

ESSENTIAL REFORMS

Introduction

2.1 The Committee is of the opinion that there are a number of essential reforms which should be implemented irrespective of whether an Australia Card is introduced. Some of these reforms have been outlined in the Government submission while others include recommendations made by various Royal Commissions and Parliamentary and Government bodies which relate to the areas of fraud against the Commonwealth identified in Chapter 1. The following reforms are discussed:

- (i) The computerised linkage of births, deaths and marriages registers.
- (ii) The establishment of a Data Protection Agency.
- (iii) The introduction of privacy legislation.
- (iv) The adoption of the following recommendations proposed in various Royal Commissions and Parliamentary and Government reports:
 - . Improved controls by financial institutions recommended by the Costigan Royal Commission.
 - . Implementing the outstanding recommendations of the Report of the House of Representatives Standing Committee on Expenditure concerning control of illegal immigration (November 1985).

- . Monitoring and possible extension of new proof of identity procedures adopted by the Department of Social Security.
- (v) Administrative reforms.
- . Enactment of legislation to allow Commonwealth agencies to inform the appropriate authority of suspicious circumstances which could lead to fraud.
 - . Transfer of operational responsibility for payments under education assistance schemes from the Department of Education to the Department of Social Security.
 - . Improvement of proof of identity procedures utilised by the Department of Social Security.

Computerised linkage of births, deaths and marriages registers

2.2 All births, deaths and marriages that occur in Australia are required to be recorded in the register of the State in which the event occurred. At present, no links exist from deaths records to births records or marriage records either within a State or between States. In addition, these records are manually maintained, hence there is a need for them to be computerised.

2.3 To overcome these difficulties the Government proposed that the Australia Card legislation make provision for the Commonwealth to enter into agreements with State and Territory authorities under the terms of which births, deaths and marriages information would be made available to the

Commonwealth to be used for checking applications for entry to the Australia Card register. The Commonwealth commenced negotiations with the States in late 1985 and offered to assist with the computerisation of their registries of births, deaths and marriages in return for which the registries' data would be accessible to the Australia Card system. These negotiations are now at an advanced stage.

2.4 In evidence given before the Committee, the Australia Card Secretariat indicated that the negotiations on this matter were centred on the computerisation of birth, deaths and marriages registers being achieved in the following way:

- . That records from State/Territory registries be centralised on one computer - namely the HIC computer in Canberra.
- . That each State/Territory would only have access to its own State/Territory records which are held on the computerised records.
- . Any access to records of one State by another State would be subject to agreements between those States.
- . Access by the Commonwealth to this information would be limited to specific tasks related to verifying documents provided by individuals for the purpose of obtaining an Australia Card.¹

2.5 The Commission's computer expertise and facilities could be made available to the development and operation of the registry administration system. The Health Insurance Commission estimated the cost of developing and installing this system at \$25.7 million. The major cost in the system would be data collection which would in many cases require key entry from old

documents. The cost of this function alone is estimated at \$19 million. The other costs assume the need to establish 100 terminals which would be connected at all existing registry locations at single sites in Victoria, Queensland, South Australia, Western Australia and the Australian Capital Territory, three sites in New South Wales and two each in the Northern Territory and Tasmania. There is also a need for significant disk storage space and computer power to support sophisticated searching. The HIC estimated that the annual operational and support costs (excluding registry staff) would be in the area of \$1 million.²

2.6 The Committee is not in a position to make a judgment as to what is the most efficient technical arrangement for the Government and States to enter into, because the Committee had before it only broad cost estimates and an outline of the current state of negotiations between the Commonwealth and the States. No alternative technical arrangements were placed before the Committee, nor were cost/benefit analyses of alternatives made available. Because the Committee was not provided with specific details of actual administrative or technical arrangements, it cannot quantify or make judgments on the accuracy of likely cost savings arising from the computerisation of the births, deaths and marriages records.

2.7 The Health Insurance Commission has noted that independently of the Australia Card program, the benefits of computerising births, deaths and marriages data would be to:

- (a) maintain the integrity of the registries' record keeping functions;
- (b) improve the integrity of Registry data;
- (c) improve the level of service to the public;

- (d) ensure the security and privacy of records;
- (e) provide inquiry facilities to other registries' information; and
- (f) provide inquiry facilities to Registry data for nominated external State agencies.³

2.8 The HIC also noted that, in the wider context, the provision of a centralised computer system of births, deaths and marriages data would enable State registries to:

- (a) readily handle a wider range of inquiry volumes;
- (b) reduce costs of maintaining records;
- (c) address current problems which exist in some registries' clerical systems, for example -
 - . paper flow and storage
 - . intensive use of labour
 - . delays in certificate production
 - . record access difficulties
 - . difficulties in handling increasing requests for certificates
 - . difficulties in maintaining confidentiality of sensitive data
 - . no matching of records
 - . cost of document maintenance and storage;

- (d) bring together all references to a single name, greatly assisting research;
- (e) provide off-site back-up storage of computerised data, guarding against the loss of important current and historical data;
- (f) have a uniform system of registry control with allowances for differences in State data and different data held in various periods;
- (g) retain responsibility for the collection, creation and retention of original certificates; and
- (h) provide potential to increase State revenue from registry sources through -
 - . lower operating costs
 - . revenue raised from new sources eg.
 - genealogical research facilities
 - the automatic reproduction of certificates for out-of-State persons
 - handling of enquiries from other State authorities.⁴

2.9 While accepting that many of the benefits listed are real and important matters, the Committee does have concern over some of the benefits raised. The prime issues of concern are:

- . paragraph 2.7 (f) opens access to registry information to agencies who may not necessarily have access now; and
- . the related revenue benefit listed in paragraph 2.8 (h) arising from access to the registry for genealogical research facilities (the Committee's view on this issue is dealt with in paragraph 3.30).

2.10 The issue of false identities and the use of a computerised register of births, deaths and marriages to overcome that problem were discussed in detail by Mr Doug Meagher QC, a former Counsel to the Costigan Royal Commission. Mr Meagher told the Committee that:

One of the problems that we found when we were trying to break this down was that it was not easy to get information out of births, deaths and marriages registries across Australia - which, of course, is what you usually have to do - whether or not the person was born on that date and place he said and whether he is still alive or not. One of the schemes that we found being used by the union [Ship Painters and Dockers Union] was that they were taking on the names and dates of birth of people who had just died and they were being handed out to people who looked very similar to the person who died. They were the same sort of height, with the same sorts of features.⁵

2.11 Mr Meagher later explained the need for this arrangement, especially in certain types of compensation fraud. He stated:

I must say that the ones we spoke to regarded it as absolutely necessary to take a dead man's identity because if they took a live man's identity they would run the risk of detection and exposure very quickly. You must bear in mind that when people make claims for

compensation it is usually going to go on for some time, so it is not just instant exposure that they are concerned about, it is exposure over perhaps one or two years.⁶

2.12 In his evidence before the Committee, Mr Meagher indicated that he supported a wider access to any computerised register of births, deaths and marriages than that indicated by the HIC in its evidence. The issue of whether such information should be 'freely available'⁷ to the public was examined during the following exchange:

Mr SAUNDERSON - When you say freely available, do you mean that once it is computerised, financial institutions, banks, say, would be able to access it in order to ascertain the accuracy of someone's name and address?

Mr Meagher - The details he gave when he did it.

Mr SAUNDERSON - Would they ring someone, saying: "We have someone who purports to be such and such a person. Is that a genuine name?".

