

Parliament of the Commonwealth of Australia

House of Representatives Standing Committee  
on Banking, Finance and Public Administration

## **MATCHING AND CATCHING**

### **Report on the Law Enforcement Access Network (LEAN)**

November 1992

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## Members of the Committee

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Chairman: Mr R P Elliott, MP (from 5 March 1992)

Deputy Chairman: Hon I B C Wilson, MP

Members: Mr J N Andrew, MP  
Mr R A Braithwaite, MP  
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Mr S C Dubois, MP  
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Mr G Gear, MP  
Mr R S Hall, MP  
Mr S P Martin, MP (Chairman to 2 January 1992)  
Mr L J Scott, MP (from 3 March 1992)

Secretary: Mr D R Elder

## Members of the Sub-committee

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The Sub-committee appointed to undertake the inquiry comprised:

Chairman: Mr R P Elliott, MP

Members: Mr S C Dubois, MP  
Mr G Gear, MP  
Mr R S Hall, MP  
Hon I B C Wilson, MP

Sub-committee Secretary: Ms B Forbes

Inquiry Staff: Ms J Starcevich

Adviser: Mr G Tucker



## Terms of Reference of the Committee

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The Standing Committee on Banking, Finance and Public Administration is empowered to inquire into and report on any matters referred to it by either the House or a Minister including any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or paper.

## Terms of Reference of the Sub-committee

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Inquire into and report on:

- 1 Measures for assessing the level of risk of fraud\* on the Commonwealth\*\* overall and in particular departments and agencies;
- 2 The extent to which there should be coordination of the assessment, prevention and control of fraud in the Commonwealth, the responsibility for any such coordination and the scope for improved liaison and cooperation among all agencies;
- 3 Progress made by departments and agencies in developing and implementing fraud prevention and control strategies, including the role of internal and external audit and the adequacy of performance information to assess the success of the strategies;
- 4 The adequacy of the penalties and administrative sanctions which can be applied in cases of fraud;
- 5 The need for training of staff or fraud awareness, prevention, detection and control;
- 6 The appropriateness and adequacy of mechanisms for the investigation and follow up of less significant instances of fraud by departments and agencies, and the consistency of treatment of offenders by various agencies;
- 7 The adequacy of existing working arrangements and mechanisms between referring agencies and the AFP/DPP for the referral of instances of fraud;
- 8 The capability and capacity of the AFP and the DPP and other agencies to investigate and prosecute fraud matters;

- 9 The potential for the use of information exchange, including the use of information technology, in combating fraud and the privacy implications of such exchange;
- 10 The adequacy of current codes of conduct and ethics for the Commonwealth public sector, including the post separation employment of public servants and the need for guidelines for Australian companies doing business with the Commonwealth; and
- 11 The desirability of whistleblower legislation as a means of combating fraud.

\* *For the purposes of this inquiry, fraud is taken to mean:*

*'inducing a course of action by deceit involving acts or omissions or the making of false statement orally or in writing with the object of obtaining money or other benefit from or of evading a liability to the Commonwealth'.*

\*\* *the scope of the inquiry extends to all Government departments and agencies but does not extend to Government Business Enterprises or external fraud on the Australian Taxation Office. In relation to the Health Insurance Commission, the scope of the inquiry does not extend to the operation of the Health Insurance Act and National Health Act insofar as those Acts deal with the referral of providers to appropriate tribunals to deal with claims of overservicing.*

The following audit reports have also been referred to the Committee:

*ANAO Report No. 25 1990-91: Australian Federal Police - Efficiency and Effectiveness of Fraud Investigations* referred by the House of Representatives on 7 May 1991;

*ANAO Report No. 15 1991-92: Department of Defence - Procedures for Dealing with Fraud on the Commonwealth* referred by the Parliamentary Secretary to the Prime Minister on 21 April 1992; and

*ANAO Report No. 40 1991-92: Department of Social Security - Systems for the Detection of Overpayments and the Investigation of Fraud* referred by the House of Representatives on 24 June 1992.

## Abbreviations

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ABCI	Australian Bureau of Criminal Intelligence
ACS	Australian Customs Service
AGs	Attorney-General's Department
AFP	Australian Federal Police
ANAO	Australian National Audit Office
APF	Australian Privacy Foundation
ASC	Australian Securities Commission
ASL	Average Staffing Level
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CITEC	Centre for Information Technology and Communications
CPU	Central Processing Unit
CTRA	Cash Transactions Report Agency
DAS	Department of Administrative Services
DEET	Department of Employment, Education and Training
DPP	Director of Public Prosecutions
DSS	Department of Social Security
DVA	Department of Veterans' Affairs
HIC	Health Insurance Commission
HHCS	Department of Health, Housing and Community Services
ICAC	Independent Commission Against Corruption
IPP	Information Privacy Principles
LEAN	Law Enforcement Access Network
MoU	Memorandum of Understanding
NCA	National Crime Authority
OECD	Organisation for Economic Cooperation and Development
OTC	Overseas Telecommunications Corporation
TFN	Tax File Number



## List of Conclusions and Recommendations

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### Chapter Two - Information exchange, fraud control and privacy implications

#### Secrecy provisions

The Committee considers there is general agreement that the need for reform of the secrecy provisions in Commonwealth legislation is long overdue and it is concerned at the limited progress made in addressing this matter during the past 16 years. As a result of the referral of the confidential information inquiry to the House of Representatives Standing Committee on Legal and Constitutional Affairs this Committee has not sought to examine secrecy provisions in detail. The Committee believes this issue demands wide public consultation and supports the Legal and Constitutional Affairs Committee looking into this matter. It suggests the Legal and Constitutional Affairs Committee consider the suggestion of the DPP and examine whether amendments to the secrecy provisions may allow more scope for greater exchange of information between law enforcement agencies while continuing to protect basic privacy considerations. (paragraph 2.24)

#### *The Committee recommends:*

- . following completion of the review of secrecy provisions by the House of Representatives Standing Committee on Legal and Constitutional Affairs the Government give a high priority to implementing appropriate changes to Commonwealth legislation to rationalise secrecy provisions. (paragraph 2.25)

#### Privacy issues

- . Scope of law enforcement and protection of revenue exemptions in IPPs

#### *The Committee recommends:*

- . the Attorney-General's Department and the Privacy Commissioner give a high priority to developing an agreed opinion on the interpretation of the application of Information Privacy Principles 10 and 11 to law enforcement and protection of public revenue matters. (paragraph 2.42)

**. Use and disclosure required or authorised by or under law**

**The Committee recommends:**

**a review of the legislation which allows use and disclosure of information in circumstances where it is required or authorised by or under law. (paragraph 2.45)**

**. Notifying the public of fraud control practices**

**The Committee recommends:**

**where it is appropriate to do so, that agencies continue to publicise in general terms their data-matching and other activities used to detect fraud. (paragraph 2.56)**

## **Chapter Three - Law Enforcement Access Network (LEAN)**

### **The need**

The main users of LEAN seem convinced of the need for the facility, though some potential users are cautious about the costs of the system. (paragraph 3.18)

### **Financial issues and cost-benefit analysis**

#### **. Cost-benefit analysis**

Based on the information that has been provided the cost-benefit ratio is not substantial in monetary terms with benefits largely derived from the ATO's data-matching activities. While such benefits would be achieved initially over the five years of the cost-benefit analysis it could be expected they would decrease with time as compliance with capital gains tax provisions, the major area of savings identified by the ATO, increases. (paragraph 3.26)

#### **. User pays regime**

The Committee supports the introduction of the users pays regime after two full years of operation of LEAN. (paragraph 3.28)

## Consultation

While a Government decision may have been made about the LEAN facility, this does not preclude a need for consultation about the system's development. The Committee concludes that while public debate may well have occurred around LEAN, there has been no direct avenue for public input into the Attorney-General's Department's development of the system. The Attorney-General's Department has not been proactive in disseminating information about the system, but there are no grounds for believing departments have been gagged in commenting on LEAN. (paragraph 3.35)

### The Committee recommends:

the Attorney-General's Department adopt a more open approach to the development of the LEAN system and be more active in disseminating information about the system to the public. (paragraph 3.36)

## Administration and accountability

The Committee notes that at this time LEAN is not governed by an Act of Parliament. Projects such as LEAN which raise significant privacy concerns should be clearly defined publicly and open to public scrutiny. The Committee believes LEAN should have legislative control and such legislation should be put in place within the next two years.

During the preparation of the legislation the principal accountability document will be the MoU and as such the Committee wishes to see updated drafts of that document and believes the final version should be made publicly available. The development of legislation does not preclude the need for the MoU particularly during the next two years, though after that time the scope of its contents may be curtailed because of legislation. On the basis of the draft document the Committee has seen it is confident the MoU is seeking to address most of the matters which should be included.

The forementioned arrangements as well as the general accountability mechanisms outlined should be adequate for monitoring the LEAN facility and an evaluation of the system after two full years of operation is appropriate. (paragraphs 3.50-3.52)

### The Committee recommends:

legislation be put in place within the next two years to govern the operation of the LEAN system;

the Attorney-General's Department keep the Committee informed of progress with the development of the Memorandum of Understanding and provide the Committee with updated versions of the Memorandum of Understanding as it becomes available;

the Attorney-General's Department make publicly available the final version of the Memorandum of Understanding used for the administration of the LEAN facility; and

the report on the evaluation of LEAN after two full years of operation be referred to the House of Representatives Standing Committee on Banking, Finance and Public Administration for its consideration. (paragraph 3.53)

### **Management of the system**

The Committee is satisfied the existing structures outlined by the Attorney-General's Department to manage the implementation of the LEAN project are effective at this stage and notes the Department is endeavouring to develop an appropriate management structure for the operational system. However, the adequacy of these structures should be reviewed when the new audit and financial arrangements for the Commonwealth are introduced in mid 1993. The Committee will re-examine the arrangements for managing the system in its final report on the inquiry. (paragraph 3.58)

### **Data on LEAN**

The Committee notes the LEAN facility will contain only publicly available land ownership and company records. Any decision to include additional data on LEAN, or to link LEAN to other data bases, would be a new project and should be considered by Cabinet and be preceded by a full review of the LEAN facility with extensive public consultation.

The Committee concludes, subject to the successful outcome of negotiations with all State and Territory Governments concerning the availability of land ownership data and an improved version of the land data, the scope, timeliness and retrospectivity of the data bases currently proposed for LEAN will meet the stated needs of departments and agencies for law enforcement and protection of revenue purposes. The problems with data quality and the Attorney-General's Department's efforts to redress this situation are noted. (paragraphs 3.75-3.76)

## **Provision of data by the public**

### **The Committee recommends:**

- the Attorney-General's Department ensure the final Memorandum of Understanding with data providers includes a requirement that data providers include a statement on the relevant documents used to collect the original data of the purposes for which LEAN will use data. (paragraph 3.81)

## **Public access and amendment rights**

The Committee notes this important matter of an individual's access to and amendments of records about him/herself is being addressed. However, it is concerned that in the administrative procedures outlined there may be substantial delays in amending incorrect records. It suggests the Attorney-General's Department seek to streamline procedures as much as possible to reduce the time period for amendments. (paragraph 3.85)

### **The Committee recommends:**

- the Attorney-General's Department ensure the final Memorandum of Understanding includes a requirement for individuals to have access to data contained on the LEAN facility about themselves and that such information be provided promptly and at no cost to the individual concerned; and
- the Attorney-General's Department ensure the final Memorandum of Understanding includes a requirement that individuals be given the right to comment on the LEAN data used by an agency in making a decision about them, such as termination of a benefit, before any adverse decision becomes final. (paragraph 3.86)

## **Accessing the system**

The Committee accepts while LEAN is aimed at users with a substantial need, given that fraud control is a departmental or agency management responsibility, other departments and agencies may wish to access the system and as such the number of terminals connected to the facility is substantial. The number of users may expand in the future limited largely by the capacity of the computer facility to accept additional terminals. (paragraph 3.96)

## Security

The security of the system can only really be assessed when the system is operational. At this stage the Committee is satisfied the Attorney-General's Department is giving this matter the priority it demands. (paragraph 3.102)

## Privacy implications

### . Application of the Privacy Act

The Committee considers that the Attorney-General's Department's could have addressed the privacy implications of LEAN earlier thereby allaying some of the concerns privacy groups have about the scheme. (paragraph 3.107)

### . Consultation with the Privacy Commissioner

The Committee recommends:

- . the Privacy Commissioner be more active in defining and publicising his role in projects such as LEAN which have significant privacy implications so that people are more aware of the nature and scope of the Privacy Commissioner's involvement and responsibilities. (paragraph 3.109)

### . Data-matching on LEAN

The Committee recommends:

- . the Attorney-General's Department revise the LEAN data-matching guidelines in the light of criticisms made of those guidelines by the Privacy Commissioner; and
- . all agencies using data from LEAN for data-matching include in their annual report details of compliance with the Privacy Commissioner's data-matching guidelines for LEAN data-matching activities. (paragraph 3.114)

## Privacy Act and State jurisdiction

The Committee recommends:

- . the Attorney-General's Department include in the Memorandum of Understanding for LEAN, administrative procedures which reflect the principles of the Commonwealth's Privacy Act that will apply to State participants in LEAN; and

the Standing Committee of Attorneys-General, urge all State and Territory Governments to develop and adopt a common set of principles for privacy legislation. (paragraph 3.121)

### State Government participation

The Committee is concerned that the LEAN project should have developed to the stage that it has without negotiations for the basic land ownership data for inclusion on the system having been finalised. Since the companies ownership data is already available online there would seem to be little point in proceeding with the development of the system if most of the States and the Territories do not provide their land data. (paragraph 3.127)

### The Committee recommends:

the Attorney-General's Department complete negotiations with the State and Territory Governments on the acquisition of the land ownership data for LEAN as a matter of urgency. (paragraph 3.128)

### Copyright

The Committee is satisfied the copyright issue is being addressed appropriately. (paragraph 3.132)

### LEAN acquisition process

The Committee is concerned the LEAN facility is behind the initial schedule for its implementation. If delay persists the accuracy of the initial cost-benefit analysis will be seriously brought into question as users develop other strategies to achieve the projected savings and advances in technology begin to overtake the technological solutions proposed for LEAN. (paragraph 3.134)

### The Committee recommends:

if there are any further delays in the implementation of the LEAN facility the cost-benefit analysis for the system be reviewed and the needs for the project re-examined with extensive public consultation and participation. (paragraph 3.135)

## **Staffing**

Given the sensitivities associated with privacy and security of LEAN, the Committee sees considerable benefits in retaining the policy and security/audit functions inhouse with half of the staff compliment and the remaining staff outsourced. (paragraph 3.137)

## **Overall conclusion**

The Committee notes that in October 1991 the Attorney-General announced the Government would be proceeding with the LEAN project. While it acknowledges that the development of a national information facility such as LEAN which brings together both Commonwealth and State/Territory data and requires major technological input is a demanding and complex task, as a result of its review the Committee has some major qualifications about the facility and the way in which it is being developed.

Details of those concerns have been outlined in the preceding sections of this report. Most notable are: the cost-benefit ratio for the project in monetary terms is not substantial; negotiations with the State and Territory governments on the provision of the basic land ownership records for the system have not been finalised; some basic privacy concerns remain unresolved; there has been no public consultation on the development of the system; basic arrangements for the administration of the system are incomplete; and the project is now six months behind the initial schedule and not expected to be operational until mid 1993. The Committee would expect these issues to have been resolved before selection of the successful tenderer to provide the hardware and software for the system.

