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Submission to Access Card Consumer and Privacy Taskforce on the Proposed Health and Social Services Access Card

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1. Introduction

Health Issues Centre (HIC) has been an independent, not-for-profit organisation for over 20 years, promoting consumer perspectives in the Australian health system. Its mission is to improve the health outcomes for Australians, especially those who are disadvantaged. It works with a wide range of consumers, health providers, researchers, governments and other health organisations to achieve this through: policy analysis and advocacy from consumer perspectives; consumer-focused research; supporting consumer participation; and providing information.

2. Overview

HIC welcomes any moves to improve consumer access to the health system, such as reducing paperwork, the number of required visits and queuing time, or improving the coordination of data across agencies. However, as an organisation committed to empowering consumers and respecting the ability of all Australians to make informed

decisions about health matters pertaining to their own lives, HIC believes that there are serious flaws in both the genesis of the proposed card and the proposed system itself.

There has been a lack of genuine preliminary consultation with taxpayers and potential consumers of the card - as outlined below, the vast majority of Australian residents at some point in their lives – about whether they actually want such a card. If the *raison d'être* for the card is to help ordinary Australians, it makes neither economic nor democratic sense to present the card as a *fait accompli* and then ask consumers whether they want it.

Informed and transparent public debate about any proposed card, and taking consumer views seriously, requires extensive consultation and involvement of the general public and non-government organisations in <u>formative</u> discussions about the privacy, IT and broad social implications of any Government smart card system, rather than limiting public consultation to allaying concerns and instructing them in how the system will work, as the KPMG Report implies (*Health and Social Services Smart Card Initiative Volume 1: Business Case – Public Extract*, KPMG, February 2006, pp93-97).

Now that consumers are being consulted at a later stage via the Access Card Consumer and Privacy Taskforce, they have not been provided with sufficient information with which to evaluate the Government's various claims about the card. For example, Clayton Utz's Privacy Impact Assessment commissioned by the Government has not been publicly released. The *Health and Social Services Smart Card Initiative Volume 1: Business Case – Public Extract* (KPMG, February 2006 – 'the KPMG Report') is only available to the public in a censored version. The major review of the *Privacy Act 1988* (Cth) being undertaken by the Australian Law Reform Commission will not be completed by the deadline set for the access card system. It seems inconceivable that a proposed national project involving such fundamental issues of privacy and technology is not able to wait for the key national law reform body to conclude its investigations into how effectively Australia's most important national privacy statute protects privacy, and any necessity for further legal privacy protection.

There is also a lack of information presented about consumers' views in countries which have access card systems, other than using this fact to justify a similar system in Australia. However, where such wider consultation has taken place in those countries,

there has been strong opposition to schemes similar to that currently proposed in Australia.[1]

The rationale in support of the card's introduction is, in our view, confused and verging on dishonest, particularly in relation to assertions that is not an ad hoc national identity card in some important aspects. There are serious civil liberties and especially privacy concerns associated with a national identity card which are not outweighed by any proven benefits to consumers.

The practical ramifications of an access card system have also not been sufficiently thought through, specifically in relation to: claims made about the benefits accruing to consumers; how it will reduce fraud; how privacy will be protected; and how Australians can have confidence in the technical capacities of the proposed card system. There is also a lack of research to support claims made about the cost and savings of the card.

HIC therefore opposes the introduction of the proposed access card. Below we outline our main concerns in more detail.

3. Key themes

3.1 The compulsory nature of the card

The Commonwealth Government says that the card is not compulsory, but in order to receive Centrelink benefits, government hospital treatment or claim for Medicare, a card will be necessary after 2010. It is therefore difficult to imagine many Australians not 'choosing' to register for one eventually, as the 'choice' not to have a card by 2010 is a 'choice' not to participate in the Medicare system to which all taxpayers are required to contribute.

Government arguments have also suggested that if there was a natural disaster or similar emergency, people might be able to access emergency payments via ATMs or EFTPOS using the card, again implying that having a card might be a practical necessity.

