

Exposure Draft Comments  
c/- Department of Human Services  
PO Box 3959  
Manuka ACT 2603



**AUSTRALIAN  
FEDERATION OF  
AIDS  
ORGANISATIONS  
INC.**

11 January 2007

Dear Sir or Madam,

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

Thank you for the opportunity to provide comments on the exposure draft of the Human Services (Enhanced Service Delivery Bill) 2007.

The Australian Federation of AIDS Organisations (AFAO) represents community-based HIV/AIDS organisations at a national level. Our membership includes State and Territory AIDS Councils, the Australian Injecting and Illicit Drug Users League (AIVL), the National Association of People Living with HIV/AIDS (NAPWA) and Scarlet Alliance, the Australian Sex Workers Association.

Our clients are frequently vulnerable members of the community and because of the stigma attached to HIV/AIDS, injecting drug use and sex work, often have particular concerns around privacy issues. In its current form the Access Card proposal contains few benefits for consumers; some of our concerns were outlined in a previous submission to the Consumer and Privacy Taskforce. Most importantly, we are concerned that the proposal will have a detrimental effect on consumer privacy.

We note that this exposure draft represents only the first tranche of legislation relating to the Access Card, and hopefully our concerns will be addressed in the second part. We look forward to participating in further consultations regarding the proposed Access Card.

If you have any further queries regarding this submission, please do not hesitate to contact me on (02) 9557 9399.

Yours sincerely

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# Human Services (Enhanced Services Delivery) Bill 2007

## Exposure Draft – Comments

### **Privacy issues**

As the *Explanatory Material* states, privacy issues are not directly addressed by this legislation. The potential impact of the Access Card upon the privacy of consumers is a significant concern for AFAO and its member organisations, and this was also a leading concern among those organisations which made submissions to the Consumer and Privacy Taskforce.

The *Explanatory Material* states that existing provisions of the Privacy Act 1988 will apply to the access card, and will prevent unauthorised access to and use of information. It also states that existing legislative provisions ‘are considered sufficient at this time to prevent activities such as unauthorised browsing’ (p. 62). This provides little comfort to consumers. These provisions provide a mechanism to punish privacy infringements, but not to prevent them. Once lost, privacy cannot be regained. The discovery in August 2006 of extensive privacy breaches by Centrelink staff shows a disturbing lack of security within the current system.

The proposed access card system will create a database of unprecedented size, with increased risks to privacy. For these reasons, the Department of Human Services needs to define who will have access to information stored on the database and under what circumstances this information can be accessed. Existing privacy legislation is broad and may not be sufficient to address these issues. AFAO notes that privacy issues are to be considered in the development of the second tranche of legislation, and urges further consultation with the Privacy Commissioner and other stakeholders in the development of this legislation.

### **Documents produced to prove identity - (Part 2, Division 3, Section 75)**

Consumer and privacy organisations have expressed concerns about copies of documents provided by consumers being included in the register. This matter was also addressed by the Consumer and Privacy Taskforce. Section 75, item 4 provides for copies of documents to be included on the register, but provides no information as to which documents will be stored on the Register and in what form. The proposed clause states only that ‘if the Secretary determines that a copy of a document...is to be included,’ it will be included. Further information regarding arrangements for storing of documents – particularly photographs – is needed in order to adequately address concerns regarding privacy and protection of information. AFAO urges more detailed consideration of this issue in future drafts of the Access Card legislation and associated regulations.

**Getting an access card** – (Part 3, Section 100). Section 100 states that people are eligible for an access card if they are registered on the Register and aged at least 18, while Part 2 Section 50 states that people may be registered if they are eligible for a Commonwealth benefit. These provisions leave arrangements for people aged under 18 (many of whom may be eligible for Commonwealth benefits) unclear. This issue has been raised previously but remains unresolved. Under the proposed arrangements, recipients of Commonwealth benefits who are aged under 18 will be treated differently to those aged over 18. While Part 5 Section 310 (5)(a) allows the Secretary to exempt individuals from the age requirement, it is not clear under what circumstances the Secretary would do so. We urge the Department to reconsider the age requirement.

**Ownership of the card** – (Part 3, Division 5, Section 175.). Section 175 (1) states that ‘you own your access card’. However, section 175 (3) states that the cardholder does not own the information contained in the card chip, and Section 180 states that the cardholder may not sell or transfer ownership of their card. This renders the concept of ‘ownership’ as it is commonly understood virtually meaningless. It is equivalent to ‘owning’ a car that you cannot sell or give away – and you don’t own the engine. The purpose of this Section is not clear, and it should be reconsidered.

**Function creep** – (Part 4, Division 2) these clauses prohibit unauthorised individuals from requiring the production of an access card. These clauses are clearly intended to address the possibility of ‘function creep’; that is, use of the access card beyond its intended purpose. The possibility of function creep was addressed by the Consumer and Privacy Taskforce in its Report.

The clauses in the exposure draft are commendable but AFAO is concerned that they will have little impact. The formal prohibition against ‘requiring’ consumers to produce the access card will not prevent its expanded use. The notion of ‘requirement’ is of limited use in this context, when consumers may have few options available to them in meeting identity requirements. It is difficult to imagine, for example, how prosecution of these offences might occur. Prosecution of such an offence would be initiated by a complaint from a consumer; but consumers may be refused access to a service if they fail to meet proof of identity requirements or fear retribution if they complain.

Importantly, paragraph 210 (1) (d) (i) makes it an offence to require consumers to produce their access card unless the purpose of the enquiry is to establish that the cardholder has a Medicare or benefit card or number. The *Explanatory Material* states that the purpose of this clause is to ensure that service providers who currently provide discounted rates to concession holders may continue to do so. Concern regarding the potential effect of the access card on discount rates for concession holders has been expressed by AFAO and other organisations.

However, the paragraph proposed to address this issue is extremely problematic, for the following reasons. First, as Part 3, Division 4, Section 140 details, the surface of the card will not include information about a cardholder’s concession status (other than DVA

status). If this is the case, then service providers would need to access information on the card chip in order to ascertain the cardholder's concession status. The term 'service provider' is not included in the Definitions but the purpose of the clause implies that it includes those services that currently provide discount rates. These services include organisations as diverse as state transport authorities, cinemas, and hairdressers. To extend access to information held on the card chip to all of these organisations constitutes an unacceptable breach of consumer privacy. Further, disadvantaged consumers who rely on concession rates should not be *de facto* forced to produce their access card in order to access a concession. This would appear to encourage just the kind of 'function creep' that Part 4 is designed to avoid. AFAO urges the Department to reconsider arrangements for concession card holders.