



**SUBMISSION TO THE ACCESS CARD CONSUMER AND
PRIVACY TASKFORCE ON THE ACCESS CARD**

Due Date: 27 July 2006

Extension agreed to 3 August

3 August 2006

Jill Iliffe
Federal Secretary

Gerardine Kearney
Assistant Federal Secretary

Australian Nursing Federation
PO Box 4239 Kingston ACT 2604

Ph: 02-6232 6533
Fax: 02-6232 6610
Email: anfcanberra@anf.org.au
Website: www.anf.org.au

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The Australian Nursing Federation (ANF) was established in 1924. The ANF is the national union for nurses, with branches in each State and Territory of Australia. The ANF is also the largest professional organisation in Australia, with a membership of over 148,000 nurses, employed in a wide range of enterprises in urban, rural and remote locations in both the public and private sectors. The ANF's core business is the industrial and professional representation of nurses and nursing.

The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veteran's affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.

Executive Summary

The ANF has considered issues around the proposed Access Card and is of the view that the benefits of a single 'smart card' to access a range of Australian Government health and social service benefits should outweigh the very real risks for a large proportion of the Australian community, if the Government stands by the assurances it has made in its initial undertakings. However, there are some caveats to the ANF's endorsement of the concept.

Most Australians today are over-burdened with plastic cards that have varying levels of technological sophistication and linkage to databases. These range from Government benefit cards, cards issued by financial institutions, credit cards, loyalty cards, membership cards, building and other facility access cards, communication cards etc. To have some rationality in relation to a suite of these cards issued by the one controlling provider has significant merit, particularly where they control access to essential services such as health care and means to livelihood. Access to health care, medications, and welfare and emergency benefits should be seamless and require minimal red tape for people in need. Nurses are often witnesses to the mental and physical effects of people not seeking early interventions for health and social

problems due to lack of ready finance to fund co-payments for support, treatment and care – the personal and system costs escalate exponentially.

The ANF shares the Australian Government's view that the current systems for accessing health and social services benefits are complex and often inconvenient for many Australians, especially those most often in need of such assistance.

However, the ANF is somewhat sceptical about the cause and scale of the alleged level of fraud that has been detected in the current system and would argue that this will not be easily remedied without remedying some of the social and economic causes that lead to fraud by some recipients of benefits.

Certainly the impact of mistakes being made because information is incorrect or out of date can be devastating for some people and mechanisms that can reduce this risk are supported.

In a world where technology is facilitating so many other aspects of life, there is definitely a need for a more user-friendly system that will reduce time spent in filling out forms and waiting in queues, and to provide more efficient and effective options for customers. Such a card could also have uses in emergency situations, for example following natural disasters such as earthquakes, floods, cyclones or bushfires where people need to access emergency relief but do not have the necessary documents readily accessible

In noting the assurances made by Government relating to the Access Card, the ANF would like to see real safeguards introduced that will ensure that: the Access Card does not become a defacto national identification card; and the potential breaches to privacy do not occur, such as having an effective regulatory infrastructure to deal with complaints about abuses and misuses of the system. The Access Card should have no utility for other organisations and agencies other than the face of it being a means of collecting evidence about the identification of the holder, such as the way Medicare Card and Credit Cards are used currently in establishing 100 points for identification.

A good start would involve having the necessary regulatory framework to ensure that safeguards for ensuring *what the access card will NOT be* are enshrined in legislation ie. that it:

- will not be a national identity card or any version of a national identity card;
- will not be formally compulsory for every Australian;
- will not be an electronic health record, that is, it will not contain extensive clinical health information;
- will not use biometric finger prints or retinal scans (while incorporating other information, specifically a photograph and a digital signature);
- will not be compulsory to be carried at all times or to be shown to anyone other than for the provision of Australian Government health and social services benefits;
- will not result in the amalgamation of existing agency databases as a result of the creation of the Secure Customer Registration Service (SCRS);
- will establish the SCRS database separate from participating agency databases;
- will not include any sensitive agency specific information in the SCRS database;
- and
- will not provide access by participating agencies to other agencies' information.

The ANF also recognises the potential for 'function creep' and seeks further assurances from the Australian Government that any broadening of the functions of the Access Card would only occur after an identified and obligatory process of rigorous impact analysis, community participation in a public debate and stringent safeguards being applied to any additional functions that are introduced.

The following submission will address the issues under the specific headings of:

- The right of choice,
- The right to and protection of privacy,
- Consumer benefit and consumer control,
- Making the right technology choices, and
- Authorisation and accountability.

