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Editors: Elizabeth Broderick, Blake Dawson Waldron
Robert Johnston, Ebsworth and Ebsworth

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The Tax File Number

L. G. Lawrence *

It may seem churlish of one who has been accurately cited, to criticise the Report by the Senate Standing Committee on Legal and Constitutional Affairs on the "Feasibility of a National ID Scheme; The Tax File Number". However, in view of the background of potential readers of this article, it is worth highlighting its good and bad features.

The major general criticisms are that the report is too late and too weak.

It is too late in that the Government pushed ahead in September with legislation to implement the tax file number, well before the report could be presented in October. Hence the evidence to and conclusions of the Committee could not be included in consideration of the legislation. Similarly, to the best of available

knowledge, the Opposition has seen fit to make changes in return for support, without the benefit of considering the evidence given.

The report is too weak in many areas, some of which have been mentioned by Roger Clarke (the Australian, 1st November, 1988). In general the Committee appears to have lacked an awareness of computing systems and the reaction of the unaware user to them. The Committee has

fallen victim to the very inequity it seems to recognise (in para. 7.74) by accepting unsubstantiated submissions of officers or employees of agencies and departments over evidence presented by others.

The report is also too weak in that it does not make sufficiently strong recommendations and in some areas leaves problems highlighted, without suggesting any solution.

Nevertheless, the report is not all bad. Like the proverbial curate's egg it has some good points which should provide a basis for expansion. To see what these are and what expansion may be needed, comments on the Tax File Number ("TFN") are provided in order of the terms of reference.

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Australia Card Provisions and Feasibility of National Identification.

The report does not recommend the establishment of a national identification scheme. In essence it concentrates on the Births, Deaths and Marriages Register and the feasibility of National Identification based on it.

The Committee seemed to accept the non-computer literate viewpoint that computerising a BDM Register would miraculously improve accuracy and completeness. It did not seem to realise that interstate and international movements, coupled with legitimate name changing by deed poll or common law rights, makes the BDM useless for identification and that no amount of computerisation can affect the external logical inconsistencies and incompleteness of the Register.

Fraud

The Committee did not see a role for a national identity system in addressing tax avoidance and welfare cheating. In spite of this, the majority did not appreciate that if there are other procedures available now without a national identity number, these same techniques could be used without the proposed tax file number.

There is a degree of naivete in that the report assumes

that because Departmental officers at a senior level were aware of fraud, then all officers, including the newest recruits, are equally aware and concerned. This false assumption continues into their consideration of privacy.

Australian Federal Police Reports

The Committee could not gain access to reports supposedly used to argue the benefits of identification schemes, and which were specifically mentioned in its terms of reference! A letter from Senator Tate summarising these reports was accepted. However, the Committee, Senator Tate and the AFP seemed unaware of some of the "advantages" in using a computer to commit fraud. Certainly it is not cost-effective to spend \$900 to investigate a one-off cheque fraud of \$200, but when a computer is used, that cheque may represent only one of many incidents repeated automatically over many accounts and over a long period of time. Hence, controls over information security play a more important preventive role than does any legislative penalty.

Cost to the Private Sector

The Committee recognised the problem of obtaining figures on the cost associated with
(Continued on page 3)

NEW SOUTH WALES SOCIETY NEWS

The society wishes to thank all last years speakers and members for their support and to wish them a Happy New Year. Last year was most productive for the Society with an overwhelming response to our half day Computer Law Seminar in July and the Gala meeting, Catching the Pirates and the Loot, in December.

This year's planned meetings cover a wide range of topics including Shrink-Wrap licensing, the Legal Aspects of EDI, Local Area Networks, Computer Viruses and many more. We also hope to include overseas speakers on our meetings schedule if the opportunity arises. A provisional timetable is included on the last page of the newsletter. Any other suggestions on topics can be forwarded to the Editors.

The Society's AGM will be held on 21st March at the Law Society, Level 2 at 5:30pm. We will bring you a list of new office bearers in our next edition.