In view of the decision that the LEAN facility should go ahead the Committee has made some major recommendations on the way in which the project should be managed in the future. In particular, the Committee has recommended legislation be put in place within the next two years to govern the operation of the system and the Attorney-General's Department should adopt a more open and public approach in developing the system.

The Committee regards these matters very seriously and considers the Attorney-General's Department should take immediate steps to address the matters of concern raised in this report. While its work on the fraud inquiry continues next year the Committee has asked to see the updates of the MoU for LEAN and wishes to be made aware of other technical developments on the system. If appropriate the Committee will draw additional conclusions regarding the LEAN facility in its final report on this inquiry into fraud on the Commonwealth. (paragraph 3.138-1.141)

# Chapter One

## Introduction

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### Decade of change

1.1 The 1980s was a decade of significant change in the way in which fraud control was managed in Australia. In the early 1980s the Government introduced a number of new initiatives in the tax and law enforcement area to deal with the previously unsuspected and disturbing picture of major criminal activity revealed by various commissions of inquiry. These initiatives included legislative and administrative changes in the tax area, the establishment of the Director of Public Prosecutions (DPP) and the recasting of the role of the Australian Federal Police (AFP) and the National Crime Authority (NCA) to make large scale fraud against Commonwealth revenue a priority. While the beneficial effects of these measures in the fight against fraud were obvious by the mid 1980s, problems existed with dramatic increases in workload and delays in handling fraud matters by the various agencies involved, particularly the AFP.<sup>1</sup>

1.2 The Government subsequently commissioned a major *Review of systems for dealing with fraud on the Commonwealth*<sup>2</sup> and in September 1987 proceeded immediately to implement all but two of the Review's recommendations. The major policy changes were that the principal responsibility for the prevention and detection of fraud rest with the agencies affected and that all agencies accept responsibility for the investigation of 'routine' instances of fraud against their programs, referring only the more complex and large scale frauds to the AFP for investigation. Improved arrangements for consultation and information exchanges between agencies were also introduced.

1.3 In response to the findings of the 1987 Review of Fraud the Australian National Audit Office (ANAO) in 1990 commenced a series of performance audits on fraud against the Commonwealth. In May 1991 the House of Representatives Standing Committee on Banking, Finance and Public Administration had referred to it the Audit Office's report on fraud investigations by the AFP and also decided to seek a more general reference on fraud on the Commonwealth to examine the progress made by departments and agencies in implementing the major policy changes stemming from the 1987 Review of Fraud.

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<sup>1</sup> *Review of systems for dealing with fraud on the Commonwealth*. March 1987. Australia, Special Minister of State. Canberra, AGPS, pp. 17-18.

<sup>2</sup> *Review of systems for dealing with fraud on the Commonwealth*, *ibid.*, 205p.

## **Inquiry into fraud on the Commonwealth**

1.4 On 30 March 1992 the Attorney-General, the Hon Michael Duffy MP, referred the reference into fraud on the Commonwealth to the Committee for inquiry and report. The terms of reference for the inquiry are set out at pages vii-viii. As the inquiry was wide-ranging and affected all ministerial portfolios the comment and approval of all Ministers on the terms of reference were sought prior to their referral.

1.5 As well as the general reference on fraud and the AFP audit report, the Committee also sought and received the referral of two other audit reports on fraud. These reports are listed at page viii. The Committee believes the audit reports will assist its investigation of the law enforcement issues and provide detailed case studies on the way in which fraud is managed by Commonwealth departments.

1.6 In referring the inquiry the Attorney-General defined its scope in two ways which were agreed to by the Committee. First fraud is taken to mean:

inducing a course of action by deceit involving acts or omissions or the making of false statements orally or in writing with the object of obtaining money or other benefit from or of evading a liability to the Commonwealth.<sup>3</sup>

1.7 Second the scope of the inquiry extends to all Government departments and agencies but does not extend to Government Business Enterprises or external fraud on the Australian Taxation Office (ATO). In relation to the Health Insurance Commission (HIC), the scope of the inquiry does not extend to the operation of the *Health Insurance Act 1973* and *National Health Act 1953* insofar as those Acts deal with the referral of providers to appropriate tribunals to deal with claims of overservicing.

### **First report**

1.8 The Committee's first report on fraud on the Commonwealth is on information exchange and privacy issues (Term of Reference 9) focussing on an examination of the Law Enforcement Access Network (LEAN) System being developed by the Attorney-General's Department to assist in preventing and detecting fraud.

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<sup>3</sup>

*Review of systems for dealing with fraud on the Commonwealth, ibid., p. 16.*

1.9 The Committee decided to report first on these matters so that its concerns on LEAN could be taken into account when decisions are made on the implementation of the system. If appropriate the Committee will return to this issue in its main report in early 1993 and would welcome responses to this document.

1.10 An outline of the way in which the Committee conducted its inquiry is at Appendix 1.

1.11 In dealing with fraud, agencies interrelate in three main ways - by consultation, by the exchange or sharing of information, and by the referral of matters to other agencies. In the context of this report information exchange is distinguished from consultation in that it refers to the exchange of detailed information in relation to particular cases for checking purposes. It differs from referrals in that in the latter, cases are passed for action to other agencies such as the AFP for investigation or the DPP or the Australian Government Solicitor for prosecution. The distinctions between these terms reflect the approach adopted in the 1987 Review of Fraud. The distinctions, however, are necessarily blurred.

## 1987 Review of Fraud and information exchange

1.12 Seven recommendations in the 1987 Review of Fraud specifically addressed information exchange. Those recommendations broadly indicate the scope of matters covered by information exchange in the current inquiry. Recommendations 12 and 24 encouraged the use of data-matching between Commonwealth agencies as a strategy to detect fraud. Recommendations 14 and 15 urged all States and the Northern Territory to computerise their corporate affairs and land data records and make them available to other agencies. These two recommendations formed the genesis of the proposal for the development of the LEAN system. Recommendation 23 attempted to facilitate the exchange of location information on clients or former clients between Commonwealth agencies. Recommendations 25 and 26, the only two recommendations not accepted by the Government, sought to improve access to information by law enforcement agencies through proposals to amend the secrecy provisions in specific Commonwealth Acts.

1.13 The privacy implications of information exchange received little attention in the Review as the *Privacy Act 1988* was not in operation at the time and information technology issues were poorly covered.

## Structure of the report

1.14 The remainder of the report deals with those aspects of information exchange where the Committee found problems and addresses ways of dealing with those problems. Chapter 2 provides an outline of information exchange in fraud control, including the use of information technology, and problems with the Privacy Act and secrecy provisions; and chapter 3 examines the LEAN proposal which provides a useful example of how the forementioned issues arise in practice.



## Chapter Two

### Information exchange, fraud control and privacy implications

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#### Information exchange as a strategy in combating fraud

2.1 The Commonwealth Government taken as a whole has access to more information than any other entity in Australia. The 1987 Review of Fraud noted that the trend to allow members of the public greater access to information held by government agencies through the *Freedom of Information Act 1982* had not been matched by an equally strong development towards greater exchange of information between government agencies.<sup>1</sup>

2.2 Despite this, information relating to fraud or suspected fraud is exchanged between agencies for a variety of purposes and by formal and informal means. The information exchange occurs both at a regional and central office level, though with the development of centralised computer systems the transfer of Australia wide computer-based data between agencies has become more frequent.

2.3 The DPP said experience has shown that those who commit fraud against the Commonwealth rarely restrict their activities to one scheme or program. While criminal offenders tend to see the Commonwealth as a single entity the Commonwealth tends to respond as a collection of separate agencies. Individual agencies will often hold information that could assist another agency which is investigating alleged criminal conduct but there needs to be a forum for the exchange of that information with appropriate controls. Even the simple sharing of experience between agencies can advance fraud control.<sup>2</sup>

2.4 The development of cooperative policies for the exchange of information for fraud control was recommended by the 1987 Review of Fraud.

2.5 Information technology has given organisations a data storage, processing and analysis capacity which was previously unknown and unachievable. It has provided opportunities for better fraud control enabling early detection of losses to the Commonwealth and has the potential for improving performance in the investigation and prosecution of fraud.

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<sup>1</sup> *Review of systems for dealing with fraud on the Commonwealth*, *ibid.*, p. 92.  
<sup>2</sup> Evidence, p. S315.

2.6 The Privacy Commissioner suggests that in Australia the impetus for using computer-based methods in the crime and fraud areas came from the well resourced Royal Commissions of the early 1980s, especially the Costigan Royal Commission. He said the drive to continue to exploit these strategies now comes, in the case of the federal government, from the computer-rich areas - the ATO, Department of Social Security (DSS), the NCA as the heir to the Costigan Royal Commission, and more recently the Attorney-General's Department.<sup>3</sup>

2.7 The opportunities to use such technology for fraud control purposes are available to all Commonwealth departments and agencies not just law enforcement agencies since fraud control is a departmental management responsibility.

2.8 The negative side of information technology is that it opens more opportunities for fraud. The first interim report of the Gibbs Committee on the *Review of Commonwealth Criminal Law*<sup>4</sup> provided some major insights into computer-related crime and during the 1980s numerous legislative provisions were enacted concerning computer related offences.<sup>5</sup>

2.9 It is generally agreed that effective fraud control requires departments and agencies not only to investigate individual cases of fraud when they occur but also to actively seek to determine anomalies and patterns of behaviour that indicate fraud may be occurring. The Attorney-General's Department has said:

It is quite clear to those working in the area of law enforcement and fraud control that the future direction of their work is in prevention, rather than passively waiting until individual cases are reported and investigated.<sup>6</sup>

2.10 A proactive approach to fraud control is unlikely to be successful without information exchange, and information technology has become an essential component of the process. One of the major tools being used in this area is computerised data-matching techniques.

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3 O'Connor, K. 1992. The Privacy Act: Relevance for fraud control and investigation. Paper presented to *IRR Fraud Management Series, Combating fraud and corruption in government*. 24 March 1992, Sydney, 14p.

4 Attorney-General's Department. November 1988. *Review of Commonwealth criminal law: Interim report - Computer crime*. Chaired by Right Honourable Sir Harry Gibbs, GCMG, AC, KBE. Canberra, AGPS, 72p.

5 See Tucker G. 1992. *Information privacy law in Australia*. Melbourne, Longman Professional, pp. 144-156.

6 Evidence, p. S235.

2.11 'Data-matching is the technique of comparing the whole or a part of one set of records with the whole or a part of another set ... usually by computer'. Such activities greatly enhance the efficiency of anti-fraud activities by the agencies concerned. For example, if participation in two programs simultaneously is not permitted then the simplest way of detecting fraud is by comparing the records of participants.<sup>7</sup> Data-matching has been used extensively in the United States in this role. The 1987 Review of Fraud recommended, where cost effective, agencies consider matching of information relevant to detect instances of fraud and publicise their matching activities as a deterrent to fraudulent behaviour. Data-matching is a contentious issue with privacy groups fearing the rise of speculative data-matching. It needs to be emphasised that in the concept of fraud control, data-matching is used to identify cases which require further examination. The Attorney-General's Department has stated 'Data-matching tends to be a case selection tool rather than a fraud control tool...'.<sup>8</sup>

2.12 Another area which has had a significant impact in information exchange is the *Cash Transaction Reports Act (1988)*. Under this Act the Australian Transaction Reports and Analysis Centre (AUSTRAC, incorporating the Cash Transaction Reports Agency, CTRA)<sup>9</sup>, receives a considerable amount of financial data from participants in the financial industry. It is able to provide details of suspicious financial activities and major cash movements to a number of Commonwealth law enforcement agencies, the ATO and State police to enable their investigators to trace money associated with crime such as drug trafficking, to target tax evaders operating in the cash economy and to assist in investigation of fraud and crime generally.

2.13 The free flow of information between agencies regarding both individual fraud cases and data-matching activities is restricted by the numerous secrecy provisions in Commonwealth legislation and by the provisions of the *Privacy Act 1988*. It is generally agreed that in fraud control, as in many other areas, a balance has to be struck between privacy considerations and the public interest in not impeding the effectiveness of financial management and law enforcement activities. The difficulty is where to draw the line. It should be recognised that while there is a need to protect the privacy of individuals who provide information to the Commonwealth, that protection effectively reduces the capacity of the Commonwealth to prevent and control fraud against its programs.

2.14 Society has always accepted that a wider range of personal information may be collected in the area of law enforcement than in other areas. This however, has been balanced by the development of explicit legal safeguards for the interests put at risk.<sup>10</sup>

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7 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., p. 98.

8 Evidence, p. 235.

9 As a result of the *Cash Transaction Reports Amendment Act 1991* the CTRA will be renamed AUSTRAC from 6 December 1992.

10 Evidence, p. S1658.

2.15 The restrictions on information exchange are a major concern for departments and agencies in their fraud control activities and a discussion of these matters follows.

## Secrecy provisions

2.16 Disclosure of information held by Commonwealth agencies is subject to over 300 provisions in various Acts, Statutory Rules, Ordinances, Regulations and Statutory Instruments which are generally described as 'secrecy provisions'. Most secrecy provisions have been enacted on an ad hoc basis to protect from general access information which is sensitive because it relates to national security, the business affairs of corporations, partnerships or individuals, or the personal affairs of individuals. The 1987 Review of Fraud noted the form of the secrecy provisions and the information they protect vary widely. Of the three broad categories of secrecy provisions those that prohibit or restrict the disclosure of information are critical to the exchange of information for fraud control purposes.<sup>11</sup>

2.17 There are both general and specific provisions which fit into this category. General provisions, such as the *Crimes Act 1914*, sections 70 and 79 and the *Public Service Act 1992*, section 55, seek to control disclosure of sensitive information by government officials when there is no specific legislative restriction on disclosure. Specific secrecy provisions such as subsection 16(4) of the *Income Tax Assessment Act 1936* specify persons and authorities to whom official information may be released usually for a defined purpose. A number of the specific provisions allow disclosure if the relevant Minister or Secretary certifies the 'disclosure is necessary in the public interest'.

2.18 Since 1976 successive governments have proposed reviews of the secrecy provisions. In 1983 the Attorney-General, in cooperation with all Ministers, initiated a review to determine the necessity and form of secrecy provisions given the introduction of the *Freedom of Information Act 1982*. This review was later directed to all relevant factors in relation to the secrecy of government information. In 1987 the Review of Fraud recommended completion of that review within 12 months with emphasis placed on the removal of constraints upon the flow of information between agencies in relation to fraud. It also recommended legislation to override secrecy provisions to give the AFP, DPP and the NCA access to, and use of, information relevant to indictable offences or civil remedy. Both recommendations were rejected by Government.

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*Review of systems for dealing with fraud on the Commonwealth*, op.cit., pp. 93-94.