Mr Meagher - No, a computer terminal, a terminal in their office or in my office. You would just bring it up as a national database. I do not see that that involves any great inroads into people's privacy in any way.⁸

2.13 The Committee believes that the major advantage of computerising births, deaths and marriages registers is that it will provide a check on one of the more common means of obtaining false identities within the community. Evidence from the Stewart and Costigan Royal Commissions indicates that false identities are used within the community for the purpose of committing fraud. One means of obtaining a false identity is to obtain the birth certificate of a person who has died - Costigan referred to this practice as a 'resurrection'. By this means, a

genuine birth certificate is issued and the assumed identity is very difficult to uncover. In other instances, false birth certificates are produced and are not checked with the relevant Registry because of the inconvenience of dealing with manual registries.

2.14 Recommendations:

- (i) That the computerisation of all State and Territory Registries of Births, Deaths and Marriages proceed. To this end, the Committee supports the continuation of the current negotiations between the Commonwealth and the States.
- (ii) That the Commonwealth provide appropriate assistance and advice to the States to ensure that the computerisation of births, deaths and marriages registers can proceed within the earliest possible timeframe.
- (iii) That the only Commonwealth Departments permitted to have access to the computerised registry of births, deaths and marriages be the Australian Taxation Office, the Department of Social Security, the Passport Office of the Department of Foreign Affairs and the Health Insurance Commission. That access to computerised births, deaths and marriages data be restricted to verifying documentation submitted for the purposes of obtaining nominated services from the Commonwealth.
- (iv) That extension of access occur only after the widest possible public discussion after the system has been in operation for some minimum period.

Establishment of a Data Protection Agency

2.15 In order to provide stringent safeguards against misuse of the Australia Card system and to ensure the fullest possible protection for and strengthening of human rights, the Government proposal included the creation of a separate independent and powerful statutory body to control the collection and use of computerised personal data. The proposed authority, the Data Protection Agency (DPA), is 'specifically designed to address the many human rights and privacy concerns for which existing Commonwealth agencies are and would remain inappropriate'.⁹

2.16 The concept of an independent agency or office charged with monitoring the use of personal information by government and private bodies and with responsibility for overseeing the implementation of privacy and/or data protection legislation is not new, there being many examples of such agencies in other countries.

2.17 In Britain, the Data Protection Act 1984 provides for an official Data Protection Registry to protect the information held on private individuals from abuse or inaccuracy. Users of computerised personal information as well as bureaux processing and compiling data must register by May 1986. The Data Protection Registry is to be used by the British public to find out about the nature and use of personal data in computer systems and to ensure high standards of practice and protection when personal information is stored on a computer. Any breaches of the obligations imposed on data bureaux and users may attract severe penalties.¹⁰

2.18 Although the Data Protection Registry has been only recently introduced in Britain, the idea has been under consideration since 1972 when the Committee on Privacy chaired by Sir Kenneth Younger recommended an independent body to keep

'under review the growth in and techniques of gathering personal information and processing it with the help of computers'.¹¹ The recommendation was broadly supported by a 1975 White Paper¹², given detailed form in the 1978 Report of the Committee on Data Protection chaired by Sir Norman Lindop¹³, and further scrutinised in a 1982 White Paper¹⁴ before the 1984 Act was introduced.

2.19 The main functions of the Privacy Commissioner of Canada are to ensure the Privacy Act is properly applied and that individuals receive the full rights to which they are entitled.¹⁵ The Privacy Act, which took effect on 1 July 1983, gives individuals access to the personal information held on them by the Federal Government and some control over the Government's collection and use of the information. The Act also places restrictions on who may see the information and sets out principles of fair information practices. In the role of investigator of complaints, the Privacy Commissioner acts as a specialised ombudsman for privacy.

2.20 There are also examples of agencies with the authority to supervise the collection and uses of personal information by the private sector as well as the public sector. In Sweden, the Data Inspection Board has general carriage of the country's data protection laws, including supervision of the Debt Recovery Act 1974¹⁶ and the Credit Information Act 1973.¹⁷ The latter Act contains the provision whereby the subject of a request for information is immediately informed of all relevant details relating to the request and the response:

s.11 When personal information is supplied, a written statement shall at the same time be submitted free of charge to the person to whom the information relates, notifying him of the particulars, assessments and advice concerning him contained in the information, and who has requested the information.¹⁸

Further information relating to the Data Inspection Board was given to the Committee in evidence by Mr Lars Tegnhed, Director of the National Tax Board of Sweden.¹⁹

2.21 The Australia Card proposal envisages three main areas of activity for the Data Protection Agency:

- (i) to provide advice and formulate policy on various issues arising from the introduction of the Australia Card, including the effect of ever changing computer technology on the personal privacy of individuals;
- (ii) to undertake a 'watchdog' monitoring role to ensure that personal data is collected, stored and used in a manner that provides stringent access safeguards; and
- (iii) to provide a co-ordinated, expeditious, informal and inexpensive external review mechanism.²⁰

2.22 The statutory objectives of the proposed Data Protection Agency would be:

- . to ensure that information on the Australia Card register is treated as private and confidential except for the specific uses authorised by legislation;
- . to have decision-making jurisdiction in the areas of data matching, database contents, database uses, confidentiality and access;
- . to monitor changes in technology;
- . to provide protection against abuse in the areas of data trespass involving computers;

- . to provide an independent, effective and accessible review mechanism beyond that provided internally by the HIC and other relevant agencies, and to ensure that the mechanism is economical, informal and expeditious;
- . to allow a co-ordinated monitoring of the many uses of personal data;
- . to set and oversight stringent administrative and legislative controls in the area of privacy and secrecy provisions; and
- . if deemed appropriate by the Government and the community, to provide the foundation for more vigorous control over the collection and use of personal data by the many organisations both public and private which use databases.²¹

2.23 The functions and powers envisaged for the agency were expanded upon in evidence by Mr Michael Clarke, Assistant Secretary, Australia Card Secretariat. Mr Clarke stated:

... in terms of each particular database containing personal information about individuals in this country, the data protection agency would determine who is entitled to keep a database, what is entitled to be kept on that database, why the information is being kept, to whom the information can be given, and under what conditions it can be given. We envisage the data protection agency in this country working along very similar lines and with similar powers as the data protection board has in Sweden. Namely, it would be able to give licences and permits to agencies and later on to public sector bodies, and to maintain databases. It would exercise very strict and very precise control over the sorts of information which could be maintained in those databases and the uses to which that information could be put. Its

brief, though, goes further than that. Its brief would also encompass ensuring that information contained on databases about individuals was accurate. In order to ensure that accuracy it would give each individual access to any database record held on that individual.²²

2.24 Mr Clarke further explained that the DPA would be dealing specifically with control over data matching and data linkage and that:

... only the data protection agency will be authorised to permit one agency to match its database with another, or one agency to enter into on-line links with another. It will grant that licence or that permit under circumstances where the operations and the functions of a particular agency require matching to take place, or require linkage to take place in order to eliminate fraud or to make systems more administratively convenient. It will be empowered to set conditions under which the matching or the linkage can take place and the agencies concerned will be obliged to conform to whatever conditions the data protection agency sets in that area.²³

