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NEWS EXTRA

The Canberra Times

Sunday, 18 March 2007

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Peter Martin

TENSIONS ARE raw within the Government over its stalled plans for an Access Card. A scheme that the Government said was essential for Australia, on which it has already spent millions of dollars and encouraged the private sector to spend millions more, has been blocked by four of its own senators.

In a unanimous recommendation on Thursday the Senate's Finance and Public Administration Committee asked the Government to withdraw the legislation it had already passed in the House of Representatives and start again.

It is a sign of how seriously Minister Chris Ellison takes the Senate Committee's report that within about an hour he had agreed.

As the Opposition Access Card spokeswoman Tanya Plibersek put it on Friday: "Seldom do Coalition senators make recommendations that are critical of a government program, let alone multiple critical recommendations ... but the Access Card is so bad they have swallowed their fears and spoken out." Right now the Liberals on the Committee are lying low.

As it happens, the Chair of the Committee, Queensland Liberal Senator Brett Mason, is one of Australia's leading experts on privacy law. A barrister and an academic before entering politics, he wrote his PhD thesis on privacy, and last year published a book entitled *Privacy Without Principle: The Use and Abuse of Privacy in Australian Law and Public Policy*.

Launching the book in Parliament House in March, Mason's friend and Canberra flatmate Peter Costello said Mason knew "more about privacy than practically anybody else in this building".

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Also active in the inquiry was the ACT's Labor Senator Kate Lundy, along with three other Labor senators, three other Liberals, and Senator Andrew Murray of the Australian Democrats.

All supported the recommendation that the legislation go back to the drawing board and throughout the inquiry all worked as a team trying to uncover what was going on in a very tight time frame.

The Government didn't make it easy for them. The literature it presented to the committee implied that a new-generation Access Card would cut welfare fraud by between \$1.6 billion and \$3 billion, but these figures were over 10 years and they were not net of the very substantial costs of setting up and running the card system. The Australian Privacy Foundation told the committee the Government could get a better return by putting the Access Card expenditure in the bank.

And the committee found it impossible to work out how the \$1.6 billion dollar figure was arrived at. It was simply told that the accounting firm KPMG had arrived at the number and that the details could not be disclosed.

When it asked a representative of one of the companies bidding for the tender to build the scheme how many new cards it would be possible to add to the scheme each day he replied "you can ask but we can't answer". He had signed a deed of confidentiality in order to be part of the tender process.

Two tender processes were running while the committee was conducting its investigation and before the Senate had passed the legislation. In restrained language given the circumstances, the committee concluded that that "could be seen as undermining the authority of the committee by creating the impression that passage of this legislation is pre-ordained, rendering Senate oversight superfluous".

The reason for the urgency was never made clear. As one committee member asked in frustration: "Where's the fire?"

At the heart of the scheme proposed by the Government was an unresolved conundrum. On one hand the Government said that the new card was to be used only for the purpose of replacing the existing Medicare and Commonwealth benefits cards. Under no circumstances was it to become a national ID card. The minister introducing the Bill, Ian Campbell, even described the Bill as an "anti-ID card Bill".

On the other hand, every detail about the design of the card appeared to facilitate it becoming a national ID card.

In its unanimous report the committee mocked the "well-intentioned" clause in the legislation that specified a five-year jail term for anyone who demanded the card as proof of ID. It said the penalty purported to criminalise behaviour that was "an almost inevitable consequence" of the design of the card.

"It is logically questionable for the Government to create a document that can serve perfectly as a high-quality identity document, and then to penalise those in the private sector who would want to use it for precisely that purpose," the Committee said. 'It will be entirely logical for persons whose job entails requiring proof of identity to prefer the most authoritative and high-quality document possible. So from nightclub bouncer to airline check-in clerk, the temptation to ask for the access card as a form of ID will only be exceeded by the willingness of individual Australian citizens to

produce that same document in the face of such a request."

The committee said it was easy to envisage a scenario whereby, after almost universal registration for the card, the penalty for non-government use was demonstrated to be both ineffective and excessively punitive. "There will be widespread pressure on the Government from a business community that is highly dependent upon reliable identification documents to repeal the dead-letter, draconian prohibition against requiring the Access Card for that purpose."

In fact, the committee reported that the Australian Bankers' Association had already asked to delete the five-year penalty during testimony in Melbourne.

The committee members were not necessarily against the idea of a universal national identification card, particularly in an era of heightened security concerns. Mason's own book about privacy makes the point that no one has an absolute "right" to privacy in modern times. But the Government's problem and the committee's problem was that the Government deliberately decided not to make that case.

