ms Hartland**—The sex of the person on the register is that provided on their birth certificate. Where the person has changed their sex, the register will record the sex as recognised by the records of the relevant state and territory birth, deaths and marriages register. So it picks up what the states are doing.

**Senator NETTLE**—Thank you for that. I think I put this question on notice earlier—it is about the interaction between the access card and the electoral roll.

**Ms Scott**—Can I go back to the submission of the Office of the Privacy Commissioner. I did not have an opportunity last night or this morning to read all of it, but I thought it was interesting how this question of balance comes in again. We have been asked to remove place of birth because people were worried that that would disclose nationalities and, potentially, race. We wanted place of birth on it because we know that there are reciprocal health care agreements and we did not want to deny anyone their benefits. Possibly naively, we went out and put place of birth on it and then we were told in the exposure draft process that that was an ill-advised thing to do because of Yugoslavia and all those things. We took that off and we asked a specific thing about citizenship in relation to a particular list of countries. I think there were 12.

So, having fixed that one, people are now saying, ‘Why are you asking people about citizenship?’ We are trying to provide a convenient card. I could point to probably 50 different mentions in different submissions where we have placated one concern to find that another concern has arisen. It requires the wisdom of Solomon to work out where to put the focus on.

**Senator NETTLE**—The complexity of the project creates some of that.

**Ms Scott**—It does. But it is also because people have different interests. Some people have high concerns on privacy and are prepared to wear some inconvenience; other people put very high priority on convenience and are prepared to wear some diminution of privacy. It is this issue of balance. It is an imperfect world, I guess. That was just an aside. As I said, we put clause 57 in there to address concerns of the Privacy Commissioner and then we get the Bankers Association saying we are a bunch of marshmallows.

**Senator NETTLE**—Okay, I will just keep going. The electoral roll was a question I asked on notice. I do not know about the interaction. There has been a lot about integrity of the roll, people showing their card and whether the AEC will be involved. I think you consulted with them, didn’t you? Are they on your list? No, they are not on your list.

**Ms Scott**—They cannot compel people to show their card.

**Senator NETTLE**—Yes. Have you consulted with the Electoral Commission in the development of the access card?

**Ms Scott**—We have had a meeting with them. We are very interested in how they do fast rollout particularly to Indigenous areas, so we are drawing on their expertise there.

**Senator NETTLE**—I asked a question on notice a while ago, on the big, long list I gave you after estimates, and you answered the part about that it cannot be required—and I know that, because we just had that before. The part I want the answer to is: will it be accepted as evidence of identity for electoral enrolment and/or for voting with the new voting retirements?

**Ms Scott**—I suspect that what has happened is that we have answered the bit that we can do quickly and we will now need to talk to the Electoral Commission. I do not know that answer at this point in time.

**Senator NETTLE**—There are a couple of those sorts of ones in there. I just thought I would flag that one in particular. There are others, like how many points it is going to get. It looks to me like the answer to that is AUSTRAC is deciding.

**Ms Scott**—I need my authority figure here, but under the new arrangements the organisations themselves determine.

**Senator NETTLE**—Yes, the AML legislation. I was going to get onto that.

**Ms Scott**—I have a little phrase here: it will be up to businesses to determine the extent of customer identification to be conducted under the AML legislation.

**Senator NETTLE**—I am familiar with that legislation.

**Ms Scott**—Does that answer your question?

**Senator NETTLE**—No, it does not. I accept everything you say about the AML. I am very well aware of what I consider to be concerns with the legislation. But, in earlier evidence we got from the bankers, it was their understanding that the provisions of the AML did not preclude AUSTRAC from determining a number of points to it as ID.

**Ms Scott**—We have some information here from Attorney-General's which they have given to us. But I have to say that it does not go to that issue, so we will have to take that one on notice—and potentially refer it to our colleagues in the Attorney-General's Department.

**Senator NETTLE**—Sure, but if we could just get some idea of that. Just on the AML legislation, the bankers raised a number of concerns around that impact. I do not know if you want to answer that now or if you want to—

**Ms Scott**—I was just raising the issue earlier about this fine balance. It all comes down to that, doesn't it?

**Senator NETTLE**—Yes.

**Ms Scott**—It is clause 57 they are particularly annoyed about.

**Senator NETTLE**—Can I ask you to take on notice any more specifics that you are able to give about the interaction between the AML legislation and the access card. I have concerns around the AML legislation but it is there and I think it does create some difficulties with the interaction of these two bits of legislation.

