

## **8. Withdraw the Access Card Proposal, Make Appropriate Use of Smartcards**

*The 'Access Card' project has been shown up as an attempt to impose a national identification scheme and an ill-conceived waste of taxpayers' money. The project must be abandoned. A new project should be commenced to upgrade the Medicare card, using smartcards to protect privacy as well as to assist agencies' operations and support their social control objectives.*

### **Australian Democrats response:**

The Democrats have long been opposed to the introduction of any form of identity card and led the campaign to vote down the Australia Card when it was proposed in 1986.

The Democrats have stridently opposed the introduction of the Access Card, which we consider is an ID card in disguise. Senator Stott Despoja has led a public campaign to stop the introduction of the access card and conducted widespread consultation regarding public concern with the proposed legislation. On 16 August 2007, the Democrats launched the next step of their campaign against the Access Card – a mock ID card which highlights the dangers of the proposed card.

The Democrats support the abandonment of the Access Card and would give serious consideration to any detailed proposal to upgrade the existing Medicare card and using smartcard technology to protect personal privacy, rather than put it at risk.

Further details regarding the Democrats campaign against the access card can be found [here](#).

## **7. Strengthen Controls over Telemarketing**

*The valuable Do Not Call Register initiative has been seriously weakened by government compliance with lobbying by industry and by political parties. These weaknesses must be overcome.*

### **Australian Democrats response:**

The Democrats share the concerns of the APF regarding the efficacy of the Do Not Call Register (DNCR).

Senator Stott Despoja moved amendments to the *Do Not Call Register Bill 2006* calling upon the Senate to remove the exemptions for political parties and to note that the exemption of government departments, religious organisations, charities, and educational institutions would seriously risk undermining the value of the DNCR.

The Democrats would support any move to amend the legislation to remove any exemptions that are preventing the legislation from achieving its policy rationale, namely reducing or eradicating invasive telemarketing calls.

## **6. Establish an Open Appointment Process for the Privacy Commissioner**

*Successive Privacy Commissioners have been appointed in secret by the Attorney-General. They have been captured by the bureaucracy and by industry associations. The position must be openly advertised, appointment criteria must be transparent, the selection committee must be representative of the public rather than of the organisations the appointee is meant to regulate, and the appointee must be attuned to the interests of the public rather than those of government and business.*

### **Australian Democrats response:**

The Democrats support an increase in the transparency and accountability of Government appointments to public roles in general. The Attorney-General has constantly defended the use of his prerogative powers to hand pick high level public authority appointments, placing public accountability in the hands of the electorate at the polling booth.

The Democrats will support any legislative initiatives to develop objective appointment criteria, independent appointment committees and publicly accessible processes for the appointment of public roles by government.

In 2004 the Democrats initiated a Senate inquiry into the overall effectiveness and appropriateness of the *Privacy Act*, as a means by which to protect the privacy of Australians. The terms of reference included a consideration of the whether the resourcing, funding and powers available to the Office of the Federal Privacy Commissioner allow the office to properly fulfil its mandate.

## **5. Prevent the Inappropriate Export of Personal Data**

*Many countries have even less protection for personal data than Australia. There is supposed to be a prohibition against the export of personal data to such countries. Yet corporations and government agencies are releasing data to places like India and the USA. The Government and the Privacy Commissioner must fulfil their responsibility to get those data flows back under control.*

### **Australian Democrats response:**

The Democrats consider that existing privacy laws deal inadequately with the unauthorised disclosure of personal data. On 16 August 2007, Senator Stott Despoja introduced a Private Senator's Bill, the *Privacy (Data Security Breach Notification) Amendment Bill 2007*, which seeks to introduce a notification requirement where an unauthorised disclosure of personal information has occurred.

The Bill is a straightforward amendment to the *Privacy Act* and will place the onus on Government organisations and businesses to notify an individual when there has been a confirmed or reasonably suspected breach of data security involving that person's

personal information. Notification must occur as soon as possible, and at no cost to the individual.

At the moment, there is substantial evidence that suggests that privacy breaches are occurring routinely in Australia. But with no legal obligation for such breaches to be disclosed, the issue is flying under the radar and people are left in the dark as to whom their sensitive personal information may have been inadvertently disclosed. This Bill seeks to highlight the extent of the problem and focus the industry and consumers on tightening data security procedures, and minimising the risk of identity theft and other adverse outcomes.

The Democrats consider that this amendment to the *Privacy Act* will assist in the identification of any unsuitable export of personal data to foreign entities. The Democrats will consider any further amendments which may be required if the prohibition against the export of personal data continues to be overlooked.

#### **4. Establish Standards and Guidelines for Public Consultation**

*Many major government initiatives have substantial negative impacts on privacy and other interests. But agencies are avoiding the involvement of the public in their conception, design and implementation. Authoritative documents need to be negotiated that set minimum standards, and that guide the more enlightened agencies in the conduct of effective consultation processes.*

##### **Australian Democrats response:**

The Democrats consider that the lack of adequate consultation in relation to legislative and other initiatives which impact upon privacy is a major concern. The Democrats agree that the lack of adequate public consultation in the conception, design and enactment of legislative schemes is a major factor in the lack of privacy protection which is present in recent government initiatives, such as the Access Card.