2.19 In December 1991 the Gibbs Committee report, *Review of Commonwealth Criminal Law*<sup>12</sup>, also made a number of recommendations relating to the disclosure of Commonwealth information. The Attorney-General's Department said these recommendations are under review.<sup>13</sup>

2.20 The Attorney-General's Department noted there are considerable inconsistencies in the Commonwealth secrecy provisions and that most provisions now predate the administrative reforms, amendments and review regimes that have been brought in over the last 10 to 15 years. The Department said that in reviewing the provisions it is hoping to align them with the freedom of information regime, the Privacy Act, a recognition of the circumstances where it is both to the Commonwealth's advantage and in the public interest that there be sharing of information within the Commonwealth, and other activities. As part of the secrecy provisions review the concept of the Commonwealth as a single entity or a series of separate entities for information exchange purposes is being considered. Also under consideration is the fact that confidentiality provisions in most Commonwealth legislation do not distinguish between general disclosure and disclosure to other Commonwealth departments and agencies.<sup>14</sup>

2.21 The DPP also stresses the restriction which the secrecy provisions and the Privacy Act place on the free flow of information between agencies, inconsistencies in the operation of different secrecy provisions and the lack of logic in a person committing fraud against one arm of government being protected by secrecy provisions that apply to another. It calls for a comprehensive review of all such provisions, in particular whether they are necessary, whether they can be rationalised and if there is scope for greater exchange of information between law enforcement agencies.<sup>15</sup>

2.22 Surprisingly, with the exception of minor references by the AFP and NCA, no other agencies commented on the secrecy provisions during the inquiry.

2.23 On 28 July 1992 the Attorney-General referred an inquiry into 'The Protection of Confidential Personal and Commercial Information held by the Commonwealth' to the House of Representatives Standing Committee on Legal and Constitutional Affairs. This inquiry will look at secrecy provisions in detail.

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12 Attorney-General's Department. December 1991. *Review of Commonwealth criminal law: Final report*. Chaired by The Right Honourable Sir Harry Gibbs, GCMG, AC, KBE. Canberra, AGPS, vii 374p 86p appendix.

13 Evidence, p. S231.

14 Evidence, p. 236.

15 Evidence, p. S315.

## *Conclusion*

2.24 The Committee considers there is general agreement that the need for reform of the secrecy provisions in Commonwealth legislation is long overdue and it is concerned at the limited progress made in addressing this matter during the past 16 years. As a result of the referral of the confidential information inquiry to the House of Representatives Standing Committee on Legal and Constitutional Affairs this Committee has not sought to examine secrecy provisions in detail. The Committee believes this issue demands wide public consultation and supports the Legal and Constitutional Affairs Committee looking into this matter. It suggests the Legal and Constitutional Affairs Committee consider the suggestion of the DPP and examine whether amendments to the secrecy provisions may allow more scope for greater exchange of information between law enforcement agencies while continuing to protect basic privacy considerations.

2.25 The Committee recommends:

following completion of the review of secrecy provisions by the House of Representatives Standing Committee on Legal and Constitutional Affairs the Government give a high priority to implementing appropriate changes to Commonwealth legislation to rationalise secrecy provisions.

## **Privacy issues**

2.26 The *Privacy Act 1988* regulates the collection, retention, access to, correction, use and disclosure of personal information by Commonwealth agencies (unless exempted). Personal information is widely defined to include anything, fact or opinion, that reasonably identifies the information-subject. The fraud control activities of Commonwealth agencies involving personal information take place within the terms of the Information Privacy Principles (IPPs) set out in the Act. The basis of the IPPs, as well as the *Data-matching Guidelines* discussed later, are the eight fundamental privacy principles set out in the *Organisation for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Data Flows of Personal Data* (Paris 1981). The OECD Guidelines (as they are generally known) were adopted in Australia in 1984.

2.27 The Privacy Commissioner notes that many factors affect the extent to which fraud control practices intrude on privacy, and the extent to which particular circumstances warrant privacy considerations being overridden in the interests of more effective fraud control. Factors which he considers important are the evidence for and the scale of suspected fraud in a particular area, the potential importance of the information in preventing or detecting fraud, the use to which the information is put (speculative intelligence gathering is inherently more intrusive than investigations based on reasonable suspicion), the sensitivity and source of the information and the role of the agency using the information.<sup>16</sup>

2.28 The Privacy Commissioner has also noted that when information is used or disclosed for fraud investigation or detection, either on a case by case basis or in data-matching, safeguards should be established to minimise the loss of privacy. Key safeguards are: information should be protected against re-use or re-disclosure, individuals should be informed before any action is taken involving information attained about them, access to information should be limited, information should be kept secure and limited retentive periods for information should be considered.<sup>17</sup>

2.29 The impact of the Privacy Act is considered wide ranging. For example, the NCA points out that although it is not bound by the Privacy Act, the Act impacts upon its work where information is required from bodies bound by it.<sup>18</sup>

2.30 For some time there has been disagreement between the Attorney-General's Department, other departments and agencies and the Privacy Commissioner regarding the interpretation of the Privacy Act and wider privacy issues for fraud control purposes. A number of areas of uncertainty have been resolved but some major difficulties remain. A discussions of those difficulties follows.

#### **Scope of law enforcement and protection of revenue exemptions in IPPs**

2.31 There is a difference of opinion between the Attorney-General's Department and the Privacy Commissioner on whether the exemption allowing the use and disclosure of information, if it is reasonably necessary for law enforcement or protection of revenue purposes, should be applied on a case by case basis.

2.32 The IPPs do not allow personal information to be used for a purpose other than for which it was collected (or a directly related purpose) or disclosed unless:

the individual has consented to the use or disclosure; or

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16 Evidence, pp. S65-S67.

17 Evidence, p. S70.

18 Evidence, p. S1111.

one of a number of other exceptions listed in IPPs 10 and 11 is met (that is, limits on use and disclosure of personal information respectively).

2.33 Agencies involved in detecting and investigating fraud are unlikely to see it as appropriate to limit use and exchange of information to occasions when the individual provides consent. They tend to rely on the exceptions in IPPs 10 and 11 which allow use or disclosure of information if it is reasonably necessary for enforcement of the criminal law, or of a law imposing a pecuniary penalty, or for the protection of public revenue (IPP 10(1)(d) and 11(1)(e)).

2.34 The Attorney-General's Department suggests that in fraud cases the traditional view of approaching crime on a case by case basis is difficult since much of the effort needs to go into ascertaining whether an offence has been committed. To say that departments can only exchange information if there is a 'prior suspicion' of a particular offence lessens a department's capacity to protect against fraud. Rather, the Attorney-General's Department advocates the use of the more subjective test of what is a reasonable balance between privacy interests and protection of the nation's revenue. The Department says it:

... routinely advises agencies that it is not appropriate to give a 'blanket' interpretation of the criminal and revenue protection exemptions in the sense of attempting to state, in the abstract, whether these exemptions apply 'broadly' or 'narrowly'. The question of whether a contemplated use or disclosure is 'reasonably necessary' is a question of fact to be assessed in the particular circumstances of each contemplated use or disclosure not on the basis of presumptions such as a 'prior suspicion' test.<sup>19</sup>

2.35 A number of Commonwealth departments and agencies, particularly those involved in law enforcement and the revenue collecting agencies, support the view that the Privacy Act is too restrictive on the exchange of information for fraud control purposes.<sup>20</sup>

2.36 The Privacy Commissioner notes that in specific case investigations it is feasible and desirable that consideration should be given to whether each individual disclosure is justified, in terms of the requirements of the case. However, agencies increasingly want to access or search whole databases, rather than making individual requests for specific items of information.<sup>21</sup>

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19 Evidence, pp. S232-S233.

20 Evidence, pp. S315, S336, S356 and S998.

21 Evidence, p. S68.

2.37 The Commissioner believes agencies tend to favour very permissive interpretations of the exemptions and that interpretations of that sort are counter to the intention of the Privacy Act. The Privacy Commissioner's view is:

... the terms of the exceptions require an agency to ensure that each proposed use or disclosure of information which it holds is individually considered, and that any action is justified against a test of 'reasonable necessity'. The decision whether to use or disclose information should normally be taken in the context of each affected individual's situation.<sup>22</sup>

2.38 He suggests there is a strong need to clarify the purposes of the exceptions.

2.39 The 1987 Review on Fraud in commenting on the IPPs, which were under consideration at the time and have since been enacted as part of the Privacy Act, stated:

The IPPs also permit disclosure where it is reasonably necessary for the enforcement of the criminal law or a law imposing a pecuniary penalty or for the protection of the public revenue, but it is appropriate to interpret this as meaning 'disclosure in individual cases', not as an invitation to wholesale disclosure of the type involved in most data-matching exercises.<sup>23</sup>

2.40 Discussions on this matter have continued since 1989 without satisfactory agreement being reached. This is having a negative impact on the operations of some agencies in their fraud control work. For example in May 1991 in its audit report on the AFP the ANAO pointed out the detrimental effects of the situation on the capacity of the AFP to detect and investigate fraud (and other matters) and recommended an agreed view on the exception be obtained from the Privacy Commissioner and Attorney-General's Department. In June 1992 the AFP advised that officers of the Attorney-General's Department had declined to pursue the matter because in their opinion an agreed view cannot be reached.<sup>24</sup>

2.41 The Committee is extremely concerned that the interpretation of the application of IPPs 10 and 11 to law enforcement and revenue protecting activities remains unresolved after nearly four years.

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22 Evidence, pp. S73-S74.

23 Review of systems for dealing with fraud on the Commonwealth, op. cit., p. 102.

24 Evidence, pp. S5 and S144.

2.42           **The Committee recommends:**

the Attorney-General's Department and the Privacy Commissioner give a high priority to developing an agreed opinion on the interpretation of the application of Information Privacy Principles 10 and 11 to law enforcement and protection of public revenue matters.

**Use and disclosure required or authorised by or under law**

2.43           Another exception in the IPPs relates to allowing disclosure and use of information if it is required or authorised by or under law, that is IPP 10(1)(c) and 11(1)(d). Many government agencies have powers under legislation to disclose or obtain personal information, for example the *Income Tax Assessment Act 1936*, section 264 and the *Social Security Act 1991*, section 1304. The Privacy Commissioner has said those provisions confer on the Commissioner for Taxation and the Secretary for DSS sweeping powers to obtain and use information for very broad purposes with limited or no restriction as to the purpose or need for which the information is required. This has the potential to exempt those agencies from the principles established by the Privacy Act in an even more uncontrolled way than for the IPPs mentioned above. The Privacy Commissioner believes those provisions need to be reviewed.<sup>25</sup>

2.44           More recently the Privacy Commissioner has raised the possibility that:

the problem could, at least in part, be dealt with by amending IPPS 10(1)(c) and 11(1)(d) so that only a specific requirement or authorisation in another law would constitute an exemption from IPPs 10 and 11.<sup>26</sup>

2.45           **The Committee recommends:**

a review of the legislation which allows use and disclosure of information in circumstances where it is required or authorised by or under law.

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<sup>25</sup> Evidence, pp. S74-S75.

<sup>26</sup> Evidence, p. S1760.

## Data-matching guidelines

2.46 The 1987 Review of Fraud identified a number of ad hoc arrangements between various Commonwealth agencies for data-matching. More recently many of these types of arrangements have been formalised with the introduction of the Tax File Number (TFN) system by the ATO in 1988, and since January 1991 DSS and other assistance agencies (Department of Veterans' Affairs (DVA), Department of Employment, Education and Training (DEET) and the Department of Health, Housing and Community Services (HHCS)) have been able to use the TFN system for data-matching purposes. Some agencies involved in data-matching, such as DSS, provided an outline of their major data-matching activities.

2.47 The Privacy Commissioner believes data-matching is so intrusive on privacy, even when used for a purpose recognised in the IPPs, that elaborate controls on its use are required. It is therefore highly desirable that appropriate mechanisms be in place to consider whether each proposed overall data-matching program is justified and legally authorised.<sup>27</sup> As a result in July 1992 following a process of extensive consultation from November 1990 to May 1992 the Privacy Commissioner issued *Data-matching Guidelines*<sup>28</sup> under section 27(1)(e) of the Privacy Act.

2.48 The guidelines aim to ensure that data-matching programs are:

- . only undertaken where there are substantial social benefits which outweigh the privacy of individuals in relation to their personal information;
- . conducted in a manner which minimises any further and unnecessary intrusion into privacy and avoids unfairness as denial of natural justice; and
- . independently monitored as to their compliance with these guidelines and are regularly evaluated regarding their continued justification.

The guidelines are designed for large scale automated matching programs which involve more than 5000 individual records.

2.49 The final version of the guidelines has left considerable authority with the agency to make decisions about the conduct of data-matching programs and giving public notice and the like, rather than those activities being under the control of the Privacy Commissioner as suggested in earlier versions.

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<sup>27</sup> Evidence, pp. S69-S70.

<sup>28</sup> Privacy Commissioner. June 1992. *Data-matching in Commonwealth administration: Report to the Attorney-General*. Sydney, Human Rights Australia, viii 42p. appendices.

2.50 The guidelines are voluntary and an interim step to their inclusion as a new part of the Privacy Act. To date two key departments involved in data-matching - DSS and DVA - have adopted the guidelines on a voluntary basis and Defence has also agreed to comply. There has been strong resistance from the 'law enforcement' and collection of public revenue groups of agencies with the ATO and AFP declining to comply, DEET undecided, no response from the Attorney-General's Department as yet and the DPP not involved in data-matching but making no commitment to comply.<sup>29</sup>

2.51 The Attorney-General's Department said the guidelines are effectively a statement by the Privacy Commissioner of what is desirable from his perspective. The Department makes a distinction between the guidelines in the Act and those recently released by the Privacy Commissioner. The Department says it is cautious about adopting a general set of guidelines which will automatically apply in all circumstances. It believes data-matching proposals should be examined individually on their merits in order to determine what the appropriate safeguards are outside those specified by the Act.<sup>30</sup>

2.52 Some agencies such as the DPP and DEET believe the privacy implications of data-matching can be overstated particularly since the purpose of the matching is not to prove fraud, but only to identify cases which may require further examination.<sup>31</sup>

2.53 The Committee notes the Privacy Commissioner proposes to monitor the operation of the voluntary guidelines for 12 months and will then make a recommendation to the Attorney-General regarding their incorporation in the Privacy Act.

#### Notifying the public of fraud control practices

2.54 The 1987 *Review of Fraud* recognised the importance of deterrence in fraud control and recommended, where appropriate, informing the public of information practices such as data-matching and other techniques aimed at detecting fraud. Departments and agencies outlined practices in this regard. The Committee supports the continuation of this practice.

2.55 The Privacy Commissioner stresses that notifying individuals when information is collected of the purposes for which it will be used and by whom is also desirable from a privacy viewpoint. He believes the public's fears regarding the exchange of personal information will be substantially allayed if people perceive Commonwealth departments and agencies are open in revealing their information practices.<sup>32</sup>

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29 Privacy Commissioner, June 1992. op. cit., pp. iii-v.

30 Evidence, pp. 233-234.

31 Evidence, pp. 299 and S333.

32 Evidence, p. S70.

2.56 The Committee recommends:

where it is appropriate to do so, that agencies continue to publicise in general terms their data-matching and other activities used to detect fraud.

#### Use of information derived from public registers

2.57 Increasingly computers are being used to bring together in a single data base information previously scattered in specific purpose public registers through the community. It is argued that because this information is already in the public domain there is no privacy issue in its compilation in a single data base. The Privacy Commissioner said arguments were put in this manner regarding the development of LEAN. The Privacy Commissioner's view, however, is that once the data is brought together more is known about the individual and more can be done by way of matching and analysis of that data. Furthermore, a record is created which never previously existed in public form.<sup>33</sup>

2.58 The Commissioner also suggests that systems such as LEAN:

... illustrate a wider issue [of] whether previous decisions to allow access to certain records need to be reviewed as a result of advances in information technology. Computerisation has the capacity radically to improve the speed and convenience of access to public registers, and in the process to create use possibilities that did not exist previously.<sup>34</sup>

This has the effect of changing the privacy implications of the data.

