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## Cyberspace Law and Policy Centre

A Centre for the Public Interest in Networked Transactions

Senate Finance and Public Administration Committee  
**Supplementary submission to the Inquiry Into the  
Human Services (Enhanced Service Delivery) Bill 2007**

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### **The Australian Government's Submission is seriously misleading to the Senate**

The Australian Government's submission to this Senate Inquiry is seriously misleading in the particulars following. I submit that the Government should be required to withdraw and correct the document, and should be required to explain to the Senate Finance and Public Administration Committee why it has provided such misleading information about the Bill.

- 1 On p17 the Government claims that there are 'offences prohibiting persons from copying the card number, photograph and signature'. The expression 'the card' in the Bill includes both the card surface and the chip in the card. The statement is wrong and misleading, because s57 only deals with such information on the surface of the card, and not the same information on the chip. This is a vital omission in the card's protections, as explained in my article accompanying my submission.
- 2 This misinformation is reiterated on p50 which says 'Clause 57 is intended to prevent persons from copying or recording certain information on a person's access card (ie a person's access card number, photograph and signature).' This is wrong and misleading as explained above. It says further on p50 'The clause is intended to cover all forms of copying, including photocopying, scanning and photographing.' While the particular examples may be correct, the expression 'all forms of copying' is seriously misleading because s57 does not prevent any form of electronic copying. The misinformation is repeated yet again on p81.
- 3 The examples given in relation to s57 on p50 seem to be intended to mislead because they are carefully limited to examples of private sector breaches (pharmacies and banks), while failing to admit that s57 has no application to breaches by Commonwealth or State government officers because they are immune from prosecution. If the importance of exempting Governments from prosecutions for abuse of ID cards is not obvious, it is discussed further in my article.
- 4 The discussion of 'safeguards' on p54, states that 'IPP 11 provides, in addition to a number of limited exceptions set out in the IPP, that DHS must not disclose personal information on the Register about an individual to another person, body or agency unless the individual: has consented to the disclosure; or is reasonably likely to have been aware, or was aware under IPP 2, that DHS usually passes that

information to that other person, body or agency.’ There is no further discussion of other exceptions. By including it under ‘a number of limited exceptions’, the Government has disingenuously avoided any specific mention of exception 11.1(d) ‘the disclosure is required or authorised by or under law’. This is the exception that is capable of driving a pick-up truck through the Register, but the Government has tried to hide it. For a non-exhaustive set of examples of where disclosures from the Register could be authorised by law because of the demand powers of other agencies, see the Administrative Review Council Draft Report - *Government Agency Coercive Information-gathering Powers* <<http://www.ag.gov.au/agd/WWW/arcHome.nsf/Page/Home>>, Appendix B of which lists the information demand powers of agencies (including ACCC, ATO and Centrelink) which can be exercised against ‘any person’. Why cannot such powers be exercised against the Secretary in relation to the content of the Register? As pointed out in my article, this is probably the major weakness in any attempt to rely on the Privacy Act 1988 as adequate protection for the privacy of information in the Register.

- 5 The Government then exacerbates this misinformation by pretending that such disclosures by DHS could result in determinations being made by the Privacy Commissioner (p54). Even if the ‘authorised by law’ exception was not so wide, this ignores the fact that in nearly 20 years of the *Privacy Act 1988*, successive Commissioners simply have not made determinations against Commonwealth agencies. Section 52 is a dead letter, it is not even used *in terrorem*. One reason for this, never acknowledged by Government, is that there is no appeal to a Court against the decisions (or non-decisions) of the Privacy Commissioner. As discussed in my article, this Bill not only fails to define what will constitute unlawful disclosures from the Register (so as to preserve the open wound in it caused by the ‘authorised by law’ exception), it also fails to give cardholders any rights to seek compensation in a Court for any breaches of its provisions. This is a Bill to protect both Government and business *against* cardholders protecting themselves through the courts.
- 6 The Government submission on p71 gives the impression that the Government intends that ‘POI documents or copies of them are not kept once they are no longer required for verification or fraud purposes’. This is a nice idea, but the only problem is that there is no mention here of cl 17 item 12 of the Bill, which gives the Secretary unlimited and unreviewable power to include any Proof of Identity documents on all Australians in the Register. The Taskforce castigated the inclusion of cl 17 item 12 as, in effect, a breach of a Ministerial undertaking. The danger of this inclusion have been raised by many others, and is discussed in my article. Why has the Bill included this power if the policy is going in the exact opposite direction?
- 7 In light of the above, how accurate is the statement on p82 ‘The Secretary of the Department of Human Services does not have the power to add personal information to the Register’? What are POI documents if not personal information? Perhaps the Secretary does not have the power to add ‘*new classes* of personal information to the Register’.

The Government’s submission is economical with the truth, in keeping with its campaign slogan ‘this is not an ID card’.