2.25 The Government has proposed that the functions of the Data Protection Agency (DPA) be phased in in three quite distinct phases. Under phase one the Agency would have jurisdiction over the Australia Card register itself (administered by the Health Insurance Commission) and all other databases operated by Commonwealth Government agencies which in any way draw upon or contain information from the Australia Card register. It is then proposed that the operations and role of the DPA would be reviewed by a Joint Select Committee after the first three years of its operations to determine whether the DPA is fulfilling its purposes and to consider the inclusion of all Commonwealth agencies under DPA jurisdiction whether or not they are associated in any way with the Australia Card database. If

that legislative extension is granted, the wider jurisdiction would then apply for a further three years. At the end of that time, a further review by the Parliament would take place with a view to bringing under the control of the DPA all private sector databases falling within the Commonwealth Government's jurisdiction. Such databases would include those which are encompassed within the banking powers under the Constitution, the corporation powers, or the other related powers upon which the Australia Card system is based and which can be extended to cover databases. It would be under this third phase, when the DPA reached its maximum jurisdiction, that its application would become most like that of the Swedish Data Inspection Board (see paragraph 2.18). It is also proposed that once a year every individual would have the right to receive upon request, free of charge, a record of the information which relates to that person. Any additions or changes made since the person's record was last printed would be highlighted for ease of reference.²⁴

2.26 As part of its inquiry the Committee received evidence about the extent to which data matching and data linkage currently take place within the Government. It became evident that significant data matching occurs between the Australian Taxation Office, the Department of Social Security, the Department of Immigration and Ethnic Affairs and a number of other Commonwealth departments, usually via magnetic tapes. In some instances, the data matching can be done fairly quickly and accurately, in others the information provided from one department to another is very difficult to match. It was evident to the Committee that data matching and data linkage presently take place almost without control. In some areas there is a degree of statutory prohibition on release of data between agencies but, in many other areas, agencies and departments are able to match and link data according to degrees of administrative convenience.

2.27 The Committee believes that, in the light of this evidence alone, there is a need for an independent statutory agency which will take control of that particular element of activity which can at times be a threat to individual privacy. Evidence by the Australia Card Secretariat of the Department of Health emphasised the Government's view that the Data Protection Agency would be one of the more important elements of law reform arising from the Australia Card program. The Department stated:

It is the first attempt to come to terms with the highly increasing pace of computerisation within government service and within the corporate sector. It comes to terms with and sets up mechanisms to protect people from abuses of their privacy through computers. If you look ... at the range of powers, the range of objectives and the range of functions that the DPA will have, you will gain some appreciation, I believe, of the real power, the real likely effectiveness of that agency.²⁵

2.28 The Committee agrees with this view. It believes that the establishment of a DPA is an important and necessary legal reform. It agrees that there is a need for an independent body to monitor data matching and linkage and it does not believe that the existing and proposed network of Commonwealth agencies and protection mechanisms are sufficient to protect civil liberties.

2.29 The other major factor leading the Committee to favour the establishment of a DPA concerns the private sector. At present, for many individuals far more information, including information of a highly personal nature and information which represents a severe infringement of civil liberties, is held in the files of the private sector eg. banks, building societies and other financial institutions, credit bureaux, etc. than by the Government. There is no existing legislation concerning privacy of that information and evidence obtained during the

inquiry suggests that at least some of this information is regularly shared or even sold between various financial institutions. As computers become more integrated into the commercial sector, the flow of information on individuals is likely to increase.

2.30 There is an argument that the existing and proposed network of Commonwealth agencies and civil liberties protection mechanisms are and would be sufficient to satisfy the legitimate concerns of persons who object to the increasing intrusion on individual privacy through computer databases. This approach relies upon the Administrative Appeals Tribunal and the proposed Human Rights and Equal Opportunities Commission (assuming it would be made responsible for monitoring compliance with the information privacy principles which the Government proposes will be enacted through privacy legislation during the course of this year). The 1983 Australian Law Reform Commission Report on Privacy clearly indicated that the existing civil liberties protection mechanisms are insufficient and unlikely to ensure individual privacy. The proposed mechanisms have been criticised on the basis that any existing Commonwealth agency could not provide a high level of protection of personal data. The Committee is similarly sceptical that any existing Government agency would have the independence and the powers to effectively monitor and control the storage, processing, use and transfer of personal data and to protect the individual from unnecessary infringements of rights and privacy.

2.31 The Government proposal noted that under normal circumstances the Government would quite rightly be reluctant to consider the creation of another statutory authority within the Commonwealth, and would be reluctant to allocate staffing and financial resources to such an authority. However it further notes that the Government fully appreciates the growing need to monitor and control the storage, processing, use and transfer of

personal data and to protect the individual from unnecessary infringements of rights and privacy. Although the DPA has been proposed as a means to satisfy various criticisms that have been raised against the introduction of the Australia Card system of identification, the Committee believes that the proposal stands alone and that there is a need within the community, irrespective of whether the Australia Card proposal is adopted, to establish a Data Protection Agency. The Committee believes that in this regard Australia is well behind most other western countries which have comprehensive public and private databases and which have access to and use of sophisticated computer facilities.

2.32 However, the proposal before the Committee places a number of restrictions on the use of the DPA's powers. First, it envisages that the DPA would deal only with computerised information. Second, three caveats would apply in relation to the right of a citizen whose details are kept on a database to have access to that data: the DPA would be empowered to withdraw that access where Commonwealth revenue was at risk, or to ensure compliance with the criminal law, or for reasons of national security. If a decision was made not to give access, a right of appeal would lie to the Federal Court.²⁶

2.33 The Committee agrees that restrictions on the right of access should apply. In addition further consideration needs to be given as to whether certain agencies are excluded from the operations of the DPA eg. national security organisations and police forces. However, it is not convinced that the DPA should only deal with computerised information. The Committee appreciates that there are difficulties associated with extending the powers of the DPA to cover all personal data, whether hardcopy or computerised, but has little doubt that excluding hardcopy would emasculate and eventually defeat the very purpose of the agency. The Committee suggests that in its

first three years, the DPA cover only computerised personal data and that the question of an extension to hardcopy should be examined immediately by a Parliamentary Committee with a view to its implementation in three years time.

2.34 The Committee agrees that a Data Protection Agency be established as soon as possible along the lines proposed in the Government submission, irrespective of whether the Australia Card proposal is implemented. It envisages that the jurisdiction of this body should cover from the outset all Commonwealth data banks. The Committee believes there is merit in the suggestion contained in the Government submission that a Parliamentary Committee be set up to investigate the operation of the DPA after a period of three years and that that Committee should give consideration to extending further the jurisdiction of the Agency to cover all private sector databases falling within Commonwealth Government jurisdiction. Unless severe difficulties are encountered in the first phase of operation or are likely to be encountered in the proposed extension, the Committee is firmly of the view that the DPA should cover all private sector databases three years after its establishment.

2.35 Recommendations:

- (i) That the Commonwealth establish an independent statutory body, known as the Data Protection Agency, to control the collection and use of personal data.
- (ii) That this body have powers, functions and objectives similar to those outlined in paragraphs 14.6.4 - 14.6.6 of the Government's submission and as further outlined in paragraphs 2.23-24 of this Report.
- (iii) That the jurisdiction of the proposed Data Protection Agency cover from the outset all Commonwealth computerised data banks.

- (iv) That a Parliamentary Committee be established to investigate and monitor the following:
 - (a) the implementation and operation of the proposed Data Protection Agency.
 - (b) the extension of the Data Protection Agency's jurisdiction to cover all private sector databases falling within the Commonwealth jurisdiction three years after the establishment of the Agency; and
 - (c) the extension of the Data Protection Agency's functions to cover all written personal data banks three years after the establishment of the Agency.

- (v) That the right of an individual to have access to and correct personal data on a database be on the same basis as that provided under the Freedom of Information Act and that it be extended contemporaneously with any extension of the access provisions of that legislation.