2.59 In April 1992 the Privacy Commissioner prepared a paper on the *Re-use of Public Register Information*<sup>35</sup> and referred it to the Privacy Advisory Committee for comment. Members of that Committee expressed concerns on the matter and supported the Privacy Commissioner's approach to the Attorney-General's Department on the specific issue of share register information.<sup>36</sup>

2.60 The Committee believes this matter should continue to be discussed.

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33 Evidence, p. S72.

34 Evidence, p. S72.

35 Evidence, pp. S97-S103.

36 Evidence, p. S1759.

## Unauthorised disclosure of personal information

2.61 In August 1992 the NSW Independent Commission Against Corruption (ICAC) issued its *Report on unauthorised release of government information*.<sup>37</sup> The investigation disclosed a massive illicit trade in government information including Commonwealth government information and involving Commonwealth public officials. Departments and agencies named in the report are DSS, Department of Immigration and Ethnic Affairs, Telecom, ATO, Australia Post and Medicare. The evidence suggests the most commonly traded information from a Commonwealth source has come from DSS and this information played a prominent role in the overall information trade.

2.62 On 21 August 1992 the Attorney-General asked the House of Representatives Standing Committee on Legal and Constitutional Affairs to broaden its inquiry on the protection of confidential information held by the Commonwealth and look into the implications for the Commonwealth administration of the ICAC report. As a result of this Committee's desire not to overlap with the work of the Legal and Constitutional Affairs Committee it has not investigated the matters raised by the ICAC except for receiving some comments on DSS's involvement.<sup>38</sup>

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37 Independent Commission Against Corruption. August 1992. *Report on unauthorised release of government information*. 3 vols. Sydney, ICAC, xvi 1251p.

38 Evidence, pp. S1702-S1704.

## Chapter Three

### Law Enforcement Access Network

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#### Introduction

3.1 The Law Enforcement Access Network (LEAN) will provide a computer facility to give government agencies with law enforcement and revenue protection responsibilities access to several data bases containing publicly available Australia-wide company records and land ownership data for law enforcement and protection of revenue purposes.

3.2 The idea for LEAN was developed by the Federal Justice Office from the requirements of recommendations 14 and 15 in the 1987 Review of Fraud. A range of options was canvassed by the Attorney-General's Department prior to the LEAN solution though no specific alternatives to LEAN were put to the Committee.<sup>1</sup>

3.3 Although information technology is used extensively overseas for law enforcement and protection of revenue purposes, the Attorney-General's Department said there are no specific parallels to LEAN.

3.4 The key elements of the LEAN proposal are a central computer facility, operated by the Attorney-General's Department, holding several data bases of companies and land ownership records which are widely publicly available. The central computer will provide a gateway to terminals in the user agencies and will have the capacity to use sophisticated search and investigation techniques across the available data bases.

3.5 The company records data will be provided by the Australian Securities Commission (ASC) and land ownership data will be provided by State and Territory land departments.

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<sup>1</sup>

Evidence, pp. 236-238.

3.6 Discussions with potential participants and the computer industry on the likelihood of the LEAN project commenced January 1991. Between February and August 1991 a pilot system was evaluated by seven government agencies involved in law enforcement and protection of revenue work (Attorney-General's Department, AFP, DPP, ATO, Defence, DEET and DSS) to ascertain whether the LEAN concept was viable. The pilot system was hosted and managed on a day-to-day basis by the Attorney-General's Department and was cooperatively controlled by the participating agencies. *A Report on the Evaluation of the LEAN Pilot* prepared by the Attorney-General's Department and agencies participating in the pilot commented favourably on the system.

3.7 On 21 October 1991 the Attorney-General announced the Commonwealth would be proceeding with the LEAN project.

3.8 The Attorney-General's Department has said:

The Government is implementing LEAN because it has a responsibility to protect the community from those who break the law and attempt to rip off the taxpayers through welfare cheating, tax evasion and other fraudulent means.<sup>2</sup>

3.9 Two computing tenderers currently are being considered to provide the LEAN facility.

3.10 LEAN has been one of the more controversial issues raised with the Committee in the course of its inquiry. A discussion of the major concerns follows.

## The need

3.11 With the exception of some elements of the Victorian land sales data which are not wholly publicly available<sup>3</sup>, 98-99 per cent of the company and land ownership records on LEAN are publicly available. Most of the company data and some of the land data is available via electronic means. For example the ASC's companies data base ASCOT is available on five public access networks namely Ferntree Information, Info-One International, the Centre for Information

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<sup>2</sup> Attorney-General's Department. May 1992. *Law Enforcement Access Network (LEAN): Briefing paper*. Canberra, Attorney-General's Department. p. 3.

<sup>3</sup> The availability of some elements of the Victorian land sale information, such as vendor's name and sale price, is restricted by legislation to specific groups such as local councils and real estate agents. As LEAN will only contain publicly available data the Attorney-General's Department is discussing with the Victorian Government the options for handling this matter, for example, non-inclusion of the data on LEAN or the Victorian Government making the data publicly available.

Technology and Communications (CITEC), Telecom's Discovery and the Overseas Telecommunications Corporation's (OTC's) DIALCOM. Queensland land data also is available through CITEC. While land data from most other States and Territories is available online from the individual land department offices it is not yet available from public access networks. However, it is not inconceivable this access will be available in the future.

3.12 The principal participants in the LEAN project (discussed in more detail at paragraph 3.89) have been using that data for some time where fraud has been suspected, though access to the records often by manual searches has been time consuming and not very comprehensive. It has involved in some cases visits to individual State and Territory land titles and ASC offices.

3.13 The LEAN facility will not replace current methods of accessing data. Rather, it provides significantly faster and improved access to land records with increased access points. It also allows the land records to be searched on a national basis and the results of the land and companies searches to be combined and cross-matched. It provides another and possibly cheaper avenue for access to companies records. The Attorney-General's Department also stresses that LEAN assists:

... the investigator in tracking through deliberate obfuscations in the records using fuzzy matching, weighted matching and alias tagging etc; and enables searches and matches to be done without any burden on the record keeper's computer facilities.<sup>4</sup>

3.14 The pilot project revealed a range of potential uses of the LEAN facility. The principal ones being that LEAN will enable users to get behind the 'corporate veil' of financial and company affiliations, check contractors dealing with the Commonwealth, verify statements of assets provided in determining eligibility for benefits programs, trace property assets, and enhance the taxation collection function, in particular compliance with capital gains tax provisions in the Income Tax Assessment Act.<sup>5</sup>

3.15 More specifically, the ATO said it would use LEAN in a range of programs with its greatest use in the taxpayer audit area to check compliance with capital gains legislation where there is a non-compliance amounting to about 50 per cent. Defence expects to use LEAN for checking commercial contractors and tightening up eligibility criteria for personnel entitlements of both civilian and service personnel particularly housing, travel and living away from home allowance. In the fraud area the AFP would use the facility for mapping out how funds and property are moved as part of fraudulent activity as well as in other AFP work such

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<sup>4</sup> Evidence, p. S236.

<sup>5</sup> Evidence, pp. S235-S236.

as investigating money laundering offences and tracing assets accrued as a result of criminal activity. DEET proposes to use LEAN for checking individual statements of assets but at this stage it intends to confine its use to Austudy and the Assistance for Isolated Children schemes. DSS will use it to detect undisclosed real estate holdings.<sup>6</sup>

3.16 Primarily LEAN will be a facility for accessing and searching the data bases on the system in one off searches. The ATO, DEET and Defence, however, propose to use the facility for data-matching purposes to match the public data against their own files. While not seeking access to the LEAN online system, DSS proposes to use LEAN as a source of land data which will be copied onto the DSS computers and matched against DSS client records.

3.17 Support for LEAN from potential participants has not been total. The Australian Customs Service (ACS) described its view of LEAN as '... cautious at this stage, because we really have no indication of the costs involved.' It did not participate in the LEAN pilot as it already had access to land and company data from other systems. The ACS said its decision to join LEAN would depend on the costs and the level of access required to the system.<sup>7</sup> The DPP said it did not anticipate using LEAN often, though it would be useful in its civil remedy cases.<sup>8</sup>

### *Conclusion*

3.18 The main users of LEAN seem convinced of the need for the facility, though some potential users are cautious about the costs of the system.

## **Financial issues and cost-benefit analysis**

### **Costs**

3.19 The appropriations for LEAN have been \$2.957 million in 1991-92, \$19.2 million in 1992-93 and \$6.6 million in 1993-94.<sup>9</sup> Because of delays in the commencement of the project some 1991-92 funds were carried over to the next financial year. Some additional confidential costing information on the LEAN project was provided by the Attorney-General's Department.

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6 Evidence, pp. 204, 304-305, 308, S1152.

7 Evidence, pp. 177-178.

8 Evidence, p. 483.

9 *Program performance statements 1991-92. Attorney-General's Portfolio: Explanation of additional estimates 1991-92.* March 1992. Canberra, Attorney-General's Department, p. 37. and *Budget statements 1992-93. Budget paper no.1.* Canberra, AGPS, 1992. p. 3.209.

3.20 The Attorney-General's Department also advised the estimated costs to each agency linking into LEAN will be about \$90,000 plus \$10,000 per annum running costs. This includes hardware, software, cabling and telecommunication line establishment costs and ongoing line leasing costs. The actual cost for each agency will vary depending on which tender is successful and the type of system the agency connects to LEAN. The figures were included under agency costs in the cost-benefit analysis. DEET costs also include additional staff costs. The Attorney-General's Department's costs are lower due to the LEAN system being housed within the Department's existing computer centre.<sup>10</sup>

3.21 It should be noted that some of the costs of linking LEAN to the user computer networks are included as part of the overall establishment costs of the system.

### Cost-benefit analysis

3.22 A cost-benefit analysis of the LEAN system has been prepared and was included in Cabinet documentation on LEAN. It remains the subject of Cabinet confidentiality.<sup>11</sup> Those estimates are an amalgam of the individual figures from the various participants. Although agencies were able to outline their needs for LEAN and the expected benefits, only the ATO provided estimates of savings. It stated:

It is very difficult to estimate, but we have conservatively estimated it to be \$20 million per year of additional revenue from using LEAN.<sup>12</sup>

... for every dollar we spend on the law enforcement side, we return \$10 to the Government. It is certainly worth going down that path.<sup>13</sup>

3.23 The 1992-93 Budget Statements showed expected savings from LEAN in 1992-93 of \$2.4 million by DSS, \$1.7 million by DEET and \$0.7 million by Defence.<sup>14</sup>

3.24 Recent informal advice from the Attorney-General's Department is that the project has a cost-benefit ratio of about 1:2 over a period of some five years.

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10 Evidence, p. S1676.

11 Evidence, pp. 249, S1676.

12 Evidence, p. 305.

13 Evidence, p. 307.

14 *Budget statements 1992-93*, op.cit., pp. 3.27, 3.41 and 3.86.

3.25 The accuracy of the expected savings from data-matching have recently been brought into question since the budget statements have revealed significant shortfalls in savings of some \$300 million from data-matching by DSS, DVA and DEET using the TFN. The Attorney-General's Department claims this situation has no bearing on LEAN since the LEAN savings were formulated after a pilot project and were therefore based on actual results.<sup>15</sup>

### *Conclusion*

3.26 Based on the information that has been provided the cost-benefit ratio is not substantial in monetary terms with benefits largely derived from the ATO's data-matching activities. While such benefits would be achieved initially over the five years of the cost-benefit analysis it could be expected they would decrease with time as compliance with capital gains tax provisions, the major area of savings identified by the ATO, increases.

### *User pays regime*

3.27 The Government in its decision on LEAN has required that a user pays regime be adopted after two years of full operation. The philosophy of the regime will be cost recovery. At this time a two stage charge is envisaged. The first component is a periodic subscription based on the number of terminals supported for an agency by the LEAN facility and the second is for inquiries made on the facility based on CPU usage or connect time.<sup>16</sup> Few complaints were received on this arrangement from the potential users of the system though some, such as the ACS, were cautious about costs and the Attorney-General's Department noted that:

It is of particular concern in the law enforcement area, the argument there being that the public interest is such that user pays is an inappropriate way to proceed in this area.<sup>17</sup>

### *Conclusion*

3.28 The Committee supports the introduction of the users pays regime after two full years of operation of LEAN.

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<sup>15</sup> Head, B. 31 August 1992. Savings by data matching \$300m short of forecast. *Financial Review*.

<sup>16</sup> Evidence, p. S1676.

<sup>17</sup> Evidence, p. 252.

## Consultation

3.29 In developing the LEAN proposal, during the pilot project and through the tender evaluation process the Attorney-General's Department has had extensive discussions with potential users of the system, the Commonwealth and State data providers, the departments and agencies on various LEAN committees, and several other technical computing groups. The Attorney-General's Department also has discussed LEAN at various fraud control conferences and made available several documents such as the report on the LEAN pilot project, a LEAN factsheet, the request for tenders and some journal articles.<sup>18</sup>

3.30 The Committee commends the Attorney-General's Department's efforts in this area.

3.31 Unfortunately, these public sector and technical forum discussions have not been matched by wider public consultation on the system. In its submission the Australian Privacy Foundation (APF) made the very strong assertion:

The LEAN system has been constructed outside of the authority of law, and entirely in secret. No public consultation has taken place, and a gag appears to have been placed on public comments by departments.<sup>19</sup>

3.32 The Privacy Commissioner, while acknowledging "This proposal has not been secret in the strict sense"<sup>20</sup>, questions the adequacy of the public consultation process. He stresses the importance of the 'openness principle' that there should be openness by record keepers as to new record keeping practices and an opportunity given for public consultation on those processes. This principle is one of the OECD Guidelines and is embodied in the data-matching guidelines and IPP 5 - information relating to records kept by record-keeper.<sup>21</sup>

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Attorney-General's Department. May 1992, op. cit., 7p.  
Attorney-General's Department. October 1991. *A report on the evaluation of the LEAN pilot*. Canberra, Attorney-General's Department, 23p.  
Attorney-General's Department. January 1992. *Request for tender for supply of hardware, software and services to implement a Law Enforcement Access Network (LEAN) for the Attorney-General's Department*. Canberra, Attorney-General's Department, 123p.  
Roberts, P. February 1992. Fraud control, Commonwealth initiatives and LEAN. *Australian Banker* 106(1), pp. 21-30.

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Evidence, p. S1142.

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Evidence, p. 264.

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Evidence, p. 263.

3.33

The Attorney-General's Department rejects the criticisms saying:

It is our impression that there has already been a fair amount of public comment on this system. Any suggestion that it has been developed in secret is not correct. There have been a number of public announcements about the LEAN system, both from the Attorney-General and from other officers of the Department. There have been a very considerable number of media stories about it, public reactions to it and things of that kind.<sup>22</sup>

We are in a tricky situation in these circumstances because we are sitting here implementing government decisions. In a sense, it is not up to us to canvass the merits of the overall decision that has been made by government in a public forum. It is appropriate for us to explain the decision, if that is appropriate, or to clarify some element of it, but it is not up to us to run some kind of public acceptability campaign for a decision that has been taken by government.<sup>23</sup>

3.34

The five departments and agencies (AFP, ATO, DSS, DEET and Defence) which participated in the Committee's panel discussion by users of the LEAN system denied that there had been any attempts to gag departmental comment on LEAN.<sup>24</sup>

### *Conclusion*

3.35

While a Government decision may have been made about the LEAN facility, this does not preclude a need for consultation about the system's development. The Committee concludes that while public debate may well have occurred around LEAN, there has been no direct avenue for public input into the Attorney-General's Department's development of the system. The Attorney-General's Department has not been proactive in disseminating information about the system, but there are no grounds for believing departments have been gagged in commenting on LEAN.