Issue 1 – The right of choice

The Australian Government's assertion that the holding of such a card is strictly voluntary is rather misleading. In a society where not having a Medicare Card is really only an option for the very wealthy in our society who have the capacity to privately fund all aspects of their health care, to argue that people can exercise a right to choose to have the Access Card or not, is not a useful argument to support the introduction of the card. The choice is effectively 'no choice' for people: with serious mental illnesses, dementia, intellectual or physical disabilities without vigilant guardians or carers, or those who are in this country without the necessary official visas or residency requirements.

- ***Should people continue to be eligible to receive such benefits by establishing their identity by other means?***

The ANF is of the view that there should always be alternative means for people to have access to Australian Government health and social services benefits without the production of the Access Card and that the consumers' right to authenticate their identity by other means should not be removed. As with the current '100 points system' the alternative means may be a series of prescribed processes. To vest total dependence upon one rectangle of plastic (albeit technologically enhanced) is high risk and is likely to further disadvantage the most disadvantaged and infuriate the public where its loss, theft or destruction means that they are disqualified from their assessed entitlements.

- ***Should people be able to obtain an access card for only limited periods of time and have the right to be removed from the relevant databases when they have completed a particular set of transactions with the agencies in question?***

It is difficult to identify situations where people will not wish to have access to Medicare benefits. If they were in Australia under the provisions of a particular type of non-permanent resident or visitor's visa there may be a case for time limited issue of cards. However, the ANF would not support preventing access to necessary health care for those that require it, whatever their status in the community.

- ***Should there be any particular rules or limitations about the data which card holders may voluntarily choose to have recorded on the chip?***

The ANF recommends there be some investment in the development of a national standard relating to the Access Card in which the voluntary addition of data could be included. Such a standard could provide cardholders with a guide to potential information that could be recorded on the chip and the advantages and disadvantages this may have for them. For example disclosure of allergies, blood type, organ donor status, local health provider, next-of-kin etc. may have some significant privacy ramifications for the person or of others identified without their consent. There must also be ready access for the consumer to review the voluntary data held and ensure its amendment or withdrawal when they wish. The capacity for others to add data about a card holder should be strictly prescribed.

- ***Ensuring that this data is correct at the time of its listing and is kept up to date - how is this to be achieved?***

In most cases the person themselves as well as their case manager or local health provider will have joint interests in ensuring the information held on the card is accurate and current. Simple protocols for: ensuring that the data sources are evidence based and accurate on initial entry and review points; defined opportunities and milestones for review; as well for who and how any entry and review can occur, should minimise errors. This could all be included in a standard and/or code of practice discussed in greater detail below.

Issue 2 – The Right to and Protection of Privacy

- ***What are the fundamental privacy issues which arise in relation to the proposed access card and would the application of the Information Privacy Principles be a sufficient guarantee that they have been addressed?***

The Access Card is a classic example where the innate tension between public benefit of having easy access to important information and the risks to privacy are manifest. Many people in the community would argue that the public benefits outweigh the privacy risks and hence make the introduction of such a card worthwhile. However this must not be taken for granted, nor important privacy safeguards forgone. Therefore the Information Privacy Principles should be

applied to each layer of development and operation of the Access Card with exemptions being granted only when there is a refutable case for doing so provided. As the Australian Government's Privacy Framework is being reviewed currently by the Australian Law Reform Commission, the development of the Access Card should be conducted in tandem with the issues and outcomes that arise from that review.

- ***What role should the Privacy Commissioner play in relation to the operations of the access card, and would this role be any different from the role played already in relation to the cards which the access card is proposed to replace?***
- ***Similarly, what role, or enhanced role should be played by the Commonwealth Ombudsman?***
- ***Should there be a specific body created to oversight all the operations of the access card, including privacy and should this body be sufficiently independent from Government?***
- ***Are the existing legislative provisions relating to personal privacy adequate in the light of the access card proposal (both the principles and the proposed technology) or do they require amendment?***

Each of the above questions relate to the regulatory framework that needs to be in place to protect the public from misuse and abuses of the Access Card as well as the Government's responsibilities for the appropriate stewardship of community resources.

The ANF is of the view that no one regulatory agency could reasonably be responsible for all the issues that could arise relating to the Access Card and a 'basket' of linked mechanisms with specific expertise, capacity to cross-refer and with effective compliance 'teeth' is the preferable option. Therefore there is a place for privacy, anti-discrimination, human rights and ombudsman complaint and compliance mechanisms. Given that each of these agencies currently exist and have developed particular expertise in their different regulatory environments, there may be little justification in creating yet another 'watchdog' agency to duplicate existing expertise and infrastructures.

It is difficult to say definitively whether or not the existing legislative provisions relating to personal privacy are adequate in the light of the Access Card proposal (both the principles and the proposed technology) or if they require amendment at this stage as not all the implications are clear. It is likely that there will be green field areas for new regulation and the ANF would urge the Taskforce to ensure that a watching brief is maintained during each stage of the development and roll out of the Access Card.