The introduction of Privacy legislation

2.36 In 1983 the report of the Australian Law Reform Commission (ALRC) on Privacy noted that the Crimes Act 1914 s.70 and s.79 and the Public Service Act 1922 s.51(1) and the Public Service Regulations Reg.35 provide the general framework for controlling disclosure of personal information by Government officials working in record-keeping systems for which there is no special legislation. In addition, it noted that specific

legislative provisions which require non-disclosure of personal information appear in certain other statutes, eg. the Social Security Act 1947, the Income Tax Assessment Act 1936. The ALRC reported that most Government departments and agencies have established guidelines for their internal operations which control the flow of information required by the agency, although such guidelines may only incidentally address privacy concerns. It also noted that public sector information may involve disclosure to the private sector and that this is controlled by the same general limitations which apply to internal Government use.

2.37 The ALRC was concerned that these existing provisions did not fully protect privacy concerns. It noted that:

... although much of the legislation which permits disclosure of information to the private sector imposes a duty upon the recipient to restrict its further disclosure, the wider the dissemination of personal information, the harder it is to enforce any restrictions on its future use.²⁷

In addition, the ALRC noted that 'the basic framework might be criticised as allowing discretionary secrecy. And that which allows "discretionary secrecy" also allows "discretionary disclosure"'.²⁸ The Government submission referred to these matters and other limitations of the existing legislation in protecting privacy concerns. The Committee is in full agreement with those arguments.

2.38 It has been proposed that the Government approve privacy legislation along the lines recommended by the Australian Law Reform Commission. This legislation would be concerned with collection, storage and use of information about an individual and would also be relevant to the proposal for the

establishment of the Australia Card register and the question of access to the register. If the legislation is implemented it would:

- . establish Information Privacy Principles (IPPs) which would -
 - require personal information to be collected only for a specific purpose;
 - require a collector collecting information from a person to tell that person of the purpose of collection and the collector's practices regarding disclosure of the information;
 - require the keeper of records of personal information ('record-keeper') to see to their security;
 - require record-keepers to help persons about whom they keep personal information records ('record-subjects') to find out about those records and their possible uses, and to permit them to gain access to those records;
 - require record-keepers to maintain accuracy of personal information records and check their accuracy before using the information;
 - prevent record-keepers from using or disclosing personal information other than for a relevant purpose or, in the case of information collected from the record-subject, for a purpose other than that disclosed to the record-subject when collecting it - or for certain other specific purposes, such as law enforcement or preservation of life.

- . require Commonwealth Departments and agencies to comply with the IPPs;
- . enable a person to complain of a breach of the IPPs to the Human Rights Commission or, if legislation establishing it has been enacted, the proposed new Human Rights and Equal Opportunities Commission, which would have the power to inquire into the alleged breach and report on it to the Minister.²⁹

2.39 The introduction of privacy legislation as recommended in the ALRC Privacy Report would have some impact on a number of other pieces of Commonwealth legislation. In particular, amendment of the Freedom of Information Act 1982 would be required in the following areas:

- . substantial widening of a person's enforceable right of access to records about that person
- . greater rights to privacy where others seek access to information about a person
- . abolition of exempt agencies for privacy purposes
- . some relaxation of other present FOI exemptions eg. legal professional privilege
- . extension to ACT residents of the right of access to personal records held by private sector bodies and the right to have those records amended if they are incomplete, incorrect, out of date or misleading.³⁰

2.40 It should be noted that the confidentiality of information acquired by Government officials in the course of the performance of their duties is already covered by specific secrecy provisions, in particular s.70 of the Crimes Act and

under the Public Service Regulations. The Human Rights Commission or the proposed Human Rights and Equal Opportunities Commission will have two roles: the first as the body with responsibilities under the proposed privacy legislation - a complaint-handling and monitoring role; and the second under its own legislation whereby it can handle complaints of breaches of human rights.

2.41 The Committee agrees that the introduction of privacy legislation is essential, irrespective of whether the Australia Card proposal is adopted. The 1983 ALRC report provides a substantial base for the adoption of its recommendations.

2.42 Recommendation: That the Commonwealth introduce privacy legislation based on the recommendations of the Australian Law Reform Commission Report on Privacy as soon as possible.

Adoption of recommendations proposed by various Parliamentary and Government reports

(a) Improved banking controls

2.43 Evidence before the Committee indicated that Banks have differing levels of security in relation to the opening of accounts. The Committee believes that this is a major area where fraud has occurred in the past, as the opening of a bank account under a false identity enables individuals to evade tax. The Costigan Royal Commission found many instances where the banking system was used to hide fraudulent gains. The Report noted that criminal organisations made use of the banking system to hold and transfer large quantities of money. In the Commission's view cash concealed in a wall, under a mattress, or in a car is as susceptible to theft as any honest citizen's possessions and

perhaps more so. As a result, financial institutions such as banks are resorted to for much the same reason as any business finds their facilities convenient. The Commission further noted that banks are not the only institutions preferred by criminals. It received considerable evidence of building societies, the TAB and solicitors' trust accounts being used by criminals as repositories for moneys. The Report stated:

In all of these cases the criminal employs false identities. The bank manager or other custodian willing to accommodate such preference attracts criminals to him like flowers attract bees. From my investigations it seems that such corrupt managers (and they are not limited to banks; they are to be found in branches of building societies and so on) are more likely to be encountered in small branches rather than the large ... The operation of false accounts muddies the waters for an investigator. It makes difficult the tracing of monies if the starting point is the criminal activity. The criminal, conscious of the need to cover his tracks, takes every precaution to ensure that the proceeds of the crime cannot be traced to him. But if the starting point is different, if it is at the point where the criminal commences to enjoy the possession of the money, the tracing exercise is far easier.³¹

It is in this area that the proposed Australia Card or a unique identifier number such as a tax file number would be of great assistance.

2.44 In order to avoid the difficulties associated with false identities, the Costigan Royal Commission recommended the following banking controls:

- (1.) Each person applying to open a bank account be required by law to provide a written statement containing the information set out below. This form should be signed personally and witnessed by the bank officer opening

the account. The statement should contain, inter alia, the following details:-

- (a) The full name currently being used by that person;
- (b) The name under which the person was born;
- (c) The date and place of birth;
- (d) Any other name used between the date of birth and the date of the statement;
- (e) Whether the person is or has been a taxpayer and, if appropriate-
 - (I) The name under which he lodged his last return.
 - (II) The place of lodgement.
 - (III) The taxation number allocated to him.
- (f) His current address and any address used by him as his principal place of business or residence during the previous 5 years.

(2.) The legislation should provide appropriate penalties for making a false statement. Banks tend to require proof of incorporation of companies before opening accounts. The law should demand they obtain such proof. The statement of personal particulars should be supplied by all proposed signatories for the account. If a banker fails to obtain the appropriate statements then it should be subject to severe financial penalties. The same provision should also apply to the use of accounts in business names or in the names of trusts.

(3.) In conjunction with (2.), similar legislation dealing with all financial institutions be negotiated - as appropriate - with State Governments.

(4.) Every applicant to a bank or other financial institution seeking the remission of funds overseas should be identified on a record to be kept of

that transaction. This should then be forwarded to the Reserve Bank to be included on a computerised record of all overseas transactions.

- (5.) Banking records, including all vouchers, should be retained by the banks for a minimum period of 7 years. In the event originals of such documents are released to a customer, then copies of any such documents including endorsements appearing thereon should be made and likewise retained.³²

The Final Report also noted that the recommendations relating to the retention of records, of overseas remissions and other financial institutions are also of great significance.