3.36

The Committee recommends:

**the Attorney-General's Department adopt a more open approach to the development of the LEAN system and be more active in disseminating information about the system to the public.**

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Evidence, pp. 229-230.

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Evidence, p. 230.

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Evidence, p. 301.

## Administration and accountability

3.37 Closely aligned with criticism on public consultation have been the related issues of administration and accountability of LEAN.

3.38 The administrative versus legislative basis for the system was raised by the APF which stated:

... it appears that the LEAN system will not be governed by an Act of Parliament, and thus there will be only very limited legal authority or parliamentary scrutiny of the scheme.<sup>25</sup>

3.39 The APF has attempted to draw parallels between LEAN and the need for legislative control over the TFN system and the Data-matching (Assistance and Tax) Program, involving DSS, DVA, DEET, ATO and HHCS.

3.40 The Attorney-General's Department believes the development of LEAN is an administrative matter and did not need legislative authority.<sup>26</sup>

3.41 The Privacy Commissioner has been:

... disinclined to assert a view on that matter to date ... [but noted] You cannot have every data base arrangement of the Commonwealth submitted to and run by law. However, there may be some point along the path at which you say that the law should apply. That line is difficult to draw.<sup>27</sup>

3.42 As LEAN has no legislative base it will be managed by administrative mechanisms. The Attorney-General's Department advises there will be a single agreement which will cover all participants of the LEAN facility. This common agreement will be in the form of a Memorandum of Understanding (MoU) covering data providers, user agencies and the Federal Justice Office (as project and facility manager). It will encompass a wide range of procedural issues dealing with the roles, rights, responsibilities and obligations imposed on the parties to the document.<sup>28</sup> A draft document, prepared in consultation with representatives of the Privacy Commissioner, is being discussed initially with Commonwealth participants and later with non-Commonwealth participants. The draft document contains a wide range of items including:

admission requirements for users;

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25 Evidence, p. S1143.  
26 Evidence, p. 231.  
27 Evidence, p. 265.  
28 Evidence, p. S1672.

- . exit requirements for users;
- . termination date of the MoU;
- . security liaison officers;
- . usage monitoring and logging;
- . limiting use of LEAN to law enforcement or fraud control activities;
- . publicising the use of LEAN;
- . verifying data before adverse administrative action;
- . reporting data of suspect quality;
- . training;
- . creating a Board of Management;
- . dispute resolution procedures; and
- . system evaluation.

3.43 Without legislative control the MoU is the principal document guiding the development and operation of the system and thus its coverage of a wide range of matters.

3.44 The Attorney-General's Department outlined the general contents of the MoU and eventually released to the Committee the draft document *Law Enforcement Access Network: Conditions for participation*.<sup>29</sup> The Department stressed that at this time the terms and conditions outlined are still being negotiated with participants and are in a state of flux reflecting differences of view between the parties in some quite significant areas.

3.45 There has been some debate about the suitability of an MoU. MoUs are widely used throughout the Commonwealth's fraud control activities (such as between the AFP and agencies referring cases to it and between the DPP and referring agencies) but with varying degrees of success.<sup>30</sup>

3.46 The Privacy Commissioner, while supporting the procedural discipline the MoU provides, stresses:

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<sup>29</sup> Evidence, pp. S1741-S1742.

<sup>30</sup> Evidence, pp. 84-85, 476, S4-S5 and S1022.

... at the end of the day it is really a set of administrative understandings. It is not, as I perceive it, a legally binding regime... An infraction of a Memorandum of Understanding would at the end of the day be left to any sanctions that the Commonwealth, as the principle party to the Memorandum of Understanding, sees appropriate to visit...<sup>31</sup>

3.47 Given the Attorney-General's Department sees the development of LEAN as an administrative matter the principal accountability document is the MoU.

3.48 As well there are a number of accountability mechanisms all departments work under such as reporting in annual reports to their Minister and reporting to Parliament through portfolio performance statements and appearing regularly before Senate Estimates Committees and other parliamentary committees. LEAN will be subject to those standard accountability processes.

3.49 In addition, the Attorney-General's Department has said the LEAN facility will be evaluated after two full years of operation. As noted above details of the evaluation system will be included in the MoU.

### *Conclusion*

3.50 *The Committee notes that at this time LEAN is not governed by an Act of Parliament. Projects such as LEAN which raise significant privacy concerns should be clearly defined publicly and open to public scrutiny. The Committee believes LEAN should have legislative control and such legislation should be put in place within the next two years.*

3.51 During the preparation of the legislation the principal accountability document will be the MoU and as such the Committee wishes to see updated drafts of that document and believes the final version should be made publicly available. The development of legislation does not preclude the need for the MoU particularly during the next two years, though after that time the scope of its contents may be curtailed because of legislation. On the basis of the draft document the Committee has seen it is confident the MoU is seeking to address most of the matters which should be included.

3.52 The forementioned arrangements as well as the general accountability mechanisms outlined should be adequate for monitoring the LEAN facility and an evaluation of the system after two full years of operation is appropriate.

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Evidence, pp. 255-256.

3.53

The Committee recommends:

legislation be put in place within the next two years to govern the operation of the LEAN system;

the Attorney-General's Department keep the Committee informed of progress with the development of the Memorandum of Understanding and provide the Committee with updated versions of the Memorandum of Understanding as it becomes available;

the Attorney-General's Department make publicly available the final version of the Memorandum of Understanding used for the administration of the LEAN facility; and

the report on the evaluation of LEAN after two full years of operation be referred to the House of Representatives Standing Committee on Banking, Finance and Public Administration for its consideration.

### Management of the system

3.54 The Attorney-General's Department has primary responsibility for LEAN because of its fraud policy and prevention work and law enforcement responsibilities. It is desirable to have the LEAN facility coordinated centrally because of the variety of system participants.

3.55 At present the overall management of the LEAN project is by a Steering Committee chaired by the Attorney-General's Department and with the most interested participants in the project as members, that is, DSS, ATO, Defence, AFP, DPP, DEET, NCA and the Australian Bureau of Criminal Intelligence. The Privacy Commissioner has observer status. Oversight of the acquisition of the technical facility for LEAN is provided by the Acquisition Council. The Council is also chaired by the Attorney-General's Department with members from both the fraud policy area and the computing side of the department on the Council and some representatives of users, namely DSS, AFP and the ATO, together with representatives from the Department of Administrative Services (DAS), the Department of Finance, the Department of Industry, Technology and Commerce and AUSTRAC, with the Australian Bureau of Statistics with observer status.

3.56 For the management of the operational system the Attorney-General's Department envisages the Steering Committee will evolve into a Board of Management with some user involvement and a new user advisory committee structure will be established.<sup>32</sup> Given State government involvement in the project there will be State representation as well. Details of proposed membership of the Board of Management are being defined in the MoU.

3.57 In mid 1993 new audit and financial arrangements for the Commonwealth are to be introduced which could impact on the operation of the LEAN facility.

### *Conclusion*

3.58 The Committee is satisfied the existing structures outlined by the Attorney-General's Department to manage the implementation of the LEAN project are effective at this stage and notes the Department is endeavouring to develop an appropriate management structure for the operational system. However, the adequacy of these structures should be reviewed when the new audit and financial arrangements for the Commonwealth are introduced in mid 1993. The Committee will re-examine the arrangements for managing the system in its final report on the inquiry.

### **Data on LEAN**

3.59 As previously stated company records and land ownership records will be included on LEAN. The company records data will be provided by the ASC and consist of records held by the States and Territories until 1991 when the ASC was established and ASC data from 1991 onwards. Land ownership data will be provided by various State and Territory lands departments. No agreements have been signed for the provision of either data set at this stage. This matter is taken up in more detail at paragraph 3.122.

3.60 The scope of the land data proposed for LEAN is shown by the list of data elements at Table 1. These data elements are the subject of negotiations between the Attorney-General's Department and the NSW Government. For companies the Attorney-General's Department advised the data sought will be that necessary to gain a complete picture of the company structure and relationships. Table 1 also provides a list of the data elements being discussed with the ASC. A list of the data elements available on the system will be specified in the MoU.

3.61 The decision on the coverage of LEAN was made by government in agreeing to the project.

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Evidence, p. 239.

**TABLE 1: DATA TYPES BEING CONSIDERED FOR THE LEAN SYSTEM**

New South Wales Land Data - Data Types	Australian Securities Commission - Data Types
<p>Address            Area and dimensions of property            Common property indicator            County            Crown land indicator            Estate type            Improvement code            Land use code            Local Government Area            Owner(s) name(s)            Owner type            Parish            Plan/Section/Lot numbers            Property name            Strata scheme            Valuation base date            Valuation number            Volume and folio</p>	<p>Organisation            Number            Name            Class            Sub-class            Status            Principal activity            Start date            End date            Previous State of registration            Previous registration number            Registration start date            Registration end date            Registered address            Deregistration activity code            Place of incorporation            State of incorporation</p> <p>Person            Identifier            Name            Country of birth            Locality of birth            Date of change of name            Record start date            Record end date</p> <p>Charges            Identification number            Type            Status            Start date            End date</p> <p>Shares            Class            Start date            End date            Nominal value of shares in class            Number of shares in class            Paid value of shares            Value of share options</p> <p>Creation document numbers            Update document numbers</p>

Source: Evidence, pp. S1680-S1681.

3.62 More recently the Attorney-General's Department has indicated business names data is being considered for inclusion on LEAN.

3.63 The APF and NSW Privacy Committee are concerned there is a risk that the LEAN will suffer 'function creep'.<sup>33</sup> Interest on this matter was heightened with allegations the births, deaths and marriage registers and motor registration records may be incorporated into such a data base and there is a fear expressed by the NSW Privacy Committee that:

This would effectively create a national identification system equivalent to the popularly rejected Australia Card.<sup>34</sup>

3.64 The Attorney-General's Department states the government's decision is quite specifically limited to company records and land records. There will be no extension to the data on LEAN without a specific government decision.<sup>35</sup>

3.65 The Privacy Commissioner points out the need for caution, observing that:

... it is important for you to scrutinise the actual definitions of land data and corporate affairs data within the parameters of the government decision. The definition of land data strikes me as a broad one. You raised various views as to the incorporation of local government records into the system ... I do not think it needs another government decision to bring them in. It becomes an operational decision for the managers of the scheme according to the government definition.<sup>36</sup>

3.66 In its submission the Attorney-General's Department provides a list of land related information which encompasses a wide variety of data - cadastral (land parcel), transport, utilities, administrative, statistical, natural resource and spatial. A copy of the list is provided at Appendix 6. The Attorney-General's Department says that LEAN is only concerned with the cadastral aspects of this land information.<sup>37</sup>

3.67 The following aspects of data coverage and its acquisition are also important.

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33 Evidence, pp. S1143 and S1660.

34 Evidence, p. S1660.

35 Attorney-General's Department. May 1992, op. cit., p. 4 and Evidence, p. 240.

36 Evidence, p. 265.

37 Evidence, p. S1668.

3.68 Three to four years of historical data will be maintained online on the LEAN facility with earlier data available from archives on reasonably short access time. Additional historical data on property sales back to 1985 will be obtained where possible and made available on LEAN. This data will be used mainly by ATO in conducting checks on undeclared capital gains, although it will be useful for law enforcement purposes in tracing transfers of properties.

3.69 ASC data will provide a national coverage with the geographic extent of land data depending on the success of negotiations with the State and the Territory Governments.

3.70 Given the various data providers, concerns have been raised about the format of the data on LEAN, its quality and associated costs. State and Territory land departments hold their data in a variety of forms with some of it being highly structured in form whereas others is in 'free text' form. DSS complained that the NSW land information records used in the pilot presented some difficulties in identification of accurate matches, though an improved version is expected from LEAN at the end of 1992.<sup>38</sup> Data will be available on LEAN in its original form as access to the way in which data has been provided may be of itself important. A 'scrubbed' version will also be provided to overcome problems of missing and incorrect data to improve access.

3.71 In recognition of the data quality variations the MoU proposes a system of quality ratings for records from different sources to alert users to the level of reliability of data and as a means of providing direct incentives to data providers to improve the quality of their data. As suggested by the Privacy Commissioner the need to specify a minimum quality standard below which data would not be accepted onto LEAN should be considered.<sup>39</sup>

3.72 Where possible both land and company data will be obtained in machine readable format. Where this is not possible, for example some land sales data in NSW, an assessment will be made of the potential value relative to cost in time and resources in converting them to electronic form for LEAN. Some NSW companies data prior to the establishment of the ASC in January 1991 will not be available on LEAN because it is only available in microfiche form.

3.73 Data will be updated through direct electronic transfer of data where possible. Generally updating will be as frequent as the files containing the changes are created - in many cases daily or weekly. ASC updates will be daily but one Territory's land data is only updated monthly.

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38 Evidence, pp. S1152-S1153.

39 Evidence, p. S1759.

3.74 The five departments and agencies on the panel of LEAN users which appeared before the Committee confirmed they were satisfied with the coverage of LEAN and that their requirements had been adequately taken into account in developing the scope of the system. No requests were received from other individuals or organisations for enhancements to the proposed system. There were no major complaints about the scope of the data currently being sought for inclusion on the system.

### *Conclusion*

3.75 The Committee notes the LEAN facility will contain only publicly available land ownership and company records. Any decision to include additional data on LEAN, or to link LEAN to other data bases, would be a new project and should be considered by Cabinet and be preceded by a full review of the LEAN facility with extensive public consultation.

3.76 The Committee concludes, subject to the successful outcome of negotiations with all State and Territory Governments concerning the availability of land ownership data and an improved version of the land data, the scope, timeliness and retrospectivity of the data bases currently proposed for LEAN will meet the stated needs of departments and agencies for law enforcement and protection of revenue purposes. The problems with data quality and the Attorney-General's Department's efforts to redress this situation are noted.

### **Provision of data by the public**

3.77 The APF and NSW Privacy Committee believe LEAN breaches the Privacy Act because information given for one purpose (for example for land records) is being used for another entirely different purpose. This matter is highlighted in the OECD Guidelines as principle 3 - purpose specification principle and in IPP 2 - solicitation of personal information from the individual concerned. They are also concerned that there is little justification for associating law-abiding members of the community with a criminal investigation system, nor adequate justification for prior suspicion of guilt. The NSW Privacy Committee said 'Too great a readiness to use personal information for intrusive secondary purposes runs the risk of leading to reluctance to supply information in the first place... [and] undermines the integrity of the original registers.'<sup>40</sup>

3.78 The amount of information provided and the level of detail may vary according to the uses made of the information. For example, individuals may be far more careful providing information to the ASC if they know it is being used for decision-making purposes by other government agencies. It may also encourage individuals to keep public records up-to-date. The general trend in the United States has been to provide a statement of the purposes for which information will be used

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Evidence, pp. S1143 and S1659.

on the relevant information collection documents. The Attorney-General's Department has advised it is seeking to have State and Territory Lands Departments and the ASC do the same. Publicising LEAN usage also has the potential to deter fraud through encouraging voluntary client compliance.