**Ms Scott**—This is the point on which the Bankers Association feel the two are inconsistent.

**Senator NETTLE**—Yes.

**Ms Scott**—We have checked that out with A-G's and they have given us some words which we can provide in an answer. I will ask Ms Hartland to go to that issue. I will not be surprised if you do not find it completely satisfying and still want to put the question on notice, but we will give you what we have.

**Ms Hartland**—Very briefly, the advice we had was that the **Anti-Money Laundering and Counter-Terrorism Financing Act** is not inconsistent with the access card legislation.

**Senator NETTLE**—Is there any more detail—I am happy for you to give it on notice—about the aspects, because the bankers' concerns around the clauses and how they relate are quite specific? I would appreciate more detail.

**Ms Scott**—We will see what we can do.

**CHAIR**—Senator Nettle, it is nearly 11 pm.

**Senator NETTLE**—Yes. I have finished with the ABA and there is only one more. I was asking the ABA about consultation they had had with the department. They said that they had not had consultation with you, but you have put them in your submission as having had consultation with them. I am not sure whether their answer was limited to just the emergency payments. They were saying they had not consulted. Rather than leaving that discrepancy there, I thought I would ask for some clarification.

**Ms Scott**—Fair enough. I will see whether we can clarify that for you. The answer is that we have met with them. We are trying to get a date for you.

**Senator NETTLE**—I am wondering whether the discrepancy arose from the fact that they were saying—perhaps you want to look at their evidence—that you have not consulted on the issue of emergency payments. I was asking them all about the bank numbers and how they would work.

**Ms Scott**—So the question is: have we consulted them?

**Senator NETTLE**—Yes.

**Ms Scott**—And then: have we specifically consulted them on the emergency banking?

**Senator NETTLE**—That is right.

**Ms Scott**—Let me see whether I can find out. For the documents we have available we have a list of issues that we have consulted on and the list does not go to that, so I cannot be definitive as to whether we have or we have not. We will look at that issue in light of their testimony.

**Senator NETTLE**—Thank you. The last one was a witness in Melbourne—I do not remember who it was—who raised the interaction of this legislation with the Census and Statistics Act. Their explanation was that the census act requires the Commonwealth to provide certain pieces of information and they ask the question which I am now asking you about how the census act interacts with this.

**Ms Scott**—We will take that on notice. I had discussions with the Statistician at the time—it was a number of months ago. We had discussions about de-identified data, but I think I provided those answers earlier on. The Statistician currently uses de-identified data from Medicare because the Australian population is so mobile that between the censuses you do not have good figures about how many people have gone from Victoria to Queensland or from Queensland to Western Australia. They are very keen to get this information not only for planning purposes but also for the purposes of the Commonwealth Grants Commission—funding to individual states related to the carve-up of the GST, and so on. So this is quite useful information to have. As you know, a lot of people forget to advise their change of address. This happens in Centrelink all the time. One of the advantages of the card would be that with one contact to advise change of address, if you are a very fit and healthy person who is a Centrelink customer but you hardly ever see Medicare, that information will go to Medicare.

I was talking to the Statistician about the fact that I did not want to make a direct link between ABS and our data. Our data will provide change of address data to Medicare. Medicare data is de-identified and currently provided to ABS. In that way, they will have better de-identified data than ever before. So we have had discussions. No-one has pulled out their act yet. That may happen, but it has been all very civil to this point in time.

**Senator NETTLE**—If you are able to provide anything further, that would be great. I will put the rest of my questions on notice. I would like to flag that one of them relates to an issue which I do not think we have dealt with at all—that is, the civil remedies. I do not think we have dealt with that with you this time round.

**Ms Scott**—No, I do not think you have.

**CHAIR**—We have with other witnesses.

**Senator NETTLE**—Yes, we have with other witnesses. That is what I have been trying to do: go through the debates we have had with other witnesses with you. The other one is about the serial number and why there are no offences relating to the serial number.