2.45 The Committee is aware that action has been taken in respect to these recommendations. A Government Working Group was established to examine the recommendations of the Costigan Report concerning banking controls and a questionnaire was forwarded to the Australian Bankers' Association. From the outset, the banks were opposed to the provisions suggested by the Costigan Report. They were particularly opposed to being given any role of 'policing' the activities of their customers. A similar attitude was taken by the banks towards the introduction of the Australia Card. For instance, the National Australia Bank indicated to this Committee that the significant cost to financial institutions of implementing and administering operational procedures to cater for use of and validation of Australia Card on behalf of the Government 'is considered unwarranted having regard to benefits likely to be achieved'.³³ The Government Working Group reported in June 1985, and the Committee understands that since September 1985 the Department of the Treasury, which is coordinating the response to the report, has been awaiting comments from the Attorney-General's Department and the Director of Public Prosecutions. However, the

Committee has not been informed as to the content of the Working Group Report nor the response to that report. Both the Australia Card proposal and recommendations by a majority of this Committee concerning the upgrading of tax file numbers address the major thrust of the Costigan banking control recommendations.

2.46 While the Committee is aware that the Federal Government's power over banking is limited by s.51(xiii) of the Constitution to banking other than State banking, it believes the recommended controls should be applied uniformly to all banks in the country in order to prevent leakages. The Committee accordingly urges the Federal Government to consult with the State and Territory Governments on this issue, with a view to early introduction of uniform controls as recommended.

2.47 The Committee found that, in the main, the evidence from the banks was very unsatisfactory. With the exception of the ANZ Bank, their evidence was guarded, evasive and generally unhelpful. It also appeared to the Committee that they were unconcerned about the protection of Government revenue. Despite the alarming evidence concerning bank procedures contained in the Costigan Royal Commission, their attitude to these practices appears unchanged.

2.48 During the inquiry, the Committee heard disturbing evidence, including that from representatives of various banking organisations, Mr Meagher and others, about the attitude of the banks to fraud. Generally speaking, some banks appeared very reluctant to take any action against bank employees including managers who were found to have breached bank regulations or to have been involved in fraud. Rather than publicise the matter, it appeared that a number of banks had taken the option of dismissing the employee without referring the matter to the police for investigation. This was done on the basis that the publicity would have an adverse effect on a bank's operations.

The Committee believes that this practice by the banks is abhorrent and against the interest of the community at large. In many instances, the practice meant that criminal activities which would have been uncovered by a police investigation were covered up. It is also likely that the criminals concerned merely shifted their funds to another bank.

2.49 Recommendations:

- (i) That the Government adopt without further delay the banking control regulations contained in the Costigan Royal Commission Report where they are not already subsumed within the Committee's own recommendations.
- (ii) That the Federal Government consult with the State and Territory Governments on controls on banks and other financial institutions under State jurisdiction with a view to the early introduction of uniform controls as recommended.
- (iii) That legislation be introduced to require banks to notify the relevant Commonwealth and/or State law enforcement agencies about any fraudulent or suspected fraudulent activity within the banking system.

(b) Control of illegal immigration

2.50 In November 1985, the House of Representatives Standing Committee on Expenditure tabled a report entitled 'Who Calls Australia Home?'. The report was a review of the Auditor-General's audit on the control of prohibited immigration by the Department of Immigration and Ethnic Affairs. The objectives of the House of Representatives Committee were to assess the substantive content of the audit exercise and the

quality of the efficiency audit report and to examine the response of the Department. The Committee also took up the general question of the extent to which non-citizens were able to obtain financial assistance and other benefits from Commonwealth sources.

2.51 The Expenditure Committee reported that it believed that:

... as a matter of principle, people who are in Australia unlawfully should not be entitled to the same forms of assistance/benefits which are given to those who have legal status in Australia, regardless of whether they are temporary entry permit holders, permanent residents or citizens.³⁴

As it was not possible for the Expenditure Committee to conduct a full scale inquiry into all aspects of Commonwealth assistance, the members confined themselves to looking at a number of areas which included:

- . assistance from the Commonwealth Employment Service to prohibited non-citizens to obtain employment;
- . access to the Medicare system; and
- . the availability of benefits from the Department of Social Security.

2.52 The Department of Immigration and Ethnic Affairs estimates that there are 50 000 or more prohibited non-citizens in Australia, that each year a further 6000-10 000 persons become prohibited non-citizens, and that the total number of prohibited non-citizens who left Australia in 1983/84 was 2554.

The Expenditure Committee concluded that 'despite its best efforts the Department faces an uphill task in controlling prohibited immigration'.³⁵

2.53 The Expenditure Committee was informed that as many as 30 000 jobs could become available to citizens currently seeking work if it were possible to ensure that only persons legally entitled to work in Australia did so. There appears to be some conflict with these figures and those given to the Committee.³⁶ Accordingly, it was concerned to establish whether prohibited non-citizens and visitors not authorised to work were obtaining work through the Commonwealth Employment Service (CES). The submission from the CES to the Expenditure Committee indicated that it does not check the bona fides of clients seeking assistance in finding employment. The Expenditure Committee was further advised that the CES has no charter at present to administer any form of eligibility test on its job-seeker clients. The Expenditure Committee Report reached the conclusion that it 'is therefore possible that persons unauthorised to work in Australia are using CES services to obtain jobs'.³⁷

2.54 During its inspections of the two Immigration Detection Centres in Sydney and Melbourne, the Expenditure Committee was informed that prohibited non-citizens who are detained are commonly found to be in possession of a Medicare Card. The inference was drawn from this 'that prohibited non-citizens were using Medicare cards to obtain benefits from the Australian health system to which they were not entitled'.³⁸ This inference coincides with the evidence received by this Committee. The HIC informed the Committee that approximately 10 000 to 15 000 illegal immigrants have obtained Medicare benefits at some stage since the inception of Medicare at an average of approximately \$100 per person.³⁹ The HIC indicated, however, that some of these benefits would have been obtained legally, ie.

while the persons were legally entitled to receive Medicare benefits. Following the Expenditure Committee's inquiries, the Health Insurance Commission has been made aware of the problem and is actively seeking solutions to it in conjunction with the Department of Immigration and Ethnic Affairs (DIEA). The Committee also received disturbing evidence about the lack of action taken by the HIC when it became aware that some individuals had been issued multiple Medicare cards. This issue will be discussed in the next section.

2.55 The Expenditure Committee was also informed that the Department of Social Security has procedures in place to check the travel documents of applicants not born in or newly arrived in Australia. This enables persons to be identified as prohibited non-citizens. In evidence, departmental representatives stated that these procedures were undergoing review. The Report noted that there was close contact maintained with DIEA but some reservations were expressed about the quality of the data which was being received by DSS from DIEA. The Expenditure Committee noted that there was room for improvement.

2.56 The Expenditure Committee Report also referred to the fact that a system of national identification was being examined and that it might be of some assistance in the areas examined by the Expenditure Committee. As the problems encountered by this Committee and the Expenditure Committee concerning illegal immigration are basically the same, this Committee adds its weight to the recommendations proposed by that Committee. These recommendations are set out in Appendix 5 of this Report. In particular, the Committee believes special attention should be paid to recommendations 3, 7, 8, 9(a), 9(b), 10 contained in the Expenditure Committee Report. In addition, the Audit office recommendations contained in the Efficiency Audit Report and commented on by the Expenditure Committee should be implemented; the recommendation that DIEA expedite the implementation of the 'pre-movement' database system should be given special attention.

2.57 Recommendation: That the outstanding recommendations of the Report of the House of Representatives Standing Committee on Expenditure on control of prohibited immigration be implemented as soon as possible.

(c) Administrative reforms

2.58 The Committee became aware of a number of disturbing administrative procedures during its examination of Government agencies. Two areas of particular concern were the procedure adopted by Government agencies in relation to suspected fraud, and the procedures presently adopted by the Department of Education in relation to payments under the Tertiary Education Assistance Scheme (TEAS) and other benefits.