- ***How should the on-going operations of the access card be measured against best privacy protection practices and observation of the Information Privacy Principles?***

The ANF considers that performance indicators should be developed as a fundamental component of the project of developing the Access Card and is a task that needs to be undertaken in conjunction with independent and critical review processes such as the role that the Taskforce is playing.

A Code of Practice in relation to the Access Card similar to the Code of Health and Disability Services Consumers' Rights in New Zealand¹ may provide a useful framework for the measurement of many aspects of the protection of consumer rights, not just those pertaining to privacy and provide a mechanism to outline sanctions when the Code is breached.

- ***Are there specific classes of people (eg people with certain disabilities or religious beliefs) who should be allowed to have some variation in the nature of the access card which they have? If so, what variation would be appropriate?***

The system should be flexible and responsive to the needs of particular classes of people and therefore may require differences in approach. The system should primarily serve the community rather than the bureaucracy. The consultation process should identify the different needs of a number of classes of people in the community and the system geared to have the sensitivity and flexibility to accommodate these.

¹ Available at <http://www.hdc.org.nz/theact.php?content=17>.

- ***How can Australians be confident that new databases are not being created or new linkages created without their knowledge and consent?***

The ANF recognises the potential for ‘function creep’ and seeks further assurances from the Australian Government that any broadening of the functions of the Access Card would only occur after an identified and obligatory process of rigorous impact analysis, community participation in a public debate and stringent safeguards being applied to any additional functions that are introduced.

Issue 3 – Consumer Benefit and Consumer Control

- ***Does the proposed new access card genuinely enhance service to customer?***

The assertions given by the Australian Government about what the Access Card is and what it is not are supported ‘in principle’. The Access Card does have the potential to enhance services to consumers and the ANF shares the Australian Government’s view that the current system for accessing health and social services benefits is complex and often inconvenient for many Australians, especially those most often in need of such assistance, and steps should be taken to reduce the ‘red tape’ and complexity of the existing processes.

- ***Does the proposed new access card genuinely enhance the right of customer choice and customer control in relation their own affairs?***

As asserted above, the ANF considers that consumer choice in having such a card or not is misleading and this should not be a primary argument used by the Australian Government. However, consumers having a fundamental role in controlling the information on the card and effective regulatory protection from misuse and abuse should ensure that consumers have some controls in the use of the cards.

- ***If there is only one card required, and that card is lost, stolen or destroyed, how can the card holder ensure there is a rapid replacement and no denial***

of proper benefits and that their benefits are not accessed by some other person in the interim period?

This burden cannot be solely carried by the consumer. It is a risk that is well recognised and the Government is in a far superior position to ensure that risk management strategies are in place from day one of the operation of the card. This must be an effective system that entails a degree of shared responsibility between the consumer and the Government. Financial institutions are developing quite sophisticated systems with credit cards that could be borrowed from.

Consumers' obligations would include the necessity to report any loss, theft or destruction immediately after they identify this has occurred. Government's obligations should include: taking all steps to immediately stop alternative access by any persons who are not the subject of the card; and to ensure that the benefits to that person are not held up or withdrawn.

- ***Will the arrangements for establishing proof of identity for the issue of the access card in the first instance be of sufficient integrity while at the same time not being unduly burdensome for the vast majority of Australians?***
- ***What special measures may need to be adopted if primary documents such as birth certificates are not available?***

This will require an investment in some considerable research and the development of national standards, codes of practice and protocols. The ANF recommends that this could be done in conjunction with Standards Australia who have already been involved in similar work and can draw upon work done by international standards agencies and bring a level of independence from Government that is important. Consumers should be very much involved in the process to ensure that the balance between access and security is reasonable.

Issue 4 – Making the Right Technology Choices

The ANF is not commenting on all of the questions in this section as it does not have the technological expertise to provide useful responses. However there are some matters that do warrant comment.

- ***How can we best ensure that a technology which was designed to do one thing does not get diverted or perverted into doing something quite different?***

The process of 'function-add' must be dealt with as a prohibition in the regulatory framework that is built around the Access Card. It should only be possible to add a function after a clearly outlined and obligatory process of rigorous impact analysis, community participation in a public debate and the development of stringent safeguards is gone through.

The Access Card should have no utility for other organisations and agencies other than the face of it being a means of collecting evidence about the identification of the holder, such as the Medicare Card and Credit Cards are used currently in establishing 100 points for identification. Other organisations, other than those with authorisation through Australian Government agencies concerned should not have access to any of the data bases at any level that the card provides. Prohibitions should exist if any unauthorised organisation, person or agency discriminates against a person who does not have or will not provide their Access Card for any unauthorised purpose.

