

# Australian ID Taskforce Report: A sheep in wolf's clothing

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Professor Alan Fels, former competition regulator, heads the 'Consumer and Privacy Taskforce' charged with advising Australia's Minister for Human Services, Joe Hockey, on the proposed national ID card system (euphemistically described as the 'Access Card'). The Taskforce also includes a former NSW Privacy Commissioner (Chris Puplick) and a former deputy defence ombudsman (John Wood). The Taskforce has no statutory basis or detailed terms of reference, and must report to the Minister (not the public), but is perceived by the media, politicians and public to be some type of independent watchdog over this proposal, because of the presumed credibility of its members. On November 8 2006 its first Report was made public, and the government released its response to its 26 recommendations (R1-26 in the following). Is the Taskforce living up to expectations, on the evidence of its Report and recommendations?

The Report sheds no new light on the as-yet sketchy details of the government's proposals that were not available at the time of its background paper almost six months ago. What the Taskforce has learned, the government doesn't want it to say. The Taskforce wants to make public the advice it has received on issues concerning chip capacity (R22) but the Government response evades even that, saying that the Government (not the Taskforce) can easily publish such information 'when it becomes available'. In other words, the less the public is told the better. The Government still won't release the Privacy Impact Assessment on the proposal it received over six months ago. The repeated Government protestations of intended transparency continue to sound hollow.

What substantive recommendations does the Taskforce make? First is a category which could politely be called 'uncontroversial':

- Human Services Minister Hockey, in a speech to the National Press Club, successfully focused media attention on government acceptance of the Taskforce recommendation that individuals should have 'ownership' of their Access Card (R8). This is different from the ownership of passports, credit cards etc, the property in which remains with the issuing party. Touted as some type of privacy protection and guarantee that the Access

Card will not become an ID card, this is an exceptionally silly and trivial proposal. Ownership of a physical token provides nothing except some protection against confiscation (which becomes larceny). What is important about ID cards is that others wish to see them (for the photo, name and signature), copy details (the ID number) or scan them (the chip content), none of which has any particularly relevance to property in the physical token. If anything, this is a *reductio ad absurdum* of property as privacy protection.

- The face of a card should be able to show your alias provided its use is not deceptive (R10). It would be surprising and alarming if people in the entertainment industry or others who legitimately use names other than their given name in daily life could not do so, so this was accepted. However, an unexpected sting was revealed in the Minister's speech: if you do this, the chip on your card will contain your 'real' name. So from now on, anyone who suspects that a person uses an alias will know exactly where their 'real' name can be found. Not a win for privacy. A potential disaster for anyone with an alias".
- That the expiry date should be on the card (R19) was accepted, and it will no doubt be handy to know when your identity will expire.

So much for the weighty recommendations that the Government accepted. What were those it rejected?

- The Taskforce saw 'great merit' in people's photos only being stored in the back-end database as a template and not as actual photos (R12). This significant recommendation was rejected by the Government, but because it was combined with a trivial recommendation for 'rigorous controls', this Recommendation was claimed by the Government to be accepted.
- The Taskforce prefers no signature to be visible on the card (R 15) but the Government rejected this because it will 'make it easier to cross check signatures' on paper forms.
- The Taskforce suggested that there is no need for the ID number to be visible on the card (R18), but Government rejected this, to 'make it quicker and easier for people to use the card for telephone and online services'.
- The Taskforce makes the very important recommendation that proof of identity (POI) documents produced when a person registers for a card should not be scanned copied or kept once verified (R20), contrary to the extraordinary intrusive recommendation of the KPMG 'business case' that they would all be permanently stored online in the back-end

database. The government's response is that it 'partially supports' this, meaning they 'will explore relevant legislation and business procedures with a view to implementing this recommendation'. In other words 'we will tell you later which data we would like to keep forever, but we might not keep everything'.

The result of the Government's response to the first work of their handpicked advisory committee is that every single Taskforce recommendation that would seriously restrict the surveillance potential of the ID card system is either rejected by Government or obfuscated sufficiently to allow future rejection.