Every time a representative of ASIO or the Federal Police told the committee of the ways in which the card could be used for surveillance the Chair had to remind them that the Government had explicitly said that was not the purpose of the card.

In fact, the stated purpose of the card and the card's design were poles apart.

In order to replace the Medicare and benefits cards all that was needed was a new-generation high-security card with the cardholder's name on the front.

No printed photo, no printed signature, no printed ID number. It would then be impossible for bouncers at hotels or call-centre staff at phone or gas utilities to ask for a number or ask to see the card. It would tell them nothing.

Photographic and other information, including a representation of the cardholder's signature could be embedded in the chip, but it could only be readable by the people authorised to read it.

That's actually a description of the card recommended to the Government by an advisory committee headed by the former head of the Competition Commission, Professor Allan Fels. It rejected the recommendation.

The committee also heard evidence that for the Access Card to replace the existing 17 different cards used by different agencies there was no need for a new unique identifying number. Each agency already had a number which could be stored in the ample space on the card's chip.

The committee heard as well that there was no need for the central database that administered the card system to keep digital photographs of the original birth certificates and other documents that were used to establish identity in order to get the card. Keeping them on file, after a card had been granted turned the central database into a "honey pot" for identity thieves.

At every turn the Department of Human Services seemed to insist on the retention and display of more information rather than less and on the creation of a unique national identifier.

And to insist that the creation of the card was urgent. It couldn't wait for parliamentary approval. Or even for the drafting of the rest of the legislation.

As it happened the Human Services (Enhanced Service Delivery) Bill that would allow creation of the Access Card was only part one. The House of Representatives had passed it and the Senate had been asked to pass it before seeing part two which was to "deal with the review and appeal processes for administrative decisions, further elements of information protection and legislative issues relating to the use of the card, including in relation to dependents".

The committee concluded that it was being asked to approve the Access Card on "blind faith" without "full knowledge of the details or implications of the program".

This was "inimical to good law-making" and "unlikely to encourage public confidence in the Access Card proposal, particularly as the missing measures are essential for providing the checks and balances needed to address serious concerns about the bill."

The biggest mystery for the committee members is how it all happened. Why did a government that insisted it was determined not to introduce a universal ID card fast-track legislation not yet drafted and issue contracts ahead of parliamentary approval for a system that had all the makings of a universal ID card?

The best guess is that the Access Card began with good intentions. The magnetic strip Medicare that lives in most our wallets is now ancient. It is easy to read, easy to forge and in need of a technological update. From this worthwhile aim came a proposal that grew, and then grew without effective ministerial oversight.

It didn't help that the portfolio went through three ministers while the Bill was being prepared and shepherded through Parliament.

The first, Joe Hockey, was a genuine technological enthusiast, which may not have helped when it came to rigorous oversight.

After that Ian Campbell was in the portfolio for only weeks before losing his job as part of the wash-up from the Brian Burke scandal. His replacement, Senator Chris Ellison, barely had time to get up to speed.

The proposal was without effective and continuing ministerial oversight. It was pushed by the Office of Access Card in the Department of Human Services and developed a life of its own. If an agency such as Veterans' Affairs or the Australian Federal Police insisted that a feature be added, it was. If the Office felt that it was time to issue tenders, it happened.

The Access Card became a multi-humped, continually evolving and self-sustaining camel. If a minister of any strength had taken a good, hard look at what was evolving and measured it against the Government's stated objectives, the Government members on the Senate committee would never have needed to put their names to this week's devastating report.

As an exercise in public administration, ministerial oversight and parliamentary accountability the evolution of the Access Card is not a process the Government can be proud of.

And yet what was being proposed a database of biometric and other identifying information on

virtually every adult in the country had the potential to become the Howard Government's most-remembered achievement.

By killing the Access Card bill this week the Government members of the Senate Finance and Public Administration Committee probably did their government a favour (although it would be fair to say they are not being thanked for it at the moment).

The new Minister for Human Services, Senator Ellison, says he will examine the legislation afresh and then reintroduce a revised package in one part later this year.

When he does he may be dismayed at what he finds. He was an opponent of the less-intrusive Australia Card proposal put forward by the Hawke government in the mid-1980s.

His office says he hopes to have the new Bill ready by June. But even if he does, the Bill is unlikely to pass into law before the election. Labor has promised not to proceed with the Access Card. For the moment the Government's scheme is dead.

When, after the last election, the Coalition gained a majority in the Senate, there were many who said it would mean an end to effective Senate oversight of what the Government was planning. In this instance they were wrong, and four Government senators deserve a lot of the credit.

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