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Professor Allan Fels, AO  
Chair, Consumer and Privacy Taskforce  
Department of Human Services

Dear Professor Fels,

### **Submission #3: Significant shortcomings in Discussion Paper 1**

I refer to your Discussion Paper No 1, released on 15 June. You have requested that omissions and shortcomings of that Discussion Paper be brought to the attention of the Taskforce.

First, we would like to note and commend a number of the stronger aspects of the Discussion Paper, which we believe deserve the continuing attention of the Taskforce.

- 1 The Taskforce recognises that 'almost every Australian is likely to need an access card' (p19), in other words that it is *de facto* a compulsory card. This deserves reiteration.
- 2 The observation that legislation needs to make clear 'permitted' uses, not only prohibited uses (p21), is repeated in the statement that there is a need 'equally to specify the purposes for which it cannot be used' ( p22). The importance of this cannot be stressed too much: the failure of the Australia Card legislation to specify this sufficiently in relation to both production of the card and use of the ID number was one of its greatest weaknesses.
- 3 The Taskforce notes the 'dilemma' of whether medical details should go in the closed (PIN) or open zone (p26), also outlined in my 'Quacking like a duck' paper. Dilemmas like this underline the fundamental problem of combining medical and social security information on one card.
- 4 The Taskforce questions whether the SRCS could do without a photo, and just contain a template. Although we do not have enough information to know whether this approach would be valuable, we suggest it should be investigated further.
- 5 The observation that 'consumers might have more confidence in a system which is less convenient' (p20) is a very sound one, particularly in relation to the example given, the inclusion of a photograph and signature in the SCRS. While convenience (and low cost to consumers) in replacement of lost or stolen cards is of some value, it is in our view more than offset by the incentive it gives to the creation of a black market in cards. It may be better for consumers to realise that replacement of card is a time-consuming and expensive business. This would both provide incentive to them to take security of their card more seriously, and at the same time remove the enormous risks involved in creation of national photo database and a national signature database, both of which are open to both authorised and unauthorised abuses.

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Unfortunately, we find many more weaknesses in the Discussion Paper than strong points, and we now comment on these in the order in which they appear in the Discussion Paper.

- 1 The Discussion Paper puts forward a straw man in saying “A national identity card system would include the aspects of its being compulsory, producible on demand by certain authorities, a requirement for people to carry it at all times, its linkage with a unique identifying number and the fact that it is the sole form of identification recognised by Government authorities. (p15), This list includes matters not required by the Australia Card proposal such as 'a requirement for people to carry it at all times' and 'the sole form of identification recognised by government authorities'. In other words, the Task Force is attempting to deny that the Australian public considered the Australia Card a proposal for a national ID Card, and by doing so define its way around a debate about whether this is an ID card. In doing so it is taking the Government’s preferred position. My paper on this question ‘Quacking like a duck: The national ID Card proposal (2006) compared with the Australia Card (1986-87)’ was provided to the Taskforce on 12 June, prior to the release of the Discussion Paper, but the points of comparison raised in it are not discussed.
- 2 The Discussion Paper contains one paragraph on the Australia Card (p16), but it is seriously inaccurate in stating “The Australia Card was initially proposed for purposes related to taxation, welfare fraud and immigration control (and was to be administered by the former Health Insurance Commission) but grew subsequently to incorporate many other potential uses. This proposal was eventually withdrawn.” In fact, the early history of the Australia Card proposal was characterised by many *more* proposed uses (as many as fifteen), but it was subsequently restricted to three uses by the time of the Australia Card Bill. If it is intended to imply that it was ‘withdrawn’ somehow because the uses got out of control then it is wrong. For details see G.Greenleaf & J.Nolan ‘The Deceptive History of the Australia Card’ (1986) *The Australian Quarterly* Vol. 58 No. 4, p407 <[http://www2.austlii.edu.au/~graham/publications/1986/AQ\\_IDarticle.rtf](http://www2.austlii.edu.au/~graham/publications/1986/AQ_IDarticle.rtf)>. The Taskforce seems to have attempted to re-write history to serve the argument that ‘this is not like the Australia Card because this time we are going to stop it getting out of control’.
- 3 The Task Force argues that government would have to take 'active steps' to convert what they propose into a national ID card (p16). This is wrong, as it was with the Australia Card. If the legislation (or lack of it) controlling the ID system is permissive enough about additional uses of card and number, then the government can just passively let other uses develop and a pseudo-voluntary national ID system will emerge.
- 4 The Taskforce mis-states the main dangers of the national photo database in SCRS when it says the highest priority is 'physical security' and preventing 'unlawful use' (p19). It is clear that the main dangers will come from *authorised* uses by police and security force (both currently authorised and future function creeps), in comparison with which the dangers from unauthorised access are likely to be slight. It is exceptionally unhelpful for the Taskforce to pretend otherwise.
- 5 The other main straw man is the Taskforce’s continuing theme that it is only *consumers*, or perhaps third parties, who will demand new uses (see p22 and p23), but function creep demanded by governments is not mentioned in the same breath. Our experience is that this is the opposite of the truth: governments continually invent potential new uses for these schemes in order to try to justify the inevitable escalating costs of the system.
- 6 The ‘consumer demand’ straw man assumes a more dangerous guise when the Taskforce warns that legislation should 'be able to cope with future consumer demands or usages' (p21). In other words, they want the government to be able to indulge in function creep without the necessity for legislative changes. This is pernicious to the proper parliamentary oversight of such a system – necessity for legislation to change uses is exactly what should be required, not what should be avoided. (In fairness, statements by Professor Fels reported in

the media on the release of the Discussion Paper give the impression that the Taskforce is more sympathetic to legislative controls than these parts of the Discussion Paper indicate.)

- 7 The Discussion Paper also warns against 'The system design unnecessarily, prevent[ing] uses of the card which would benefit users' (p21) (See also p23 where the Taskforce ignores the possibility of any technological limitations on the chip). The implication of this is that the technical capacity of the system should allow function creep. To the contrary, it is a good idea if the chip is only capable of supporting its intended uses and no others. It will be replaced in 7 years, which is a good time for a reconsideration. Throughout the report there is no mention of limiting chip size as one means of limiting the extent of possible function creep, and this and other possible methods of limitation need to be addressed. (As above, in fairness, statements by Professor Fels reported in the media on the release of the Discussion Paper give the impression that the Taskforce is more sympathetic to technological limitations than these parts of the Discussion Paper indicate.)
- 8 The Taskforce seems to accept the government's line that there are no proposals for any 'new' police and security accesses (p24) as a sufficient answer to the question of the extent of control over authorised accesses (particularly to the biometric databases in SCRS), without questioning whether the existing powers are excessive and dangerous in the completely new context of national universal photo and signature databases.

Finally, we find it very disturbing that in its first publication the Taskforce has not addressed the question of the imbalance in public information, and consequent capacity of those outside government to engage in meaningful debate, caused by the government's excessive censorship of the KPMG report, or its refusal to release the clearly relevant PIA and associated privacy advices. These problems were addressed in our second submission to the Taskforce on 12 June. Under the circumstances it is quite inappropriate for the Taskforce to be setting deadlines for public submissions when the public has no informed basis on which to make such submissions, Instead, the Taskforce should be demanding that the government provide the necessary information for informed public debate.

Your sincerely,

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Cc: Mr Chris Puplick; Mr John Wood; Mr Ben Battison