(i) Suspected fraud

2.59 When the Health Insurance Commission appeared before the Committee, it admitted that a number of individuals within the community had received more than one Medicare Card. At the present time, the HIC has identified approximately 20 000 possible 'duplicates' (as these multiple issue cards are known). When questioned about whether the Medicare cards are being used for fraudulent purposes, the HIC stated its opinion that many of the extra cards or duplicates that are being issued at the moment are being used to create false names for fraudulent purposes. However, it indicated that these false identities are being used not so much to defraud the Health Insurance Commission and Medicare as to establish false identities for other purposes:

We are aware of at least one case in which false identities were being created. We knew they were being created and we knew who was creating them but that in itself is not a crime. There is no legislative backing for

the Medicare enrolment process and, at the most, it is a misdemeanour - just a nuisance to the Commonwealth. We sat there waiting for that person to start putting in false claims but he never did. One day the police came and said that they had picked up this person with all these Medicare cards and we said: "Yes, we know". They said: "This person had been using them to claim TEAS". That made us feel a bit foolish, but what could we do? If we had descended on the person, what crime would we have had him for?⁴⁰

The HIC informed the Committee of another incident:

We had a case in Western Australia where two persons established 45 false identities. When they were arrested it was apparent that they were heavily involved in defrauding the Department of Administrative Services and other organisations, but I have no idea of the extent or the nature of it.⁴¹

2.60 The HIC admitted that false identities usually only become an issue when they are used in connection with false claims for benefits. It indicated that while it has controls on the enrolments, its control procedures are mainly intended to prevent the claiming of benefits where no entitlement exists. The HIC also reiterated that there is no offence of creating a false identity within the Health Insurance Act and referred to one instance where it detected an individual with multiple cards:

For example, there was one lady who had 23 cards: We knew she had 23 cards, but she was not claiming on us. We subsequently found that she was using them to defraud the Department of Education in relation to grants. Similarly, a man was arrested with 29 cards in his possession - he was defrauding Social Security. There is another aspect to the use of false identities: We recently had a case where somebody used the name of a person who had been dead for five years.⁴²

2.61 The HIC informed the Committee that it became aware of this person as a result of a routine scan:

She was then put up for daily observation on all these cards to see whether any claims were coming in. Shortly after, we were advised by the Australian Federal Police, I believe, that this lady had a number of Medicare cards in her possession. We said, "Yes, we know, but she is not committing any fraud with them", and the police said: "Yes, she is. She is using them to obtain grants from the Department of Education".⁴³

2.62 The HIC was then asked by several members of the Committee why they did not report any person with multiple Cards as a matter of course to some Commonwealth authority, such as the Federal Police. The Committee was informed by the HIC:

I have no authority whatsoever to advise the Federal Police of matters where I suspect that something may be going on. We have secrecy provisions which relate to our data and I believe I would be in breach of those secrecy provisions if I told the Federal Police that I suspected this was going on and provided a list of names.⁴⁴

2.63 The HIC explained that they can approach the Federal Police and disclose information to it where there have been offences. However, in the normal course of events, it is not a prescribed authority to which it is able to divulge information. The HIC indicated that it was constrained by Section 130 of the Health Insurance Act 1973 not to divulge any information to any organisation unless that specific organisation is prescribed by regulation: specified organisations include the Department of Social Security, the Department of Veterans' Affairs and the Department of Health. Even these Departments are able to obtain only certain specified information.⁴⁵ The Committee agrees with the recent recommendations of the Senate Standing Committee on Regulations and Ordinances in relation to a full release of information.⁴⁶ However, these provisions would prevent the HIC from informing government agencies that it suspected fraud in cases where an individual had a substantial number of Medicare cards.

2.64 The Committee believes that the circumstances outlined above are of serious concern. The Committee is strongly in favour of secrecy provisions in relation to personal data, no matter in what Commonwealth data bank they are held. However, the Committee does not believe that these provisions should in effect protect criminals or individuals where there are obvious grounds for suspicion of fraudulent activity. The Committee does not know how many other authorities or Government agencies within the Commonwealth are also prevented from informing the Australian Federal Police or any other Commonwealth agency of circumstances where fraud is suspected. The Committee recommends that a provision be inserted in Commonwealth legislation enabling Commonwealth agencies to inform the appropriate authority, which may be another Commonwealth department or the Australian Federal Police, of circumstances which indicate that there is a likelihood of fraud being committed. The question of whether the agencies should be required to report such cases should be the subject of further consideration by the Government.

2.65 Recommendation: That legislation be passed allowing Commonwealth departments and authorities to inform the appropriate department or authority about suspected cases of fraud. The question of whether departments should be required to report such cases should be considered by the Government.

(ii) The Department of Education

2.66 As noted in Chapter 1, the Committee was not satisfied with the evidence of a number of Departments which appeared before it and this includes the Department of Education. This Department was called before the Committee to discuss the application of the Australia Card proposal to the payment of benefits under education assistance schemes such as the Tertiary Education Allowance Scheme and the Secondary Allowance Scheme.

While the Department runs checks on the eligibility of applicants for the schemes, viz. income tests, checks on academic standing with the nominated educational institution, and some contact with the Departments of Social Security and Employment & Industrial Relations, the Committee was alarmed to learn that no checking is presently conducted on the identity of applicants. Further, the Department generally does not have any personal contact with applicants. Mr Bruce Milligan, First Assistant Secretary, General Student Assistance Division, told the Committee:

Basically we run a mail order business with applications for TEAS because we serve a fairly far-flung clientele. We do not have an extensive regional service. We have about 30 office outlets in Australia to serve those numbers so most of our business is done by mail application.⁴⁷

The fact that applicants do not undergo personal interviews (unlike applicants for social security benefits) opens the way for abuse of the system.

2.67 The Committee considers that responsibility for the payment of benefits under education assistance schemes should be transferred to the Department of Social Security. The Department of Education would maintain policy responsibility for establishing conditions for eligibility and for budget appropriations. The Committee also considers that the transfer of responsibility in relation to applications and payments should include the transfer of all staff associated with these operations and that this be done as soon as possible. The Committee believes that this recommendation will:

- . improve identity checks on applicants for education assistance, as the Department of Social Security would extend the use of its procedures to this sector;

- . eliminate fraud on the revenue through payment of unemployment benefits and education assistance to a person not entitled to both, as both types of benefit would be paid by the same Department; and
- . increase the efficiency of this sector of the bureaucracy as checks between the Departments of Education and Social Security would no longer be needed and many procedures are common to both Departments.

2.68 Recommendations:

- (i) That the responsibility of processing applications and payments under education assistance schemes be transferred from the Department of Education to the Department of Social Security along with all staff involved in administering the schemes.
 - (ii) That the Department of Education retain policy control over the schemes and budget allocations for education assistance continue to be held against the Education vote.
- (d) Monitoring and possible extension of the Department of Social Security identity procedures

(i) Audit findings - overpayments

2.69 During the last few years, the Auditor-General has been closely examining the procedures employed by the Department of Social Security for the payment of social security benefits. Since 1984, the Auditor-General has commented on the recovery of overpayments and on the procedures used in the payment of unemployment, sickness and special benefits.