3.79 While the forementioned arrangement is suitable for new records there are still difficulties with retrospective data. The impact of LEAN will be to apply retrospectively to the data already contained on the data bases it acquires. Individuals who have provided information have not had the opportunity to contemplate the purposes for which it has been provided. It is expected that individuals would have provided information on the basis that it would only be used for the matter at hand, for example, if it is corporate affairs information then it would only be used for the appropriate purposes within the corporate affairs agency.

3.80 It is difficult to see how this problem can be overcome except to suggest that individuals be given the right to comment on the LEAN data used by an agency in making a decision before any adverse decision becomes final. The Attorney-General's Department is discussing such an arrangement with participating agencies and details of the arrangement are provided in the next section.

3.81 The Committee recommends:

the Attorney-General's Department ensure the final Memorandum of Understanding with data providers includes a requirement that data providers include a statement on the relevant documents used to collect the original data of the purposes for which LEAN will use data.

### **Public access and amendment rights**

3.82 In a system such as LEAN which uses personal information the rights of individuals regarding access and amendment of records is critically important.

3.83 There is no access to LEAN by the public generally or by non-government agencies, although individuals do have access to the corporate and land information concerning them through the relevant registrars responsible for holding that information. The Attorney-General's Department, however, is negotiating with participating agencies on the arrangements for it, as system administrator, to process requests from members of the public for information held on them on LEAN.

3.84 The likely administrative procedures are as follows. If requested by a member of the public, a printout of information will be available but it will not have the force of a certified extract from a registrar, thereby protecting the commercial interests of the registrar as well as clearly delineating between a certified extract and copy of information held on LEAN. As responsibility for amending the data rests solely with the data provider, if a member of the public disputes the record held on LEAN he or she will be advised to contact the data provider direct about the matter and the systems administrator will send a copy of the record to the data provider. Disputed records will be flagged on the weekly bulletin on data quality issued to all user agencies by the system administrator. Disputed records will only be able to be updated through changes provided by the data provider.<sup>41</sup>

### *Conclusion*

3.85 The Committee notes this important matter of an individual's access to and amendments of records about him/herself is being addressed. However, it is concerned that in the administrative procedures outlined there may be substantial delays in amending incorrect records. It suggests the Attorney-General's Department seek to streamline procedures as much as possible to reduce the time period for amendments.

3.86 The Committee recommends:

- . the Attorney-General's Department ensure the final Memorandum of Understanding includes a requirement for individuals to have access to data contained on the LEAN facility about themselves and that such information be provided promptly and at no cost to the individual concerned; and
- . the Attorney-General's Department ensure the final Memorandum of Understanding includes a requirement that individuals be given the right to comment on the LEAN data used by an agency in making a decision about them, such as termination of a benefit, before any adverse decision becomes final.

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Evidence, p. S1675.

## Accessing the system

3.87 Access to LEAN will be through either connecting LEAN to the agency's host computer or a local area network using secured routers, bridges or gateways. Telecom services will be used to provide the physical link which will be protected by data encryption units approved by the Defence Signals Directorate. Connection will be according to participating agency specifications. It is intended that existing terminals attached to each agency's data communication network will be used for access.

3.88 The APF and the NSW Privacy Committee are concerned the information on LEAN will be available to a large number of public service staff with limited investigative training and this may increase the potential for misuse of the system.<sup>42</sup> While there is wider acceptance and expectation that such information might be available to traditional law enforcement agencies, this perception does not extend to other bodies. The number of terminals connected to the facility and general issues of access have also been raised in Senate Estimates Committees on several occasions.<sup>43</sup>

3.89 The Attorney-General's Department has stated that the list of agencies which will have access to the facility are those Commonwealth and State bodies with law enforcement and protection of revenue responsibilities.<sup>44</sup> While the list of users is not yet finalised it is likely to include:

- Australian Taxation Office
- Department of Employment, Education and Training
- Australian Federal Police
- Office of the Director of Public Prosecutions
- Department of Defence
- Department of Social Security
- National Crime Authority
- Australian Bureau of Criminal Intelligence
- Health Insurance Commission
- Australian Customs Service
- Department of Administrative Services
- Insolvency and Trustee Service of Australia
- Australian Securities Commission
- State Police Forces
- State Tax Offices.

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<sup>42</sup> Evidence, pp. S1143 and S1659-S1660.

<sup>43</sup> For example, *Senate Hansard, Estimates Committee E*, 10 September 1992, Canberra, AGPS, p. 100 and *Senate Hansard*, 17 June 1992, Canberra, AGPS, p. 3861.

<sup>44</sup> Evidence, pp. S236-S237.

3.90 The system is intended for use by departments and agencies with a significant investigation and revenue collection workload. However, there are no restrictions on other agencies that can justify use of the system for law enforcement or protection of revenue purposes being added to the list of LEAN users. Once an agency has justified use of LEAN it will require the agreement of the Attorney-General's Department and other participants to gain access. There is a potential for the list to expand since all Commonwealth departments have fraud control responsibilities. In practice, there is a threshold of usefulness in terms of the value of the information on the system to particular agencies' fraud control work and cost, particularly connections and staff training costs. The Attorney-General's Department expects some additional users may seek access once the system is operational.<sup>45</sup>

3.91 There has clearly been an increase in the potential number of users of the system since it was first proposed.

3.92 Considerable doubt exists about the number of terminals that are to be used to access LEAN. While a complete answer will not be known until the system is operational, the request for tender documents specified the number of terminals a successful tenderer would need to support with the solution offered. This figure was a combination of the estimates provided by each participating Commonwealth agency. Details are provided at Table 2.

3.93 Since the request for tender figures were provided, the HIC and DAS have both indicated they wish to become LEAN users and will require one terminal each. The number of terminals to be used by non-Commonwealth agencies is still the subject of negotiations.<sup>46</sup> More recently the Insolvency and Trustee Service of Australia and the Australian Securities Commission also have indicated an interest in becoming users.

3.94 Best estimates are that the number of terminals that will be authorised for use on the LEAN system will be 6622 but at any one time only 1600 terminals can be connected to the system. These figures are expected to grow to 10380 and 2254 respectively. Confusion surrounding the user-terminal populations seems to be related to the definition of these figures.

3.95 Given the wide availability of LEAN and its projected growth, the controls on users and security of the system are critical. Important elements of the arrangements for controlling use of the system are listed in the section on the MoU and security is discussed in the next section.

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<sup>45</sup> Evidence, p. S1669.

<sup>46</sup> Evidence, p. S1671.

## Conclusion

3.96 The Committee accepts while LEAN is aimed at users with a substantial need, given that fraud control is a departmental or agency management responsibility, other departments and agencies may wish to access the system and as such the number of terminals connected to the facility is substantial. The number of users may expand in the future limited largely by the capacity of the computer facility to accept additional terminals.

TABLE 2: USER - TERMINAL POPULATIONS

Agency	Terminals on own System	Terminals Authorised to use LEAN	Maximum Concurrent Utilisation
ABCI <sup>+</sup>	100	30 [30]	10 [16]
ACS	1500	300 [300]	150 [150]
AGs <sup>†</sup>	2000	50 [50]	20 [50]
AFP*	*	150 [150]	150 [150]
ATO	6000 [13000]	6000 [9000]	1200 [1800]
DEET	*	12 [50]	8 [20]
Defence	*	50 [50]	50 [50]
DPP	400 [600]	20	6 [8]
NCA	*	10	6 [10]
<b>Total</b>	<b>10000+ [13600+]</b>	<b>6622 [10380]</b>	<b>1600 [2254]</b>

**Note:** An \* indicates that the user has chosen not to provide the particular information. Numbers in [ ] show projected growth. The Department of Social Security will not have any terminals connected to the LEAN facility.

<sup>+</sup> Australian Bureau of Criminal Intelligence

<sup>†</sup> Attorney-General's Department

**Source:** Attorney-General's Department, January 1992. *Request for tender for supply of hardware, software and services to implement a Law Enforcement Access Network (LEAN) for the Attorney-General's Department.* Canberra, Attorney-General's Department, p. 23.

## Security

3.97 In planning the LEAN facility the Attorney-General's Department has recognised it is critically important that appropriate security protection for privacy be included. The types of security provisions being built into the system are:

- barriers to preclude any exchange of data other than accessing land titles and corporate affairs data bases;
- access restricted to registered users by a user identification and authentication system;
- access being logged for audit purposes; and
- participating agencies developing procedures, capable of being audited, for the safeguarding and proper disposal of the results derived from LEAN.<sup>47</sup>

There will also be a number of additional features of computer security such as access to LEAN through dedicated lines only with no dial-in or switch access permitted.

3.98 Recently the Attorney-General's Department has indicated user agencies will be required to nominate a security officer who will liaise with the Attorney-General's Department, as facility manager, on security matters related to LEAN. The division of responsibility on security matters between user agencies and the facility manager also are being more clearly specified.

3.99 A security assessment will be carried out once the successful tenderer is selected.

3.100 In his discussion of privacy issues the Privacy Commissioner confirmed that security considerations have been a major concern of the Attorney-General's Department since the commencement of the project.<sup>48</sup>

3.101 The OECD is developing a set of guidelines for the security of information systems. These guidelines are expected to be completed, adopted and published this year.<sup>49</sup> When this occurs, the Attorney-General's Department should examine the relevance of those guidelines for the LEAN facility.

### *Conclusion*

3.102 The security of the system can only really be assessed when the system is operational. At this stage the Committee is satisfied the Attorney-General's Department is giving this matter the priority it demands.

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47 Evidence, p. S237.

48 Evidence, p. 260.

49 Kirby, The Hon Justice Michael. 1992. Information security - OECD initiatives. *Journal of Law and Information Science*. 3(1), pp.25-46.

## Privacy implications

### Application of the Privacy Act

3.103 The debate on the application of the Privacy Act to LEAN has been going on for some time. Prior to 30 March 1992 the Attorney-General's Department argued the Privacy Act did not apply to LEAN because of the exception in the Act which exempts from its operation information held in generally available publications, although the Department was prepared to give weight to privacy considerations in the construction of the system. The Privacy Commissioner considered the Department's main privacy interest at that time was security considerations - IPP 4 - storage and security of personal information.<sup>50</sup>

3.104 On 30 March 1992 the Privacy Commissioner said he was notified that the Attorney-General's Department's view had changed and the Privacy Act did apply by law to LEAN at Commonwealth level.<sup>51</sup>

3.105 In its submission the Attorney-General's Department states it:

... recognises there are privacy implications of the program... The Department has legal advice that the establishment and operation of the LEAN facility will not be contrary to the Privacy Act because the exemptions to the Information Privacy Principles relating to law enforcement and protection of revenue will apply.<sup>52</sup>

3.106 The Privacy Commissioner acknowledges there were ambiguities with LEAN since the data at source is publicly available and it is not sensitive in the way in which personal health data, police records, national security information, financial details and social security records, for example, are sensitive.<sup>53</sup>

### *Conclusion*

3.107 The Committee considers that the Attorney-General's Department's could have addressed the privacy implications of LEAN earlier thereby allaying some of the concerns privacy groups have about the scheme.

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50 Evidence, p. 260.  
51 Evidence, p. 260.  
52 Evidence, p. S237.  
53 Evidence, p. 259.

## Consultation with the Privacy Commissioner

3.108 The Attorney-General's Department has consulted the Privacy Commissioner on the project and invited him to participate in the formulation of the necessary operational privacy safeguards. The APF alleges the Privacy Commissioner's involvement has been used by the Attorney-General's Department as an implied endorsement of the scheme.<sup>54</sup> The Privacy Commissioner says this is one of the dilemmas of a regulator in his position and in cases such as LEAN, which have significant privacy implications, he has adopted the role of observer and made available his good offices to the process.<sup>55</sup> The Commissioner stated:

I think the phrase 'consultation with the Privacy Commissioner' should be read merely to mean that. That is the difficulty because some people give it greater weight.<sup>56</sup>

3.109 The Committee recommends:

the Privacy Commissioner be more active in defining and publicising his role in projects such as LEAN which have significant privacy implications so that people are more aware of the nature and scope of the Privacy Commissioner's involvement and responsibilities.

## Data-matching on LEAN

3.110 As LEAN will also be used for data-matching purposes privacy controls in this area are important. Following the Privacy Commissioner issuing his *Data-matching Guidelines* in July 1992, the Attorney-General's Department provided an outline of the arrangements for data-matching on LEAN. The Department has developed its own set of data-matching guidelines for LEAN rather than following those recommended by the Privacy Commissioner. It is the Attorney-General's Department's view that:

... on balance, the procedures proposed for LEAN do meet the broad objectives of the Privacy Commissioner's data-matching guidelines even though they differ in some respects.

... in some areas the controls relating to data-matching on LEAN will be more stringent than those proposed by the Privacy Commissioner.<sup>57</sup>

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54 Evidence, p. S1142.  
55 Evidence, p. 261.  
56 Evidence, p. 263.  
57 Evidence, p. S1162.

3.111 The Privacy Commissioner also made a comparison of the data-matching guidelines and the LEAN arrangements (see Table 3) and concluded:

... the controls on data-matching using the LEAN data and computer facility are less than those in the data-matching guidelines.<sup>58</sup>

3.112 He identified major deficiencies in the program protocol concept, legal authority, review of programs, record control and new registers, public consultation and fairness.

3.113 The Privacy Commissioner also noted the Attorney-General's Department has consistently declined to indicate whether it will adopt voluntarily the data-matching guidelines he proposed in July. The Attorney-General's Department's reason for its stance is set out at paragraph 2.51. Two of the four agencies proposing to use LEAN for data-matching purposes, namely DSS and Defence, have agreed to adopt the Privacy Commissioner's guidelines. Of the other two agencies, ATO has declined emphatically to adopt the Commissioner's guidelines, while DEET has been consistently resistant without formally declining. As DSS, the only agency permitted to download data from LEAN to carry out data-matching on its own computer, has agreed to adopt the Commissioner's data-matching guidelines this activity should not present any new difficulty. The Privacy Commissioner noted, however, any extension of downloading of data from LEAN would need to be examined in relation to the guidelines.<sup>59</sup>

3.114 The Committee recommends:

the Attorney-General's Department revise the LEAN data-matching guidelines in the light of criticisms made of those guidelines by the Privacy Commissioner; and

all agencies using data from LEAN for data-matching include in their annual report details of compliance with the Privacy Commissioner's data-matching guidelines for LEAN data-matching activities.

3.115 The Committee will review the data-matching arrangements for the LEAN facility in its final report on the inquiry.

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58 Evidence, p. S1707.

59 Evidence, pp. S1706-1707.

**TABLE 3:**

**COMPARISON OF DATA-MATCHING GUIDELINES AND LEAN REQUIREMENTS**

Note : The data-matching guidelines exempt some types of data-matching, including certain law enforcement programs, from some or all of their provisions. Similarly, the LEAN conditions exempt law enforcement agencies from certain provisions relating to data-matching.