**Ms Scott**—Senator Lundy asked some questions about the serial number, but we will have a look at it.

**Senator NETTLE**—But she did not ask about an offence. I am talking about an offence relating to the serial number. My other question was about civil remedies.

**CHAIR**—The possibility of civil remedies.

**Senator NETTLE**—That is right. A number of people have raised with us the question: why aren't there civil remedies? I thought it was only fair to ask you guys that question. I will put my other questions on notice.

**CHAIR**—You understand the issue, Ms Scott, about civil remedies. I am not saying that you agree or that we are going to debate it, but you understand the issue. I am sure you do.

**Senator WATSON**—A witness yesterday suggested that the number on the card may be different to the number on the chip. Is that true or false? If it is true, why?

**Ms Scott**—That is false.

**Senator WATSON**—In the event of a reader being stolen, can the department render the reader inoperable quickly?

**Ms Scott**—Yes.

**Senator WATSON**—How long does it take? Is it a matter of days?

**Ms Scott**—Within the same day and probably within a matter of hours.

**Senator WATSON**—It is very reassuring, Ms Scott, that you have been involved in something like 20 smartcard developments. Can you assure the committee that the technology is available for using the information in the chip and the register while still maintaining privacy, because one witness doubted that.

**Ms Scott**—Minister Hockey had a good turn a phrase. He said that he was not interested in leading-edge technology. He talked about off-the-shelf technology. Chips have been around for an awfully long time. I think it is the 20th anniversary of a smartcard conference. It is old technology in most places. It is going to be new to us, but we are not talking about things that are about to be developed next month. This is very old technology.

**Senator WATSON**—On Monday the witness from Legacy indicated that he had a 90-year-old mother. To what extent will the interview require her to produce documentation, as required under the bill? In some cases you can not rely on information already in the system, can you?

**Ms Scott**—Yes, this is the concept of a known customer. The clearest example of this has to be veterans. There is not much that we do not know about veterans—their commencement of identity and their use of identity. I consider that veterans will have a brief interview, a

photograph will be taken, there will be a checking of the information that we have and then they will be out the door very quickly. Someone who is 90 years old is likely to have been one of our customers for a considerable length of time. I am working on the assumption that we will be using the known customer concept with people of advanced years.

**Senator WATSON**—So common sense will prevail?

**Ms Scott**—Yes, common sense will prevail. There is no particular high risk associated with the continuation of a 90-year-old getting their existing age pension.

**Senator WATSON**—Earlier tonight Ms Hartland indicated that the PIN would be a feature of the architecture. When would it be used and who would use it?

**Ms Scott**—In the interview during the registration process, people would be given a brief explanation of the PIN and asked if they would like a PIN on their card. The PIN would operate as PINs now operate on automatic teller machine cards. It would enable a further level of protection associated with some information on the card.

**Senator WATSON**—So would it be a four-digit PIN, or a six digit PIN, or—

**Ms Scott**—It has not been determined, but it is not going to be 16 digits or anything like that.

**Senator WATSON**—Six, I said—four or six.

**Ms Scott**—Four or six, something like that. We do not have that detail yet. That goes to what we call ‘card in use’ and we want to do a lot of consultation with people—Council on the Ageing or whoever. We want to go through all of this very carefully so that we have something that people will find workable.

**Senator WATSON**—So it will be an essential feature?

**Ms Scott**—No, it will be an optional feature.

**Senator WATSON**—To provide additional safeguards for some people?

**Ms Scott**—Yes, for some people who are particularly concerned about information. The information that we are gathering, as you would have seen in the bill, is quite basic information: name, address, their legal name if they have a preferred name. Some people will not find this information a worry to them and other people will, and probably for good reasons, so—

**Senator WATSON**—It is an optional safeguard.

**Ms Scott**—the option of a PIN is there to assist them.

**Senator WATSON**—My final remark is to warn of the danger of letting contracts before the passing of the second tranche of the legislation.

**Ms Scott**—The government has indicated they want the card registration process to commence in 2008 and the government made a decision on having a card in April 2006. We have been running full steam to develop, design and consult. We have done 600 contracts with people ourselves. I appreciate that there is an issue which you quite reasonably raise with us but, if we were to wait till we had all the consultations finished and all measures locked down and designed, we would not be able to start in 2008.