2.70 The Department defines overpayments as those amounts that have been paid out to recipients of assistance under its various income maintenance programs (pensions, benefits and allowances) in excess of their entitlement under the provisions of the Social Security Act 1947. Such overpayments are brought about either through the payee providing incomplete or inaccurate information at the time entitlement was assessed, or through a change in the payee's circumstances not immediately notified to the Department. All such overpayments are recoverable from the recipient. Payments in excess of entitlement arising from office error are classified by the Department as incorrect payments rather than overpayments. The relevant information for the period 1981/82 to 1984/85 is as follows:

[INSERT TABLE - OVERPAYMENTS MADE BY THE DEPARTMENT OF SOCIAL SECURITY 1981/82 TO 1984/85]

2.71 In September 1983, the Auditor-General completed an audit of unemployment, sickness and special benefits through regional offices of the Department located in the Melbourne metropolitan area. In addition, benefit payments were tested at regional offices located in Victoria, Western Australia and Tasmania. The audit concluded that the key controls over the payment of unemployment benefits were being inconsistently applied.

(ii) Audit findings - identification

2.72 Identification of applicants: One of the major problem areas found by the Auditor-General was the identification of applicants. The March 1984 report of the Auditor-General stated that:

At one office it was noted that, in a substantial number of cases and contrary to Departmental instructions, evidence held on file to support identification of applicants and dependents was inadequate. Instances were observed at a second office where unacceptable modes of identification had been used, also in contravention of Departmental instructions. In addition the existence of the spouse of an applicant for benefit was not always verified.⁴⁸

The Auditor-General also referred to deficiencies in relation to pre-grant interviews, checks with employers and intra-departmental verification checks.⁴⁹

2.73 Pre-grant interviews: At one office, pre-grant interviews were held with only some 50 per cent of all applicants for benefits, while at a second, no file record of interview was retained unless a statement was obtained from the applicant. The State administration acknowledged the importance of the pre-grant interview and the need for it to be properly documented.

2.74 Checks with employers: At one office, instances were noted where reports had not been returned from the last place of employment and there was no evidence that any follow-up action had been taken. Test checking of key controls over payments of benefits at a New South Wales regional office revealed instances where reports had not been sent to the last place of employment.

2.75 Intra-departmental verification checks: Departmental instructions require new applications to be checked against various Departmental client indices as a fundamental control primarily designed to prevent duplicate payments. In all three offices many instances were noted where there was no evidence of the index check having been performed.

2.76 In referring to the audits of the Victorian administration, the Auditor-General's office questioned whether they were indicative of a general breakdown in compliance with key controls over the payment of unemployment benefits, at least in metropolitan offices. At each office covered in the project, and to varying degrees, a number of these controls had broken down. The State administration, while conceding that not all procedures had been followed in all offices, did not regard the cumulative effect as being indicative of a general breakdown. The Auditor-General concluded:

Nonetheless the findings of this audit and of related audits of regional offices give cause for concern and serve to illustrate the many problems being faced by the Department in providing income maintenance in the form of unemployment, sickness and special benefits.⁵⁰

2.77 The Auditor-General, however, noted that initiatives had been taken by the Department to deal with these problems. These measures included enhancement of the staff training

program, introduction in regional offices of self-monitoring programs to assist in maintaining compliance with prescribed procedures and controls, and the development of a national management information system.

2.78 The next report of the Auditor-General in September 1984 again referred to the problems identified and associated with application of key controls within the national benefit processing system. The report noted that further testing of these controls at selected offices revealed further breakdowns:

- . there was no evidence that pre-grant interviews had been conducted in 24 per cent of cases reviewed by Audit at a New South Wales office;
- . although improvements in establishment of identity were noted, instances were noted at one New South Wales office where there was no such evidence on Departmental files;
- . significant arrears in field officer reviews were noted at two New South Wales offices and the Queensland office; and
- . at a New South Wales office and the Queensland office it was found that there was no regular liaison between the family allowance and the national benefit systems. Similarly, at another New South Wales office, there was no liaison between the pension and national benefit systems to detect beneficiaries with pensioner spouses.⁵¹

2.79 The central office of DSS advised the Auditor-General that a major review was currently being conducted of the role of pre-grant interviews in client identification. DSS noted that

the review has so far shown that identification processes need to be improved in terms of fraud deterrence and client service. The Department is also conducting a review of the selective review program which is expected to result in a number of changes to the current procedures.

2.80 The April 1985 Report of the Auditor-General referred to continued breakdowns in key controls in the national benefit processing system. The Report noted that further testing at a New South Wales office revealed the following breakdowns:

- . no evidence of a pre-grant or post-grant interview being held in 14 per cent of cases checked;
- . no documentation to support proof of identity in 37 unemployment benefit cases out of 54 examined other than file endorsements by departmental officers;
- . no evidence of an employer's report to validate employment history of the claimant in 24 instances and inadequate follow-up of outstanding employment details in other cases;
- . lack of liaison action between the national benefit and the family allowance systems in respect of beneficiaries with dependent children;
- . medical certificates not validated in 24 sickness benefit cases; and
- . infrequent reviews of long-term beneficiaries, some for periods in excess of three years, in a number of instances.⁵²

2.81 The Auditor-General was informed that a new initiative had been the subject of a pilot study in New South Wales, whereby a combined initial assessment and pre-grant interview form had been developed as a record of interview. He was also informed that remedial action had been taken in respect of other matters and was the subject of internal reviews currently in progress or had been referred to the central office for consideration.

2.82 The September 1985 Report of the Auditor-General advised that additional audits were recently finalised in New South Wales and Western Australia. The audits included review of controls of both the State headquarters and regional office levels. The Report also noted that at 30 June 1985 there were approximately 643 000 recipients of unemployment, sickness and special benefits and total outlays during 1984-85 were \$3449 million.

2.83 The audit findings were as follows: At five of the regional offices visited, breakdowns had occurred in the application of departmental procedures to establish the identity of applicants. Principal areas of concern noted by the Audit Office during test checks were:

- . no evidence available in seven cases to show that proof of identity had been established;
- . inadequate standard of documentation for identification purposes in five cases; and
- . copies of documents used for identification not held on departmental files in seven cases.⁵³

The Auditor-General commented:

These omissions represented an approximate 10% failure rate in the application of or evidencing of adequate identification procedures. This is considered to be unsatisfactory.⁵⁴

2.84 Between November 1984 and March 1985, the Department introduced new procedures which require a more vigorous test of an applicant's identity and eligibility. The Auditor-General noted that the adequacy of the new identification procedures had not been fully evaluated by Audit although preliminary tests at two regional offices revealed that procedures were being satisfactorily applied. The Auditor-General further stated:

In view of the apparent improvement in identity check controls and the likely vulnerability of the previous approach, a need was seen by Audit for the standard of identity acceptability in respect of all current beneficiaries to be upgraded to accord with the new procedures. This could be achieved by either progressive review of those cases where benefits had been granted prior to the revised procedures or by mounting an all-inclusive one-off exercise.⁵⁵

2.85 In response, the Department advised that a post-implementation review of the revised procedures for establishment of proof of identity would be conducted during October/November 1985 and would ensure, among other things, their national application. However, as the unemployment benefit population has a turnover time of six to twelve months, and the revised procedures are applied for all new beneficiaries, DSS stated that it was not 'seen as cost effective to conduct a one-off exercise to upgrade the standard of identification for existing beneficiaries at this time'.⁵⁶ DSS expects that proof of identity for existing beneficiaries would be upgraded when

they re-apply for benefits. Measures to upgrade the standard of identification for any residual population of long-term beneficiaries will be considered at the time of the review.