The Editors have recently heard from the New Zealand Society for Computers and the Law which was formed in September 1987. They also have a very full conference schedule and details of their program for 1989 will be included in our next newsletter.

NEWSLETTER

Editors:

**Elizabeth Broderick &
Robert Johnston**

c/- Blake Dawson Waldron
Grosvenor Place,
225 George St,
Sydney 2000

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*(The Tax File Number
Cont'd)*

implementation of the tax file number. This does not mean that the proposed figures should be ignored. Probably the Committee could not identify the equipment they had.

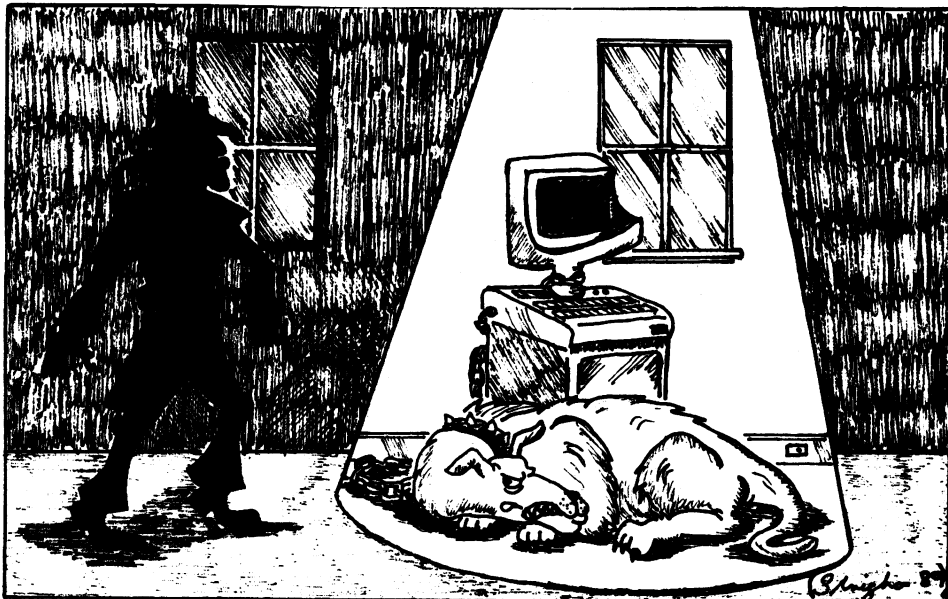
The descriptive data presented suggests that costs to the private sector, even if only moderate security measures were implemented, would exceed the tax benefits claimed, and as such, costs would be a tax deductible company expense, and could even reduce the tax collected.

The lack of consideration by the ATO of the effect on rebates required on unrepresented group certificates was raised, but

little other consideration was given to the validity of the claimed benefits in a total environment of ATO, other Government, and private sector costs.

Data Protection Agency

The report agreed with evidence provided on some of the weaknesses in the proposals of the Privacy Bill 1986, but does not give strong recommendations on useful improvements. It proposes a "watchdog" or Data Protection Commissioner but does not really recommend adequate teeth for the role. The Committee clearly had little idea of the role to be played as it recommends a review of the role by the same Committee at some future date.



Privacy Legislation

Comprehensive privacy legislation is recommended, but only as "highly desirable" and only for the public sector. The Committee recommended that such legislation should be in place before any tax file number scheme is implemented.

The Committee recognised that the proposed 1986 Privacy Bill had serious deficiencies. The report discusses some of these in detail. It does not address to any real extent the problems of exemptions which have been used overseas to bypass the provisions of Privacy Acts.

Accord with OECD

The Committee recommends that the OECD Guidelines on Privacy and Transborder Data Flow be used as a starting point for government department usage. Hooray! – a safe and secure endorsement of motherhood is now given. After all, Australia is committed by its role in OECD to ratify the guidelines and enact legislation.