Two other Taskforce recommendations in key areas (the national photo database in R12 and the national signature database in R16) boil down to nothing more than 'there are serious risks here, so there should be strong security controls'. One would have to be foolish to disagree with that. But the Taskforce does not recommend any particular security requirements, any criminal offences or damages, or anything of substance. Hong Kong's recent experience of 20,000 police complaint files poured onto the Internet from the previously presumed high security Independent Police Complaints Council gives an indication of the stakes involved (see Greenleaf *Privacy Laws & Business International*, Issue 84, p13 and Issue 82, p10).

Throughout the Taskforce's detailed arguments there are suggestions of significant criticism of the government's plans, and suggestions of specific things that could or should be done. But the actual Recommendation made by the Taskforce are almost always much weaker than the arguments presented and apparently endorsed by the Taskforce would support. In most cases the Recommendations crumble into merely stating that the government should provide more information or consult further. This means the government can formally agree to each recommendation while agreeing to nothing of substance. Eleven of the 26 recommendations can be summed up as 'provide more information' (R 1, 2, 3, 4, 5, 13, 14, 15, 17, 23, 26). Another three boil down to 'consult further' (R 21, 24, 25).

That leaves one last case of anemia. The Taskforce recommends 'a comprehensive legislative framework for the Access Card scheme' (R6), but doesn't say what it should include, only that the Taskforce's views on legislation should be taken into account as it develops (R7). The Taskforce declines to recommend anything specific, saying it 'is not in a position to provide a definitive statement or list about what matters should be comprehended in legislation', even though it gives a long list of such matters in its argument. This gives the government the opportunity to agree without agreeing to anything much beyond the fact that there will be legislation governing the access card. For example, the Taskforce says (but does not

recommend) that legislation should ‘clearly address at least three broad issues’ including preventing ‘function creep’ (or ‘transparency mechanisms’ for adding new uses), and control of the back-end database. But when the government lists what the legislation will contain, it is able to ignore both of these key issues while ostensibly accepting the recommendation.

Thus the Taskforce report ends up being a sheep in wolf’s clothing, all pretence of fierce protection of the public but without any bite. The vagueness of its Recommendations has allowed the government to convince the press that it is “accepting almost all of Professor Fels’ recommendations” (ABC Radio National), giving the impression of Government and Taskforce linking arms and marching toward the future now that privacy protection is secure. In fact, it has rejected almost every recommendation of substance made by the Taskforce.

The Taskforce avoids making any recommendations about many crucial aspects of the ID scheme’s infrastructure. What limitations should be put on the uses of both the ID card and the number by both the private and public sectors? All the Report says is that it will be legally difficult to control what State governments do. How can the private sector be prevented from circumventing prohibitions on their demanding the card simply by making it too inconvenient for people to produce anything else satisfactory? This is just one example of issues avoided.

The Taskforce states that:

‘Since the idea of having a national identity card has been clearly ruled out by the Government and according to public opinion polls is not supported by the Australian public either, it becomes important to ensure that the health and social services Access Card does not become, now or in the future, a national identity card by any other name.’

Messrs Fels, Puplick and Wood are not being paid by the Australian public to sit on the fence. They are there to tell us exactly what is required to ensure that the Access Card system can not, now or in future, become a national ID system, and to blow the whistle if the government is constructing something which will.

On the evidence of this Report, the Taskforce seems to be lacking on the ‘value for public money’ criterion. Its recommendations, though not its analysis, do little more than help provide a smokescreen for the unfettered development of the government’s proposals. This Report will soon be forgotten: its recommendations lack content and show no leadership. The Taskforce should get off the fence.

**Sources:**

Access Card Consumer and Privacy Taskforce 'Issues and recommendations in relation to architecture questions of the Access Card', 25 September 2006, 68 pgs < [http://www.accesscard.gov.au/various/Consumer\\_privacy\\_rp2.pdf](http://www.accesscard.gov.au/various/Consumer_privacy_rp2.pdf) >

Australian Government's Response to the Access Card Consumer and Privacy Taskforce's Advice to the Minister for Human Services, November 2006 <[http://www.accesscard.gov.au/various/government\\_response\\_to\\_taskforce\\_report.pdf](http://www.accesscard.gov.au/various/government_response_to_taskforce_report.pdf)>

ABC Radio National Breakfast, 9 November 2006, transcript of interview of Prof Alan Fels by Fran Kelly

The Hon Joe Hockey MP 'Future Directions for the Access Card: Your Card – Your Security' National Press Club, Canberra, 8 November 2006