2.86 The issue of proof of identity was again reported on by the Auditor-General in the March 1986 report in relation to pensions. The Auditor-General noted that verification of the claimant's identity is an essential requirement for the payment of pensions. In two New South Wales regional offices, inadequacies concerning proof of identity were disclosed 'in a significant number of cases examined'.⁵⁷ The Department advised that revised proof of identity procedures were applied to all pension claims received since November 1984 (except in New South Wales where the procedures were implemented in 1985). As all of the cases noted by the Audit Office involved claims lodged prior to the application of revised proof of identity procedures, the Department was requested to advise what national policy and procedures were to be applied to obtain suitable evidence of identity for claimants whose claims were determined before the introduction of the new procedures. In response, the Department advised there was some doubt as to the cost effectiveness of applying the revised procedures to pensioners granted pensions prior to these dates as it would entail interviewing over two million clients. The Auditor-General stated:

While recognising the difficulties of reviewing proof of identity for all existing pension recipients in the short term, Audit is of the view that a strategy for the progressive review of existing beneficiaries should be considered further by the Department.⁵⁸

The Committee is in full agreement with the Auditor-General's comments.

2.87 In February 1986, the Federal Government launched an integrated six-point strategy to prevent, investigate and recover social security overpayments. The Minister for Social Security, the Hon. Brian Howe MP, noted that the Government strategy could result in savings of up to \$90 million by 1988. The Minister stated that the campaign will involve:

- . collecting as much existing debt as possible;
- . preventing future overpayments; and
- . improving the means of identifying and investigating fraud and overpayments.

2.88 As a result of a number of initiatives introduced by the Department of Social Security, the net annual overpayments detected in 1984/85 fell below \$20 million. While these figures show a marked improvement in the reduction of overpayments of social security benefits, the Committee emphasises that this figure only relates to amounts that have been identified by the Department as overpayments. Similarly, the amount attributable to fraud based on false identities, currently 0.6 per cent of current overpayments, only relates to overpayments that have been identified by DSS as the result of fraud. The Committee is concerned by the Auditor-General's finding that there was 'an approximate 10% failure rate in the application of or evidencing of adequate identification procedures'.⁵⁹ While the Committee recognises that this figure does not mean that 10 per cent of all benefit payments were overpayments attributable to breakdowns in procedures, it is possible that there has been a considerable loss of revenue in these instances which are not included in the overall figure for overpayments.

2.89 In the light of all these comments, the Committee considers that the Department should follow the recommendations of the Auditor-General and review all applications for benefits

granted and still current before the new procedures for proof of identity were implemented. In addition, the Committee considers that, as soon as the computerised register of births, deaths and marriages is implemented, that it conduct a thorough review of all social security beneficiaries be conducted to ensure that benefits are being paid to genuine identities.

(iii) The use of false birth certificates

2.90 Of further concern to the Committee is the ease with which applicants for benefits have been able to obtain benefits on the production of false documents of identity. In these instances, even if the correct Departmental procedures concerning proof of identity had been carried out, there is no guarantee that an offender with the necessary expertise to provide false documents would be detected. As noted in Chapter 1, the Committee was informed by the Department that where a 'sound' document is provided by an applicant for proof of identity, only one other document showing identity is required. In particular, the Committee was informed that birth and marriage certificates are considered to be sound documents. However, the Committee does not agree that these two documents are in any way an adequate proof of identity.

2.91 The use and status of birth certificates was examined in some detail by the Stewart Royal Commission into Drug Trafficking in its Interim Report on Passports. The Commission closely considered the use of birth certificates and reached the following conclusion:

It appears to the Commission that a tendency has developed in the community to regard a birth certificate as evidence of identity. It clearly is not evidence of identity. Without evidence to connect a person with the person named in the birth certificate, the certificate establishes nothing about that person. It is easy to obtain from any of the registries of NSW, Victoria and Queensland a

birth certificate relating to another person without that person's knowledge. It matters not whether the other person is living or dead. There is commerce in birth certificates in that persons sell or hire their own birth certificates to others. Birth certificates relating to other people are used for many purposes other than to obtain passports.⁶⁰

2.92 The Commission also noted that blank birth certificates often went missing or were stolen. It heard evidence which convinced it that at least some of these stolen certificates came into the possession of Robert Trimbole and were used fraudulently to obtain valid Australian passports. In relation to these types of forged birth certificates the Commission stated:

A person who obtains a blank birth certificate form can easily type in whatever particulars he likes. There are no doubt considerable advantages in assuming the identity one wishes to choose which does not duplicate the identity of a person whether living or dead. Certainly there appears less chance of being detected where there is no duplication of identity. The person who fills up the blank form he has obtained with particulars to his own satisfaction must still manage to have imprinted upon the document a simulation of the facsimile signature and coat of arms which are stamped on a genuine certificate prior to its issue. The Commission is satisfied that any person engaged in the making of rubber stamps could quite easily provide stamps for the purpose of simulating the official stamps so successfully that only the most expert of examinations would reveal that the official stamps had not in fact been used.⁶¹

2.93 The Commission concluded that the root of passport abuse in Australia was the birth certificate. Among the many recommendations made by the Commission in relation to passports was the following:

23. Under no circumstances should the production of a birth certificate alone be accepted as sufficient proof of the identity of the applicant for a passport.⁶²

2.94 The Committee is extremely surprised and alarmed that, even after this damning indictment, birth certificates are still used as a 'sound' document by the Department of Social Security. Although the Department appeared to acknowledge the inadequacies of the birth certificate as proof of identity, it indicated that it still does not at present check a birth certificate at the relevant State registry. The Committee believes that this represents a serious deficiency in the checking of proof of identity. While it recognises that some assumed identities may not be picked up by this process, it would certainly highlight those cases where certificates had been forged. In the light of this evidence, the Committee believes that the Department of Social Security should not accept birth and marriage certificates as sound documents unless a check is carried out at the relevant registry of births, deaths and marriages.

2.95 Recommendations:

- (i) That the Department of Social Security conduct a progressive review of proof of identity for all existing pension recipients and all current unemployment beneficiaries whose claims were determined before the introduction of the new procedures.
- (ii) That the Department of Social Security match all recipients of social security benefits with the proposed computerised register of births, deaths and marriages as soon as that reform is implemented.

- (iii) That the Department of Social Security immediately begin verifying birth and marriage certificates offered as proof of identity with the relevant State or Territory Register.

- (iv) That the Department of Social Security not accept birth and marriage certificates as 'sound' documents for proof of identity purposes until registers of births, deaths and marriages are computerised and linked.

Endnotes

1. See Evidence pp. 2704-2710.
2. Health Insurance Commission, Australia Card: Planning Report on the establishment and administration of a national identification system, Canberra, February, 1986, pp. 109-110.
3. ibid., p. 105.
4. ibid., pp. 106-7.
5. Evidence, p. 1166.
6. Evidence, p. 1172.
7. Evidence, p. 1171.
8. ibid.
9. Department of Health, Towards Fairness and Equity: The Australia Card Program, Submission by the Government of Australia, 6 February 1986, p. 172, paragraph 14.4.4. Evidence, p. 1722.
10. Janice Barker 'Protecting Data with the Aid of the Law', London Press Service, 5 January 1986.
11. Committee on Privacy chaired by Sir Kenneth Younger Report 1972, Cmnd 5012, quoted on p. 450 of Lindop Report.
12. Home Office White Paper 'Computers and Privacy' (Dec. 1975) Cmnd 6353.
13. Home Office Report of the Committee on Data Protection, Chairman: Sir Norman Lindop (December 1978) London Cmnd 7341.
14. Home Office White Paper (1982) Cmnd 8539.
15. Privacy Commissioner of Canada, Annual Report 1983-84, Canada 1984, p. 5.
16. Evidence, p. 3278.
17. Evidence, p. 3285.
18. Evidence, p. 3237.
19. See Evidence, pp. 3207-3293.
20. Government submission cited endnote 9, p. 175, paragraph 14.6.3. Evidence, p. 1725.

21. *ibid.*, p. 176, paragraph 14.6.4. Evidence, p. 1726.
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