To its credit the report does suggest that the guidelines only provide a minimum standard and should be considered "capable of being supplemented by additional measures". In spite of evidence presented on defects in the OECD Guidelines arising from the political nature of their

origin, no recommendations are made on the extra measures needed.

Extent of Data Held

Again the Committee was unable to get firm figures from the Departments and, while not recommending a survey, concluded that one might be warranted.

The detailed discussion indicates concern over the extent of personal data in public (i.e. governmental) databases and over the extent of exchange that occurs. The report recognises that some of the current activities such as sharing or sale of information would be stopped by privacy legislation. It concludes that the "issue warrants thorough investigation".

Security of Data

The Committee appears to have been bluffed by competent exponents of the "Sir Humphrey" school of civil service. Senior departmental officials assured the Committee that the matter was in hand and that safeguards were in place, and disguised the situation in a welter of irrelevant misinformation. No hard evidence was given to support the conclusion that the measures were reasonable. Details of what measures exist, whether they are in widespread use, or whether they were effective, were not given in evidence. Customs mentioned use of line

encryption, but not to what extent; DSS mentioned access on the basis of the job; and HIC pointed out the significance of breaches of security by authorised users, but not the ease of obtaining authorisation in the first place. All of these were only minor points quickly passed over in the presentations.

Land Lines

The Committee recognised that measures like encryption of data can reduce the risks of line-tapping by making it too expensive. However, it was prepared to accept departmental assurances on safeguards without querying whether they actually used encryption techniques or even physically protected access to communications lines and terminals. Reliance on Telecom, as mentioned in one presentation, does not seem to be warranted in view of the quite recent axe attack in Sydney.

Penalties

As Roger Clarke has pointed out, the report concludes that penalties are no substitute for preventive controls. However, in dismissing the value of punitive or administrative penalties, the Committee loses sight of a major hurdle facing the ordinary citizen seeking compensation for security breaches – namely, that of proving and establishing intangible loss in today's legal

environment. It would be preferable if an established breach of the guidelines served as a prima facie case for civil action, leaving the courts to decide the extent of damage and the compensation to be given to the victim.

Overseas Evidence

The Committee agreed that "evidence indicates that limited use identification numbers have generally not remained as limited as originally intended." However, it did not follow up on this to suggest how the tax file number might be quarantined, or whether in view of the risk and the alternatives available, it should not be implemented at all. In detail the report does address tightening privacy legislation, use of the "watchdog" and severely limiting the use of the TFN. It recognises that, short of constitutional changes, there is nothing to prevent any government legislating to extend usage of an identification scheme or, indeed, bringing other areas under the ATO control.

Impact on Evasion and Fraud

The Committee believed

that the evidence presented was sufficient to say there would be little to no effect on the cash economy or organised crime, and that the tax file number would not eliminate tax evasion. It accepted that an internal ATO numbering system might facilitate investigations.

The minority reports suggested that there were other ways of meeting this need and that the cost-benefit case for the number as proposed was not proven.

In spite of these comments, the Committee seems prepared to agree to the implementation of the TFN as proposed.

Taxation System Efficiency

This extra reference was added in May 1988 and it was agreed by the ATO that its efficiency would be improved, but there would be no impact on Social Security frauds.

De Facto National Id Scheme

The Committee expresses concern that the proposed TFN does not develop into a de facto national

identification card system, and gives a very weak recommendation that the TFN scheme be strictly limited in its application. It gives no suggestions as to how this might be achieved.

Summary

Overall, the requirements for privacy legislation meeting the OECD Guidelines with extensions, and for a privacy watchdog are to be commended. However, the report is less than satisfactory in discussing how the proposed legislation might be successfully limited or whether it is even necessary. It is also unsatisfactory in referring only to the public sector, even though it does recognise that the information protected could be in manual files as well as on computer media. The ability for the aggrieved citizen to gain compensation is also glossed over, and the teeth for the "watchdog" are insufficient.

**Dr. L.G. Lawrence is an independent consultant involved in information security and EDP audit and has been extensively involved with security and privacy matters.*