I worked on competition policy and then I worked on A New Tax System. They were very different projects because you went into the hothouse and you developed the answers for as many things as you could—not everything, but as many things as you could. This is a very different program because it is one that is going to be done in stages, and that obviously creates frustrations for the committee, but I do not think there is any other way to do a process like this and meet the time frames that we have been asked to achieve.

**Senator MOORE**—I am not going to ask you many questions because you have enough, but we did ask a question about confirming what the government is going to do to notify citizens if their data has been affected. It has come up consistently through the last couple of days and I wonder whether you have a response for us.

**Ms Scott**—We have our thinking caps on. I am sorry I do not have an answer but we will try to ensure we get an answer for you on that one before Friday.

**Senator MOORE**—When you are making a claim for Medicare or a Centrelink payment at the moment, do you need a birth certificate?

**Ms Scott**—Yes. I happen to have the enrolment application form here.

**Senator MOORE**—Good, because I am trying to see whether there is going to be any more onus under this system than under the current one.

**Ms Scott**—What is different about this system is that it is going to apply more generally. I got a Medicare card that was sent out to me in a general release in the eighties. I do not remember applying for it and no-one ever checked. I think it came to me because I was on the electoral roll. But people who now apply for a Medicare card have to provide one of the following three eligibility documents—an Australian passport, a birth certificate or a birth extract, or Australian armed services papers. If people are born overseas, they have to provide their Australian or overseas passport or travel document issued by the Department of Foreign Affairs and Trade along with a valid visa. The new arrangements will not be too dissimilar to this, but the important thing is the fact that they will apply to everyone except known customers and will actually be verified. At the moment, we ask for this information but we do not verify it.

**Senator MOORE**—I am trying to get my head around the cost. In the absence of another senator, I want to ask whether a family impact statement has been done on the impact of this particular legislation—in particular, the cost to a family if they had to go along and provide documentation such as a birth certificate. I know if you are claiming a passport you have to do that, but you will have no choice in this matter.

**Ms Scott**—If you are claiming a Centrelink payment, you also need—and I have a two-page document here—

**Senator MOORE**—That is fine. To the best of your knowledge, have you been asked to do a family impact statement on this legislation?

**Ms Scott**—No, we have not. I do know the issue of availability of birth certificates was something that we discussed at one of the estimates hearings. We have done a couple of things. We have done some quantitative market research with people where we asked them if

they had a birth certificate. I find this a bit surprising, but 93 per cent of the people—a figure in the nineties, anyway—said, yes.

**Senator MOORE**—That is interesting; I would not have expected that.

**Ms Scott**—We understand that the New South Wales Registry of Births, Deaths and Marriages issue up to five birth certificates per adult there because people keep coming back and asking for these things.

**Senator MOORE**—Losing them.

**Ms Scott**—We ask for these things over and over again, so one of the advantages of the card is that we ask for it only once, we get it verified and then we do not have to ask for it again. I hope that is a full answer. Would you like me to table that information?

**Senator MOORE**—That would be very useful for a quick comparison. I have not seen that information in the documentation so far. A point that has come up regularly is the perception that the department will be keeping copies of core documents in the register. I know the register has been delayed now, but the perception is that there is going to be a register in a central place where people's birth certificates and proof of their ID are going to be held. That has been raised by a number of people as a fear, that core documents belonging to individuals will be held in a central place and will be able to be copied.

**Ms Hartland**—Is this the issue about the storage of proof of identity documents?

**Senator MOORE**—Yes.

**CHAIR**—Yes, I think it is clause 17, items 12(a) and 12(b). I flagged this issue in Sydney the other day—proof of identity documents being held by the department after verification.

**Senator MOORE**—Yes, and it has come up consistently. Yet again, it goes to the concept, which I know you have taken on board before, of a central place where this documentation will be held.

**Ms Hartland**—I think we indicated before that the government's intention is not to do that but to hold as few documents as are needed for as little time as they are needed, noting that they will go through a verification process. We are working with the National Archives and it also comes back to required changes to business processes. The intention is certainly not to hold them, or to hold them for as little time as is needed. We just need to work through that and get those business rules in places to make that happen.