The Democrats have consistently called for complex or controversial legislation to be referred to Senate committees to allow thorough examination and public consultation, especially where proposed legislation has the potential to infringe upon fundamental civil liberties.

The Democrats have long campaigned for human rights legislation to be enacted in Australia and in 2000, the Democrats introduced the Charter of Rights and Freedoms Bill into Parliament. A Bill of Rights would provide an accountable, rights based framework for government agencies to use in considering the impact upon privacy and other fundamental rights when establishing new initiatives.

### **3. Declare a Moratorium on All Biometrics and RFID-Tagging of Humans**

*The Biometrics industry is immature, is plagued by high error-rates and misinformation, and is creating profound risks for the future of personal information security. A significant number of grossly intrusive projects are in progress. They need to be halted, pending public information and consultation processes, followed by enactment of strong and enforceable laws regulating the use of all such technologies by all agencies and corporations.*

#### **Australian Democrats response:**

The Democrats share the APF's concerns regarding the rapidly expanding and largely unregulated nature of the biometrics and tracking devices industries.

While the development of voluntary codes such as the Biometrics Institute Privacy Code, which extends that National Privacy Principles, is encouraging, the Democrats consider that self-regulation of such industries is not sufficient when the potential consequences for personal privacy are so dire.

The Democrats are concerned about reports of RFID tagging of prisoners in the Australian Capital Territory with minimal or no public consultation, or consideration of the impact of the tagging upon human rights. The Democrats consider that this sort of example highlights the need for greater regulation of the industry, and will encourage legislative initiatives by the Government.

The Democrats have in the past urged caution in relation to the adoption of biometric and RFID technology, for example during debate on the *Australian Passports Bill 2004*. In 2003, Democrats Senator Brian Greig suggested that a legislative framework was required to deal with new technologies such as RFID, while at the same time respecting the privacy concerns of the consumer.

The 2006 Senate inquiry into the *Privacy Act* found that the Act was not keeping pace with emerging technology such as RFID and biometrics, and recommended that the Act should be amended to set out a statutory process for the conduct of privacy impact assessments, based on transparent and accountable criteria, in relation to new proposals which may have a significant impact on privacy. The Democrats will continue to push for the Government to act on that recommendation in 2008 and beyond.

### **2. Cancel the 'KYC' Requirements Imposed on Businesses**

*Under the guise of anti-money-laundering provisions, so-called AML-CTF legislation is about to come into effect. It substantially widens and deepens requirements of business enterprises to 'Know Your Customer', far beyond the '100-point check'. The enlistment of companies as State informers is not consistent with a free and open society, but rather with East Germany under the Stasi.*

### **Australian Democrats response:**

The Democrats moved amendments to the *Anti-Money Laundering and Counter-Terrorism Financing* legislation to provide for a greater oversight role for the Privacy Commissioner and to increase the level of review of the legislation by parliament. Unfortunately those amendments were opposed by the Government which used its numbers in the Senate to pass the legislation.

### **1. Rollback all of the Unjustified 'Counter-Terrorism' Provisions**

*Many privacy-hostile measures have been enacted, on the pretext that they are somehow necessary to protect public security. Changes are needed. All accesses by all agencies, including all national security and law enforcement agencies, require prior justification and a judicial warrant.*

### **Australian Democrats response:**

The Democrats agree that many of the Government's counter-terrorism laws have unduly impacted upon the civil liberties of Australian citizens, including upon the fundamental right to privacy. The Democrats have routinely opposed Government Bills that go too far in curtailing human rights under the guise of national security, and have moved various amendments in an attempt to ameliorate the worst aspects of those laws.

In August 2007, Senator Stott Despoja moved to establish a Senate Select inquiry into Australia's anti-terrorism laws, including whether the laws:

- adequately safeguard Australian citizens from the threat of terrorism;
- define 'terrorism' too broadly and curtail fundamental human rights (which would include privacy);
- provide a reasonable framework for investigative and enforcement agencies;
- have compromised fundamental principles of justice such as the presumption of innocence and habeas corpus, and the granting of bail;
- wrongly allow for periods of indefinite detention while suspects are questioned, including 'dead time';
- adhere to principles of natural justice and are compatible with Australia's obligations under international law; and
- interact appropriately with other powers of detention and deportation, for example immigration laws.

Senator Stott Despoja also opposed the *Crimes Amendment (National Investigative Powers & Witness protection) Bill 2006* in August 2007, including provisions allowing for secret 'delayed notification' search warrants and the expansion of unsupervised 'controlled operations' by the Australian Federal Police. The Democrats will continue to push to establish a detailed and exhaustive review of Australia's anti-terrorism legislation in 2008.