	<b>Privacy Commissioner's data-matching guidelines</b>	<b>Requirements for data-matching on LEAN facility</b>
<b>Program protocol</b>	<p>A program protocol is to be prepared, and wherever possible made public, to include:</p> <ul style="list-style-type: none"> <li>* information sources and legal authority</li> <li>* program objectives</li> <li>* controls on data quality, integrity, security</li> <li>* action to be taken in relation to results</li> <li>* results of any cost/benefit analysis</li> <li>* alternative approaches considered</li> <li>* pilot-testing of the program</li> <li>* notice to be given to individuals affected by program</li> <li>* time limits on the program</li> </ul>	<p>Matching agencies, other than law enforcement agencies, are required to publicise:</p> <ul style="list-style-type: none"> <li>* information sources and legal authority</li> <li>* program objectives</li> <li>* controls on data quality, integrity, security</li> <li>* action to be taken in relation to results</li> </ul>
<b>Other publicity requirements</b>	<p>Wherever appropriate, public notice of programs should be given in the Gazette, specifying objectives, categories of data and classes of individuals involved. Program should be otherwise publicised as widely as practicable.</p>	<p>Programs to be publicised, including purpose, data involved and a contact point for further inquiries. Individuals to be warned when providing information if the information will be checked using LEAN.</p>
<b>Public consultation</b>	<p>There should be a public consultation period of at least 45 days.</p>	<p>No consultation required</p>

TABLE 3 continued

Technical standards report (TSR)	TSR must be prepared by matching agency and include details of algorithm and other matching techniques; documentation of data quality, audit and security controls; and where practicable, detailed information on data inputs.	Federal Justice Office to provide the Privacy Commissioner (PC) with TSR in form agreed by Board of Management - contents of TSR have not yet been specified.
Verification of data	Data to be verified with source agency or individual before further action taken.	Data to be verified with data supplier before further action taken.
Safeguards for individuals	Affected individuals to be given opportunity to comment on information before further action taken.	No equivalent provision
Record controls	Matching exercise to be followed by destruction of input data accessed for the purpose of the match; or further action to be taken within specified time period.  New permanent registers of information may generally not be created as a result of data-matching.	LEAN data and other data used in match can only be kept on LEAN for a limited period, but can be downloaded to user's facility and retained as the matching agency determines.
Evaluation	Programs to be evaluated at least every three years.  Reports to be provided to the PC and where possible made public.	No individual evaluation of programs required, though these activities will be considered as part of overall evaluation of LEAN.
Monitoring	Agencies to report to PC as requested, and to enable PC to inspect data-matching activities. PC to include information on data-matching programs in annual reports.	The LEAN facility will record details of usage and report to the Board of Management.

Source: Evidence, pp. S1709-S1710.

## Privacy Act and State jurisdiction

3.116 Another concern is that the Commonwealth Privacy Act does not have jurisdiction in the States and as such the Privacy Act safeguards will not extend to access to LEAN by State governments. To date there are no effective legislative safeguards for privacy at a state level. The NSW Privacy Committee said 'LEAN could provide a conduit whereby a form of information which was restricted in one state could be accessed through another state with less effective controls.'<sup>60</sup> Privacy matters are of considerable concern to the States and Territories as discussed in the next section.

3.117 The Attorney-General's Department has sought to address this matter by incorporating in its MoU a set of administrative procedures designed to reflect the principles of the Privacy Act which will apply equally to State users as well as Commonwealth users.<sup>61</sup> The Attorney-General's Department is also suggesting the States nominate an independent body that can provide the same sort of auditing functions the Privacy Commissioner provides for the Commonwealth.<sup>62</sup> These procedures are being discussed with State users.

3.118 There is a precedent for this approach in the MoU operating under the Cash Transaction Report Act between AUSTRAC and State police forces in relation to the provision of information by AUSTRAC to those authorities. Part of the MoU provides for the subsequent use, disclosure and security of information provided to the State police by AUSTRAC and reflects (but does not quote) corresponding Commonwealth Privacy Act requirements.<sup>63</sup> The Privacy Commissioner supports the approach.<sup>64</sup>

3.119 The Committee accepts there is little more the Attorney-General's Department can do in this regard. This is clearly one of the risks associated with State Government participation in the project.

3.120 Obviously uniform privacy legislation in the States would be the preferred position.<sup>65</sup> This is unlikely given the differences in approach to privacy legislation being adopted by the Commonwealth and States. Mirrored legislation such as occurred with the new corporations law may be possible, but at the very least, the Commonwealth, State and Territory Governments should strive for a common set of principles in privacy legislation.

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60 Evidence, p. S1660.

61 Evidence, p. S1677.

62 Evidence, p. 247.

63 Australian Transaction Reports and Analysis Centre. 1990. *Memorandum of Understanding between the Director, Cash Transaction Reports Agency and the Commissioner, New South Wales Police Service on access to and use of Cash Transaction Reports (CTR) information*. Unpublished. 8p.

64 Evidence, pp. S1760-S1761.

65 Commonwealth of Australia. Law Reform Commission. 1983. *Privacy. Parliamentary Paper No. 304/1983 Report No. 22*. vols 1 and 2.

3.121 The Committee recommends:

- . the Attorney-General's Department include in the Memorandum of Understanding for LEAN, administrative procedures which reflect the principles of the Commonwealth's Privacy Act that will apply to State participants in LEAN; and
- . the Standing Committee of Attorneys-General, urge all State and Territory Governments to develop and adopt a common set of principles for privacy legislation.

### State Government participation

3.122 The expected initial purchase price for the land ownership data will be approximately \$5 million<sup>66</sup> and the estimated update price for land data will be about \$650,000 in the first year gradually rising to about \$800,000 per year after four years. The increase in the update costs is related to the number of record changes because of the number of properties expected to be sold.

3.123 The Attorney-General's Department advised negotiations regarding the supply of land data are continuing with the States and Territories at a policy level to establish whether a particular State or Territory is willing to provide data to the Commonwealth for use on the LEAN facility. Discussions are also occurring at a technical level to gain a better understanding of the data. Although an offer has been made to each data provider, no contracts have been signed because data providers are interested in receiving more information about the security, privacy and administrative arrangements to operate on the facility and they are concerned about a loss of custom for their commercial land data activities.<sup>67</sup>

3.124 The NSW Privacy Committee said it:

... is not satisfied that the benefits of the LEAN proposal are sufficient to outweigh its potential disadvantages or the very serious breaches of the privacy principles which it would incur.<sup>68</sup>

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<sup>66</sup> Evidence, p. S1675.

<sup>67</sup> Evidence, pp. S1676-S1677.

<sup>68</sup> Evidence, p. S1661.

Moreover, the scale on which personal information of vital importance for citizens of New South Wales would be transferred to the Commonwealth and then shared with *other states without safeguards, represents a significant loss of state responsibility and control. The benefits of the scheme have not been sufficiently demonstrated to overcome these concerns.*<sup>69</sup>

3.125 The Attorney-General's Department:

... anticipates that the draft MoU will quell these concerns, and further negotiations ... will convince them that they will not be commercially disadvantaged by providing data for the LEAN facility. We expect that requests for copies of their records will increase because of the lower costs to LEAN participants in identifying the specific data they need, compared with the costs now incurred in searching a larger volume of data to determine the information required.<sup>70</sup>

3.126 Both State and Territory police and tax offices are listed as users of LEAN. The same conditions for participating will apply to them as for Commonwealth users as set out in the MoU.

### *Conclusion*

3.127 The Committee is concerned that the LEAN project should have developed to the stage that it has without negotiations for the basic land ownership data for inclusion on the system having been finalised. Since the companies ownership data is already available online there would seem to be little point in proceeding with the development of the system if most of the States and the Territories do not provide their land data.

3.128 The Committee recommends:

*the Attorney-General's Department complete negotiations with the State and Territory Governments on the acquisition of the land ownership data for LEAN as a matter of urgency.*

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69 Evidence, p. S1657.

70 Evidence, p. S1677.

## Copyright

3.129 With State, Territory and Commonwealth agencies providing data for the LEAN facility the issue of the ownership of copyright in the data to be held on the system is important.

3.130 Advice from the Attorney-General's Department indicates copyright subsisting in the materials to be provided to the Commonwealth by the States and Territories is owned by the States and Territories. Section 183 of the *Copyright Act 1968* provides that it is not infringed if the material is used 'for the services of the Commonwealth'. This is interpreted by the Attorney-General's Department to cover acts carried out by Commonwealth officers in the course of their duties, which would include use of the LEAN facility.

3.131 However, the Commonwealth needs to examine the issue of copyright when State users are accessing LEAN. The Attorney-General's Department stated:

Section 183(5) [of the Copyright Act] requires the Commonwealth to come to agreed terms with each State regarding the doing of acts comprised in its copyright... The Commonwealth does not intend to obtain ownership of the copyright for itself.<sup>71</sup>

The agreed terms are being developed by the Attorney-General's Department and the State and Territory Governments and incorporated in the MoU with participants.

### *Conclusion*

3.132 The Committee is satisfied the copyright issue is being addressed appropriately.

## LEAN acquisition process

3.133 A request for tender for the system was issued on 16 December 1991 and closed on 14 February 1992. Following extra time for bidders to produce benchmark test results, tender evaluation was complete in early June 1992 and contract negotiations began. The facility was initially scheduled to commence operation in June 1992. In May 1992 the Attorney-General's Department expected

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<sup>71</sup>

Evidence, pp. S1739-S1740.

operations to commence towards the end of 1992.<sup>72</sup> Recent advice from the Attorney-General's Department is that the successful tenderer has not been selected as yet and LEAN will not be operational until mid 1993. No major reason was given for the delays. The project is likely to be about one year behind the initial schedule when operational.

### *Conclusion*

3.134 The Committee is concerned the LEAN facility is behind the initial schedule for its implementation. If delay persists the accuracy of the initial cost-benefit analysis will be seriously brought into question as users develop other strategies to achieve the projected savings and advances in technology begin to overtake the technological solutions proposed for LEAN.

3.135 The Committee recommends:

if there are any further delays in the implementation of the LEAN facility the cost-benefit analysis for the system be reviewed and the needs for the project re-examined with extensive public consultation and participation.

### *Staffing*

3.136 Funding for LEAN includes 15 Average Staffing Level (ASL) in the Attorney-General's Department with eight staff inhouse and seven outsourced officers. The Department will retain responsibility for the policy functions of LEAN including applications development, project coordination, security and audit.

### *Conclusion*

3.137 Given the sensitivities associated with privacy and security of LEAN, the Committee sees considerable benefits in retaining the policy and security/audit functions inhouse with half of the staff compliment and the remaining staff outsourced.

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<sup>72</sup>

Attorney-General's Department. January 1992. op. cit., p. 4 and Evidence, p. S238.

## Overall conclusion

3.138 The Committee notes that in October 1991 the Attorney-General announced the Government would be proceeding with the LEAN project. While it acknowledges that the development of a national information facility such as LEAN which brings together both Commonwealth and State/Territory data and requires major technological input is a demanding and complex task, as a result of its review the Committee has some major qualifications about the facility and the way in which it is being developed.

3.139 Details of those concerns have been outlined in the preceding sections of this report. Most notable are: the cost-benefit ratio for the project in monetary terms is not substantial; negotiations with the State and Territory governments on the provision of the basic land ownership records for the system have not been finalised; some basic privacy concerns remain unresolved; there has been no public consultation on the development of the system; basic arrangements for the administration of the system are incomplete; and the project is now six months behind the initial schedule and not expected to be operational until mid 1993. The Committee would expect these issues to have been resolved before selection of the successful tenderer to provide the hardware and software for the system.

3.140 In view of the decision that the LEAN facility should go ahead the Committee has made some major recommendations on the way in which the project should be managed in the future. In particular, the Committee has recommended legislation be put in place within the next two years to govern the operation of the system and the Attorney-General's Department should adopt a more open and public approach in developing the system.

3.141 The Committee regards these matters very seriously and considers the Attorney-General's Department should take immediate steps to address the matters of concern raised in this report. While its work on the fraud inquiry continues next year the Committee has asked to see the updates of the MoU for LEAN and wishes to be made aware of other technical developments on the system. If appropriate the Committee will draw additional conclusions regarding the LEAN facility in its final report on this inquiry into fraud on the Commonwealth.

PAUL ELLIOTT, MP  
Chairman

November 1992

# APPENDIX ONE

## CONDUCT OF THE INQUIRY

As is past practice, the Committee appointed a subcommittee to undertake the investigation.

In conducting this inquiry it was particularly important to the Committee that it heard the views of as many Commonwealth departments and agencies, public officials and the community as possible. Accordingly, the inquiry was advertised in major newspapers on 27 and 28 March 1992. The Committee also wrote to all Ministers, heads of statutory authorities involved in fraud control, State Premiers and privacy groups seeking submissions.

To ensure all public servants were aware of the inquiry the cooperation of the Secretaries of Commonwealth departments was sought in bringing the inquiry to the attention of their staff. Accordingly, a number of Secretaries advertised the inquiry in their departmental newsletters.

The Committee received 69 submissions; a list of these submissions and their authors is at Appendix 2 and exhibits received are listed at Appendix 3. The Committee took evidence from 69 witnesses (see Appendix 5) representing 20 organisations at eight public hearings between 5 June and 26 October 1992 (Appendix 4). The hearing on the 17 July 1992 was devoted entirely to information exchange, LEAN and privacy issues. The submissions and public hearing transcripts have been incorporated into several volumes which are available for inspection at the Committee Secretariat, the Commonwealth Parliamentary Library and the National Library of Australia.

In addition informal discussions were held on five occasions between 26 May 1992 and 16 November 1992 (see Appendix 4). Two of the discussions were with representatives of fraud control and related agencies from New South Wales, Victoria, Queensland and South Australia, one with representatives from the Health Insurance Commission and the other two discussions outlined below related to LEAN.

On 26 May 1992 to assist the Committee in understanding the proposed LEAN system, the LEAN Project Team demonstrated a pilot version of LEAN on a dial-up remote terminal at Parliament House. The Committee was able to see the key system capabilities for searching data and subsets of the company and land data planned for the operational version. To protect individual's privacy, individual surnames were masked in search results on the demonstration facility.

On 10 November 1992 officers of the Attorney-General's Department and several LEAN participants briefed the Committee on the financial aspects of the project and the MoU.

Advice on the privacy aspects of the LEAN report was provided by Mr Greg Tucker (Co-ordinator, David Syme Faculty of Business, Monash University) who commented on the draft report.