**CHAIR**—And then they will be destroyed?

**Ms Scott**—Yes.

**CHAIR**—This was raised by the Privacy Commission—

**Ms Hartland**—Yes, so everyone has the same intention.

**Ms Scott**—The minister made a statement on it, and I have answered several questions on this, including on notice.

**Senator MOORE**—The other general question, as well as some others, picks up at this point. One of the things that have frustrated me over the last couple of days has been the common stream of issues that have come through a number of people and my desire at

different times to have the people with their issues—which were often concerns about what was going to happen—and the people supporting the case in the one spot so that there was a kind of roundtable, open debate. Has that happened?

**Ms Scott**—We had a public meeting. We wrote to everyone who had provided a submission to Professor Fels’s task force. I think you will recall that he said he had had 100 submissions—

**Senator MOORE**—A hundred and something, yes.

**Ms Scott**—and done 120 consultations. We wrote to them and said, ‘Look, we’re going to have a public meeting,’ and we used that opportunity to release the exposure draft and to have a bank of people available to answer questions. We might have had 60 people at the meeting. We had a very large room booked, and there were a very small number of people in a very large room.

**Senator MOORE**—So you did make the effort.

**Ms Scott**—We have made the effort. We would be happy to do it again. Roundtables are good things. We have done it once.

**Senator MOORE**—I was unaware of that meeting, and somehow in all these discussions we have had I had not picked up on that.

**Ms Hartland**—I think it was on 13 December.

**Senator MOORE**—It seemed to me that people could have talked through a lot of it, if they had done that.

**CHAIR**—I have just two quick issues, Ms Scott. I understand the Fels report on registration is being submitted to the minister. Is that correct?

**Ms Scott**—Yes.

**CHAIR**—It would assist the committee in its deliberations for that report to be given to us or made public before our report next week. Is there any likelihood of that?

**Ms Scott**—I know that the minister has been announced, but the minister has not been sworn in, and I do not think that is going to happen immediately. I do not know how much is in the public domain here, but I am not expecting to have the swearing-in ceremony until later this week.

**CHAIR**—No, I understand. Maybe it is impossible, but it is a pity because that would assist in our deliberations.

**Ms Scott**—The paper is on the registration process; it is not—

**CHAIR**—Yes, it is not specific, but still we would like to have a look. Nonetheless, if it cannot be done, it cannot be done. Finally, the Privacy Commissioner, in relation to your powers and the powers of the minister, suggested:

... the Bill could usefully promote community confidence by including a general provision that these powers—

the secretary’s powers—

be exercised in consultation with the Privacy Commissioner.

The Privacy Commissioner mentioned in paragraph 24 of her submission:

A possible model of such a mechanism is available in section 85ZZ(1)(b) of the Crimes Act ...

Do you think it is workable that the exercise of your discretion would be countenanced in consultation with the Privacy Commissioner?

**Ms Scott**—We might have to have further discussions with the Privacy Commissioner. In clause 13 division 2, the secretary is required to consult with the Privacy Commissioner and to take into account any comments made by the Privacy Commissioner in relation to registration. So the provision is there now; it is on page 16. So it is obviously something bigger than that.

**CHAIR**—The Privacy Commissioner also refers to the formal manner in which the register may be kept, what information about the individual's benefit card will be held on the register and the chip—respectively, section 17, items 7 and 6, and section 34, item 20—what proof of identity documents will need to be scanned and so forth. That is in paragraph 33 of her submission.

**Ms Scott**—We will be briefing the new minister and I would like to have the minister's consideration of an issue like this.

**CHAIR**—If you cannot answer this question, please do not, but does the department have any in principle objections to that course?

**Ms Scott**—I think we have indicated clearly our enthusiasm for this concept in another part of the bill. I just do not want to pre-empt him. I have not briefed him one iota. I just think it would be better if I had a chance to do that.

**CHAIR**—It is getting pretty close to policy as well, although we have transgressed there tonight, haven't we?

**Senator FORSHAW**—I have two questions. Firstly, we had an appearance today by the Australian Taxation Office. I must say that I was somewhat surprised at their evidence. As I understand it, they really do not see that they will have any great interface with or need for access to the register for the access card.