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[1] See eg 'French report highly critical of new French ID card project', 18/06/05; 'Canadian Privacy Commissioner warns about "War on Terror"', 04/11/04; 'Japanese Court rules ID system unconstitutional', 30/05/05; www.privacyinternational.org accessed 27/07/06.

3.2 The card as a default national identity card

The Commonwealth Government asserts that the card is not a national identity card, but the proposed card has many characteristics typical of a national identity card. For example, it is proposed that the card contain the person's name, photograph, signature and card number. It will also have a microchip containing their address, date of birth, digital signature, concession status, and details of any children and other dependants, with the option of storing extra information such as chronic health condition details in case of emergency, and donor status.

While at present it is not proposed that it be compulsory to carry the card, we have previously noted that it will be effectively compulsory for all practical purposes to have a card (see 3.1 above). We are also concerned with the potential for function creep in the future (see 3.3 below), thereby increasing the ad hoc compulsory status of the card.

Some of the Government's own arguments in favour of the card also suggest that it has elements in common with a national identity card, in that it is claimed that the card will save people time and trouble in dealing with agencies like Centrelink, and will reduce welfare fraud. However, if the rationale of the card were simply to provide people who presently find it difficult to gain enough identification 'points' (eg through lacking a driver's licence or a passport), simply having the option of possessing a standardised non-biometric, non-micro chipped card with a photograph and signature would be sufficient. We also note that these people will still have to come up with the requisite identification in order to register for the card, so it does not eliminate the difficulty they have at present.

3.3 Potential risks to privacy and other civil liberties

Despite assurances that there will be no cross-linkage of data or security/privacy breaches, details are sketchy of how this will be ensured. This is especially concerning given the anti-terrorism climate with its attendant greater risks to civil liberties as 'justified', and in the absence of a federal human rights act to protect vulnerable citizens.

As the Taskforce's *Discussion Paper No 1* notes, there is also a high risk of function creep, as has been the case with other forms of identification. This means that it might become very difficult for people who choose not to have the card, even if they can afford to live without the health and other benefits; for example, mobile phone companies might

decide that the card is now the standard required form of identification for obtaining a new phone contract.

These matters are especially of concern for health consumers, particularly for people whose health status is still greatly stigmatised and risks discrimination, such as consumers with mental illness or who are HIV-positive. Function creep and insecure database systems could result in this data being revealed in employment, insurance or banking settings, or in dealings with police (for instance, when being pulled over for speeding), and many other possible scenarios. Even if the specifics of the illness are not on the card, the fact that an agency is listed on the card may provide an opportunity for the unscrupulous to further investigate. Once people are 'in the system', there is also nothing to prevent future legislation less mindful of civil liberties from expanding the list of personnel authorised to access the data.

It is also unclear what would be put in place to stop the card having the technical capacity to contain more compulsory data in the future; such as fingerprints or retinal scans, via the argument that this is now routine in other countries (an argument already used repeatedly by the Commonwealth Government to justify the proposed card system).

3.4 Dubious benefits to consumers

Government documentation repeatedly assures us that the card will save time for those people who attend agencies like Centrelink and find that they do not have enough documentation for acceptable identification, or have to repeat the exercise for each agency instead of having one central system. Where is the research to substantiate this claim? Given the minimal data planned to be stored on the card (ie no bank account details, rental payment proof and so on), most of the data for agencies like Centrelink will still have to be repeated each time. It is likely that much of the time spent at Centrelink is having to travel there and queuing, not form filling per se.

HIC reiterates that consumers have not been widely consulted and so the basis for the assertion of consumer benefit is also questionable on these grounds.

Further, the card may exacerbate the difficulties for consumers from disadvantaged communities. For example, unemployed, poor and low income consumers are the least likely to be able to 'choose' whether to register for a card, because they are the most

likely to be in receipt of welfare benefits or to rely on government health services. Not registering for a card would effectively mean ‘choosing’ severe hardship.

It is also not at all clear that the card will improve the process of claiming and obtaining benefits and services, despite Government arguments to the contrary. For example, homeless or some Indigenous people may be disadvantaged by being required to put all their eggs in the basket of one card that might get lost or damaged. These groups, along with other disadvantaged consumers such as asylum seekers, who already have difficulty getting access to health and social services, may also still have problems with obtaining enough acceptable identification to register for an access card in the first place (see 3.2 above).