- ***Will the technology chosen be capable of supporting other applications if these are deemed to be desirable at some stage in the future?***

To curtail the potential of the technology does not make good sense as it is easy to see that further utility may evolve with time that will serve the community in the first instance as well as the Government. The take-up of any new functions however, should be regulated to ensure that the rigorous evaluation, design and community debate and participation discussed above is conducted before other applications are added.

- ***Will the card be capable of storing additional information which the card holder may wish to place upon it?***

This could be part of the development of the standards for the card. For people with significant chronic illness and disabilities, they may wish to ensure certain information is held securely yet readily available in certain situations. The scope

for this must be clearly defined as part of the standard, codes and protocol development, and the risks and benefits clearly debated and articulated.

As indicated above, the benefits of the card should be bilateral – that is for the consumer as well as the Government.

- ***Will the technology chosen be sufficiently user-friendly, eg to allow people to view their own records who are not technologically minded, be able to do so?***

To be successful – it must be. Facilitated assistance to do this while ensuring the privacy of the information should be available through any of the participating outlets eg. Centrelink offices, GP practices, pharmacies etc. with the use of touch screens and intuitive drop down menus.

Issue 5 – Authorisation and Accountability

- ***Should the operation of the access card, or aspects of its operation, be placed specifically in legislation – if so, what aspects?***
- ***Once uses are defined and once specific uses are prohibited, how will adherence be monitored and what sanctions and penalties will be imposed for breaches—how will they be enforced?***
- ***What are the appropriate accountability arrangements which need to be put in place to secure the transparency and integrity of the access card's operations?***
- ***What administrative arrangements are best suited to the control and oversight of the access card system and its on-going operations and will such arrangements be sufficiently independent of the participating agencies or the Government itself?***
- ***How will proper records be kept about who has accessed the card so that regular audits can be undertaken to ensure that the card is accessed only for authorised purposes by people who are properly authorised to do so?***

All of the discussion above is predicated upon the requirement that the privacy, functional, operational and evolutionary aspects of the Access Card are carefully safeguarded by a robust regulatory framework. There must be clear compliance

requirements and strong complaint, sanctions and penalty provisions, built on a foundation of sound policy; and having supporting infrastructure of standards, codes of practice and protocols to guide decision making and information available to the community.

The ANF is not convinced that there are benefits in having a separate independent watchdog agency established for the purposes of monitoring the use of the Access Card. However, if a decision is made not to create such an agency, other Government watchdog agencies such as the Office of the Privacy Commissioner, the Australian National Audit Office, the Human Rights and Equal Opportunities Commission, the Commonwealth Ombudsman, the new Aged Care Commissioner etc. must be vested with specific powers to undertake the role. These must include ensuring the aspects of the Access Card relevant to the agency's purview have adequate funding, controls, penalties and sanctions. It may require an extension of some agencies core businesses to ensure that all aspects of the monitoring of the Access Card are covered.

As suggested above the development of a Code of Practice in relation to the Access Card similar to the Code of Health and Disability Services Consumers' Rights in New Zealand² may provide a useful framework for the management and measurement of many aspects of the protection of consumer rights, not just those pertaining to privacy and provide a mechanism to hang sanctions when the Code is breached.

Each of the participating Government agencies must be obliged to ensure adequate data is kept in relation to who has access to the card so that regular audits can be undertaken to ensure that the card is accessed only for authorised purposes by people who are properly authorised to do so.

The responsibility of bringing these data together, the review of them and the public reporting on them must be subject to strong controls. The oversight of the Access Card system, its governance arrangements and its on-going operations

² Available at: <http://www.hdc.org.nz/theact.php?content=17>

and such arrangements must be sufficiently independent of the participating agencies and the Government itself to ensure the ongoing confidence of the community.

Conclusion

The ANF welcomes the opportunity to provide comment on such an important initiative and reiterates its position that that the benefits of a single 'smart card' to access a range of Australian Government health and social service benefits **should** outweigh the very real risks for a large proportion of the Australian community if the Government stands by the assurances it has made in its initial undertakings.

However, the caveats to the ANF's endorsement of the concept relate to the development of a robust regulatory infrastructure that ensures:

- sound governance of the system,
- strong accountability to the community,
- safeguards against 'function creep',
- the development of standards, codes of practice and protocols around various aspects of the operation, monitoring and future developments of the Access Card, and
- a system of independent review and oversight where the relevant watchdog agency has adequate powers to take action when warranted including a strong complaints and compliance enforcement system with effective sanctions and penalties when there are breaches identified during routine monitoring or via complaint.

Nurses and midwives recognise the benefits that a less complex and more accessible system can provide for the community accessing services that are provided by and through Australian Government health and social welfare agencies.

The ANF would be pleased to participate in the future development of the Access Card and strongly urges the Taskforce to concentrate on ensuring the needs and rights of the people of Australia balance the Government's desire to have efficiencies

in the administration of the health and social welfare schemes that are their responsibility.