**Ms Scott**—No, that is right.

**Senator FORSHAW**—My thought was that if this were going to be a register of essentially all Australians that was to be regarded as as accurate as it could be and that was to be used primarily for accessing government benefits and ensuring that the identities of the persons accessing those benefits were correct, there would be some role for the Australian Taxation Office, if only to data match their records.

**Ms Scott**—The bill specifies very clearly what the participating agencies are and ATO is not a participating agency.

**Senator FORSHAW**—Yes, I can see that.

**Ms Scott**—It is for health and social service benefits and not tax concessions. You ask an interesting question and it comes back to the deliberations the government has about what the extent and purpose of this card are. So it has a limited role and it is the bill that limits that role.

**Senator FORSHAW**—But I would have thought the ATO has the right—probably more so than most agencies, with the possible exception of the security agencies—to have access to records, both government and non-government, such as Centrelink, the banks and child support.

**Ms Scott**—Arrangements exist for data matching in relation to the Australian Tax Office and, for example, the Child Support Agency and for parts of data matching between Centrelink and the Australian Tax Office in relation to family tax benefits because it is done on an annual income, but there is no link between the creation of this register and the tax office—none.

**Senator FORSHAW**—I wanted to ask you to verify that. It is not that I did not believe them and I am not suggesting that I think it would be a bad thing if there were. But it would seem to me that, if necessary, the tax office would still have the right to seek access to the information, wouldn't it, given their general powers to pursue?

**Ms Scott**—We have now explored ASIO, AFP and the state police. I resign myself to the fact that I might take this one on notice. But we have not had discussions about it. They have not sought any of that information. I think I can say quite frankly that at no time has it been within the mandate of this project for them to have access to it. I will have to check what their powers are, but I think they have powers to get information about individuals. Anyway, I will take that on notice.

**Senator FORSHAW**—I am only raising it in the context of where, for particular individuals, they might need to check their records against other government records and in relation to payments that may be made to persons.

**Ms Scott**—But that information about payments will not be kept on our database.

**Senator FORSHAW**—I understand the distinction between the access card register and the separate databases, but the intention is for them to work together—that the information on the register is what verifies the identity of the information that is kept on the database.

**Ms Scott**—Yes, that is right.

**Senator FORSHAW**—My final question is: are the explanatory memorandum documents and the second reading speech prepared by the department?

**Ms Scott**—The preparation of the explanatory memorandum?

**Senator FORSHAW**—Yes.

**Ms Scott**—Yes.

**Senator FORSHAW**—What about the second reading speech?

**Ms Scott**—Let me just check. We provided the information that was utilised in the speech.

**Senator FORSHAW**—So the department's officers did not do a draft of the second reading speech?

**Ms Scott**—Let me just check.

**Senator FORSHAW**—That was done separately, was it, by the minister?

**Ms Scott**—I was not closely involved, so I just want to check. We provided a draft, but I think there were some not rhetorical but—

**Senator FORSHAW**—Flourishes.

**Ms Scott**—flourishes that we did not draft.

**Senator FORSHAW**—That what?

**Ms Scott**—There are some ‘flourishes’—I think that is the word I would use—that were not in the draft.

**Senator FORSHAW**—That are in the final speech?

**Ms Scott**—Yes. I am advised that there are some flourishes in the speech that we did not draft.

**Senator FORSHAW**—That you did not draft.

**Ms Scott**—Did not draft.

**Senator FORSHAW**—I appreciate that you have pre-empted a question that I was not going to ask, but I understand the reason why you made the last comment. Thank you.

**CHAIR**—Does the committee agree that we publish submission No. 61 from the Australian Lawyers for Human Rights?

**Senator FORSHAW**—Yes.

**CHAIR**—Ms Scott and Ms Hartland, we thank you both very much for your assistance and for your robust advocacy—we have enjoyed it immensely—and thank you very much to the officers.

**Ms Scott**—I know that Hansard does a marvellous job but, given that we are taking a lot of questions on notice and are committed to doing what we can by Friday—and it is now Tuesday night—

**CHAIR**—I understand.

**Ms Scott**—It is a very difficult situation.

**CHAIR**—It is.

**Ms Scott**—You will feel frustrated and we will be looking for documents that we do not have.

**Senator FORSHAW**—We understand precisely the difficulties that are you labouring under as much as anyone else and we do appreciate that.

**Committee adjourned at 11.29 pm**