Again, extensive consultation with vulnerable consumers is necessary in order to test any claims about consumer benefit.

We also note with concern the statement in the *Discussion Paper No 1* that ‘it is possible that confiscation of access cards may be authorised by law in the event of their systematic or criminal misuse’ (p14). The implication is that given the nature of the card system, the individuals concerned would be effectively denied access to health care. We emphasise that universal access to health care is a human right fundamental to Australia’s health system, and that any move toward a punitive system similar to the ‘breaching’ approach used by Centrelink in relation to welfare benefits will be vigorously opposed by consumers and community organisations.

3.5 Unsubstantiated claim that the card will save Government (ie taxpayers’) money

The Commonwealth Government, supported by the KPMG Report, claims that the card will save money, primarily via reducing welfare fraud. However, there has been no public dissemination of detailed figures on the various types and causes of ‘welfare fraud’, and therefore no opportunity for informed public discussion of this aspect of the proposed card. For example, a detailed discussion of fraud is absent from the publicly released version of the KPMG Report. It is therefore uncertain how much fraud is actually due to fake identification, as opposed to, say, failing to divulge employment. It is also unclear how health, as opposed to welfare, fraud, and fraud by providers as compared to consumers, is going to be detected via the individual card system, and who is going to investigate this (more costs would also be incurred).

If fraud reduction is genuinely the main objective, perhaps the money would be more effectively spent on focusing on other forms of 'rorting' such as corporate fraud, rather than on targeting the poor. There is also the possibility that professional identity thieves will find it easier to defraud the system when only one card is required for proof of identity and there is a centralised database. In cases of suspected identity theft or where there are other attempts to misuse the access card, it is not clear how the legitimate owner will be able to make transactions in the interim.

HIC is also not convinced that the savings estimated by KPMG of $3 billion over ten years will actually result. The public has been denied access to the detailed costings by KPMG, but it is known that the initial implementation of the card will cost $1.09 billion. As the *Discussion Paper No 1* notes, registration for the card is likely to be a mammoth task. Further, given the vast number of outlets where the card may be used, to effectively eliminate the potential for 'double dipping' with the card and to make the system more efficient for consumers, as is claimed, will require a far more sophisticated administrative system than is currently in place in agencies like Centrelink, particularly in the smaller offices.

There will also need to be substantial funding to train those who will be 'reading' and updating the data (including all retail outlets with EFTPOS facilities, if the card is to be used for instant disaster relief as well). All of these tasks and costs are likely to have been underestimated, thereby eating into any claimed savings from the proposed system.

We also believe that the Government's promotion of the card proposal has underestimated the technological complexity and other likely obstacles to the reliability of such a system. For example, a failsafe or foolproof system must build into it the fact that the sophistication of computer hacking is currently keeping pace with technological advancements. It is also difficult to envisage a system relying on many, often small-scale outlets operating in a 'glitch-free' manner when, for example, the present EFTPOS system in retail outlets regularly has delays when 'the network is down'. At the very least, there must be provisions made for when a person's card is unable to be read due to no fault of their own. Given that Centrelink is one of the key agencies in the proposed card system, it does not inspire consumer confidence that at present, for example, Centrelink routinely and erroneously sends out multiple letters, sometimes with conflicting details about the one transaction, to the same consumer.

While some health consumers would welcome a reduction in the number of cards they are required to produce and the removal of unnecessary duplication of data entry, Commonwealth Government documentation about the proposed card seems to present an unrealistic view of the usefulness to consumers of the new system. For example, the Government claims that people will be able to update their address details online, as an example of how things will be more convenient. Yet institutions such as banks already provide password-protected Internet access to services, but for security reasons consumers are still required to post a signed letter in order to change address details.

We are therefore not convinced that simply introducing new technology (which in any case has been insufficiently explained to the public and appears to be poorly understood even by some of its advocates, as well as being subject to rapid change in IT developments) will overcome current deficiencies in the system which are more attributable to problems of governance and administration.