## APPENDIX TWO

### LIST OF SUBMISSIONS

No.	Name of person\organisation
1	Department of Treasury
2	Australian Federal Police
3	Mr Geoff Gadogan-Cowper
4	Department of Defence
5	Mr Roger Brown
6	Australian Taxation Office
7	Criminal Justice Commission
8	Privacy Commissioner
9	Australian Federal Police
10	Australian National Audit Office
11	Australian National Audit Office
12	Department of Primary Industries and Energy
13	Office of the Auditor General - Western Australia
14	Attorney-General's Department
15	Minister for Finance
16	Department of Industry, Technology and Commerce
17	South Australian Government
18	Commonwealth Director of Public Prosecutions

- 19 Department of Veterans' Affairs
- 20 Department of Foreign Affairs  
and Trade
- 21 Mr Geoff Bown
- 22 Ms Carolyn Currie
- 23 Department of Social Security
- 24 Australian Customs Service
- 25 Minister for Immigration, Local Government  
and Ethnic Affairs
- 26 Minister for Defence
- 27 Department of the Arts, Sport, the  
Environment and Territories
- 28 Department of Employment, Education  
and Training
- 29 Public Sector Union
- 30 Department of Health, Housing and  
Community Services
- 31 Australian National Audit Office
- 32 CSIRO
- 33 Mr G G Manners
- 34 Australian National Audit Office
- 35 Public Service Commission
- 36 Australian Federal Police Association
- 37 Department of Transport and Communications
- 38 National Crime Authority
- 39 Mr B Filipovich
- 40 Australian Privacy Foundation

41	Department of Social Security	11
42	Attorney-General's Department	12
43	Premier of Queensland	13
44	Department of Social Security	14
45	Welfare Rights Centre	15
46	Department of Administrative Services	16
47	Whistleblowers Anonymous	17
48	NSW Privacy Committee	18
49	Attorney-General's Department	19
50	Mr F O Eliason	20
51	Department of Social Security	21
52	Department of Social Security	22
53	Department of Health, Housing and Community Services	23
54	Department of Social Security	24
55	Privacy Commissioner	25
56	Department of Defence	26
57	Mr T McRae	27
58	Commonwealth Ombudsman	28
59	Administrative Appeals Tribunal	29
60	Attorney-General's Department	30
61	Management Advisory Board	31
62	Attorney-General's Department	32
63	Attorney-General's Department	33

- 64 Merit Protection and Review Agency
- 65 Mr W F Toomer
- 66 Privacy Commissioner
- 67 Detective Superintendent Cliff Crawford
- 68 Department of Social Security
- 69 National Crime Authority

## APPENDIX THREE

### LIST OF EXHIBITS

- | No. | Name of person\organisation   |
|-----|---|
| 1   | Letter and paper entitled 'Current Trends in Public Sector Fraud and Corruption' by Bruce Swanton received from: Mr Duncan Campbell Director, Australian Institute of Criminology   |
| 2   | Papers entitled 'Citizen Co-production and Corruption control' and Controlling Fraud, Waste and Abuse in the Public Sector' received from: Mr P N Grabosky, Director of Research Australian Institute of Criminology                                |
| 3   | Paper entitled 'The Privacy Act: Relevance for Fraud Control and Investigation' (IIR Fraud Management Series Combating Fraud and Corruption in Government conference) received from: Privacy Commissioner   |
| 4   | Paper entitled 'A Report on the Evaluation of the LEAN Pilot' received from: Fraud Policy & Prevention Branch, Federal Justice Office   |
| 5   | Paper entitled 'Law Enforcement Access Network (LEAN) Briefing Paper' received from: Fraud Policy & Prevention Branch, Federal Justice Office   |
| 6   | Paper entitled 'Request for Tender for Supply of Hardware, Software and Services to implement a Law Enforcement Access Network (LEAN) for the Attorney-General's Department' received from: Fraud Policy & Prevention Branch Federal Justice Office |
| 7   | Paper entitled 'Corruption Prevention and Fraud Risk Assessment in the Public Sector Conference' received from: Fraud Policy & Prevention Branch, Federal Justice Office  |

- 8 Report on 'Review of Public Sector Auditing in Queensland' received from: Electoral and Administrative Review Commission, Queensland
- 9 Report on 'Protection of Whistleblowers' received from: Electoral and Administrative Review Commission, Queensland
- 10 Pamphlet: 'What is Fraud' received from: Department of Finance
- 11 Paper entitled 'Fraud Control Statement' received from: Department of Finance
- 12 Booklet entitled 'Operational Modelling' received from: Australian Customs Service
- 13 Documents received from Mr G Manners, Isle of Man
- 14 Report entitled 'Fraud Risk - No Surprises How to Assess the Risk of Fraud in Your Program Then Deciding What You Can Do About It' received from: Department of Employment, Education and Training
- 15 Pamphlet: 'Why Should you Contact the Defense Hotline?' received from: Department of Defence
- 16 Report entitled 'Semiannual Report to the Congress' received from: Department of Defence
- 17 Report entitled 'Data-Matching in Commonwealth Administration: Report to the Attorney-General' received from: Privacy Commissioner
- 8 Report entitled 'White-Collar Crime - *A Report to the Public*' received from Department of Defence, Inspector-General's Office
- 19 Letter and attachments received from: Australian Federal Police
- 20 Graphs JSA/NSA Random Sample Graphs received from: Department of Social Security
- 21 Privacy Committee of New South Wales - Annual Report 1990

- 22 Paper A Two-year Debt Management Plan for Student Assistance Programs received from Department of Employment, Education and Training
- 23 Paper How Fraud Matters are Handled in DEET received from Department of Employment, Education and Training
- 24 Annex B: High Court Judgements on the Subject of Jurisdiction received from: Department of Defence
- 25 Document 'Sanctions Applicable to Public Servants and Canadian Forces Members' from Mr G Ryle, National Defence, Canada received from: Department of Defence
- 26 'Standard of Conduct' received from: Public Service Commission
- 27 Extract from 'Public Service Regulations' received from: Public Service Commission
- 28 Document entitled 'Personnel Management Manual Volume 3' received from: Public Service Commission
- 29 Report entitled 'A Framework for Human Resource Management in the Australian Public Service' received from: Public Service Commission
- 30 'The issues paper prepared by the Standing Committee of Attorney-General ('SCAG') after the SCAG meeting in Melbourne on 7 August 1992 entitled "Complex Fraud Trials"' received from: Commonwealth Director of Public Prosecutions
- 31 'Three papers prepared by the US President's Council on Integrity and Efficiency ("PCIE") entitled respectively "A Progress Report to the President"; "Model Prevention Plan" and "Report on Model Prevention Plan Follow-up Project"' received from: Commonwealth Director of Public Prosecutions
- 32 'The reference to the PCIE contained in the 7th Edition (1990-1991) of the US Encyclopedia of Governmental Advisory Organisations' received from: Commonwealth Director of Public Prosecutions

- 33 Document 'Code of Conduct for Public Employees' received from:  
South Australian Public Sector  
Fraud Coordinating Committee
- 34 'Guidelines for Ethical Conduct for Public  
Employees in South Australia' received from:  
South Australian Public Sector Fraud  
Coordinating Committee
- 35 'Whistleblowers Protection Bill 1992' received  
from: South Australian Public Sector Fraud  
Coordinating Committee
- 36 'A Guide to Internal Controls in the Victorian  
Public Sector' received from: Victorian Department  
of Finance
- 37 'LEAN Press Cuttings & Media Coverage' received from:  
Attorney-General's Department
- 38 'Treasury Regulations 1992 S.R. No. 123/1992'  
received from: Victorian Department of Finance
- 39 'Fraud Control Plan Guide-lines' received from:  
Victorian Department of Finance
- 40 'Four Questions Put to Would-be Whistleblowers'  
received from: John McNicol, Whistleblowers Anonymous
- 41 'Additional documentation relating to the  
Toomer case' received from: John McNicol  
Whistleblowers Anonymous
- 42 'In Whose Interest? - Corruption 18 Issues  
to Consider' received from: Independent  
Commission Against Corruption
- 43 'The First Two Years - 19 Key Issues'  
received from: Independent Commission  
Against Corruption
- 44 'Financial Transaction Reporting in  
Australia' received from AUSTRAC
- 45 'Extracts from 1991/92 Annual Report' received  
from AUSTRAC

- 46 'Whistleblowing: Some Observations Concerning  
*the Public and Private Sector Experiences*'  
received from: Dr Simon Longstaff, The St James Ethics  
Centre
- 47 'Fraud Investigation in Queensland' written by  
C J Crawford (LLB) Detective Superintendent
- 48 'Corruption Prevention and Fraud Risk Assessment  
in the Public Sector Conference Papers', Brisbane, 26 May 1992  
received from: Criminal Justice Commission



## APPENDIX FOUR

### PROGRAM OF ACTIVITIES UNDERTAKEN BY THE SUB-COMMITTEE

#### Public Hearings

Canberra	5 June 1992
Canberra	26 June 1992
Canberra	16 July 1992
Canberra	17 July 1992
Sydney	27 July 1992
Canberra	14 August 1992
Canberra	28 September 1992
Melbourne	26 October 1992

#### Informal discussions

Canberra	26 May 1992
Melbourne	26 October 1992
Canberra	9 November 1992
Canberra	10 November 1992
Sydney	16 November 1992



## APPENDIX FIVE

### LIST OF WITNESSES APPEARING AT PUBLIC HEARINGS

Witness\organisation	Date(s) of appearance
<b>Attorney-General's Department</b>	
Mr Allan Behm Director, Federal Justice Office	5 June 1992
Mr John H Broome Deputy Government Counsel, Civil Law Division	17 July 1992
Mr Peter Neal Director, Audit and Evaluation	5 June 1992
Mr Norman S Reaburn Deputy Secretary	5 June 1992 17 July 1992
Mr Peter Roberts Assistant Secretary Fraud Policy & Prevention Branch	5 June 1992 17 July 1992
Mr Anton M Schneider Director, Fraud Policy Section	5 June 1992
Ms Joan Sheedy Senior Government Counsel	17 July 1992
Mr Richard L Sidford Director, Applications Development, Fraud Policy and Prevention Branch	17 July 1992
<b>Australian Customs Service</b>	
Mr James A Conlon Collector of Customs, NSW	27 July 1992
Mr Brian G Hurrell Acting National Manager	16 July 1992

Mr John H Jeffery Manager, Executive Support	16 July 1992 27 July 1992
Mrs Jennifer Peachey Manager, Evaluation and Audit	16 July 1992
<b>Australian Federal Police</b>	
Mr Brian C Bates Deputy Commissioner (Operations)	26 June 1992
Commander Arthur Brown Officer-in-Charge, Fraud and General Crime Division	26 June 1992
Detective Commander William J Spurling Officer-in-Charge, Operations Policy and Support Division	26 June 1992 17 July 1992
Detective Superintendent Edwin Tyrrie Fraud and General Crime Division	26 June 1992
<b>Australian Federal Police Association</b>	
Mr Patrick J Jumeau National Secretary	26 June 1992
<b>Australian National Audit Office</b>	
Mr Peter G Bell Senior Director, Audit Operations	5 June 1992 26 June 1992
Mr Terence J Hemmings Senior Director, Audit Operations	5 June 1992
Mr Thomas B Jambrich Executive Director	5 June 1992 26 June 1992 16 July 1992 14 August 1992
Mr Bert M Johnston Senior Director	16 July 1992
Mr Graham Koehne Senior Director	14 August 1992
Mr Lindsay Roe Senior Director	14 August 1992

**Australian Privacy Foundation**

Mr Simon G Davies 17 July 1992  
Spokesman

Mr Timothy E Dixon 17 July 1992  
Director

**Austalian Taxation Office**

Mr Harold Hepburn 17 July 1992  
Taxpayer Audit Group

Mr John A Wharton 17 July 1992  
Director, Privacy

**Department of Defence**

Major-General Arthur J Fittock 16 July 1992  
Deputy Chief of General Staff

Commodore Murray B Forrest 27 July 1992  
Chief of Staff, Naval Support Command  
Headquarters

Mr Francis Harvey 16 July 1992  
Inspector-General 27 July 1992

Mr Peter W Hider 27 July 1992  
Regional Secretary - New South Wales

Dr Vernon Kronenberg 17 July 1992  
Assistant Secretary, General Investigations  
and Review

Brigadier Iain G A Macinnis 27 July 1992  
Chief of Staff, Land Headquarters - Army

Mr Ronald N McLeod 16 July 1992  
Deputy Secretary, Budget and Management

Air Vice-Marshal Thomas W O'Brien 16 July 1992  
Deputy Chief of Air Staff

Brigadier William Rolfe 16 July 1992  
Director-General, Defence Force Legal Services

Rear-Admiral Rodney G Taylor 16 July 1992  
Deputy Chief of Naval Staff

**Department of Employment, Education and Training**

Ms Helen Connor 16 July 1992  
Direct, Fraud Control and Privacy Section 17 July 1992  
Risk Management and Communications Branch

Mr Paul W Hickey 16 July 1992  
Deputy Secretary

Ms Jennifer Ledger 16 July 1992  
Assistant Secretary, Risk Management  
and Communications Branch

Mr Keith Thomas 16 July 1992  
Director, Benefits Control 17 July 1992

**Department of Finance**

Mr John V Galloway 5 June 1992  
Assistant Secretary, Resource Policies and  
Management Branch

Mr Maurice J Kennedy 5 June 1992  
Assistant Secretary, Accounting Policy Branch

Mr Gary J Smith 5 June 1992  
Director, Management Review,  
Evaluation and Securities Section

**Department of Foreign Affairs and Trade**

Mr William J Farmer 14 August 1992  
First Assistant Secretary, Corporate  
Services Division

Mr Geoffrey J Forrester 14 August 1992  
Deputy Secretary

Ms Glenda Gauci 14 August 1992  
Member, Fraud Prevention and Discipline  
Section

**Department of Health, Housing and Community Services**

Mr Lance Parsons 16 July 1992  
Acting Director, Payments Control Section  
Audit and Review Branch

Ms Fiona Tito 16 July 1992  
Assistant Secretary, Audit and Review Branch

**Department of Social Security**

Ms Karen Barfoot 14 August 1992  
Assistant Secretary, Resources

Mr Graham F Campbell 26 October 1992  
Area Manager West

Mr Ian G Carnell 17 July 1992  
First Assistant Secretary, Security, Fraud  
and Control 14 August 1992

Mr Des Kelly 26 October 1992  
Area Manager East

Mr Geoffrey Main 14 August 1992  
Director, Fraud Control

Mrs Frances Marshall 26 October 1992  
Regional Manager

Mr Derek Volker 14 August 1992  
Secretary

**National Crime Authority**

Mr John M Buxton 26 October 1992  
General Manager, Policy and Information

**Office of the Commonwealth Ombudsman**

Mr Alan Cameron 28 September 1992  
Commonwealth Ombudsman

Mr John R Taylor 28 September 1992  
Senior Assistant Ombudsman

**Office of the Director of Public Prosecutions**

Mr Ian R Bermingham 28 September 1992  
First Assistant Director

Mr Edwin J Lorkin 28 September 1992  
Associate Director and Acting Director

Mr Tom McKnight 28 September 1992  
Senior Assistant Director

Mr Bruce D Taggart 28 September 1992  
Legal 2, Policy Section

**Privacy Commissioner**

Mr Kevin P O'Connor 17 July 1992

**Public Sector Union**

Ms Wendy Caird 14 August 1992  
Acting Assistant National Secretary

**Public Service Commission**

Mr Edmund J Attridge 28 September 1992  
First Assistant Commissioner  
Management Selection and Development Division

Mr Brian J Gleeson 28 September 1992  
Assistant Commissioner, SES Career  
Management Branch

Mr Richard H J Harding 28 September 1992  
Assistant Commissioner, People  
Management and Deployment Branch

**Whistleblowers Anonymous**

Mr John McNicol 28 September 1992  
President and National Director

## APPENDIX SIX

### SCOPE OF LAND RELATED INFORMATION

Land related information encompasses a wide variety of data:

- . cadastral (land parcel)
  - owner
  - tenure
  - value
  - zoning
  
- . transport
  - street network
  - traffic flows
  - pavement
  
- . utilities
  - water mains
  - sewer mains
  - electricity
  - telephone
  
- . administrative
  - electoral
  - postal
  - local authorities
  
- . statistical
  - population
  - sociological data
  - planning zones
  
- . natural resource
  - vegetation
  - water
  - geology
  - forestry
  - agriculture
  
- . spatial
  - referencing
  - framework

Source: Evidence, p. S1668.

1. The first part of the document is a list of names and titles.