Parliament of the Commonwealth of Australia

House of Representatives Standing Committee

on Banking, Finance and Public Administration

FOCUSING ON FRAUD

Report on the

Inquiry into Fraud on the Commonwealth

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Members of the Sub-committee in 37th Parliament

The Sub-committee appointed to undertake the inquiry comprised:

Chairman:	Mr R P Elliott, MP
Members:	Hon L R S Price, MP Mr A M Somlyay, MP (to 21 October 1993) Mr R A Braithwaite, MP (from 21 October 1993)
Sub-committee Secretary:	Ms B A Forbes
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Members of the Sub-committee in 36th Parliament

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Sub-committee Secretary:	Ms B A Forbes
Inquiry Staff:	Ms J R Starcevich

Terms of Reference of the Committee

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

Terms of Reference of the Sub-committee

Inquire into and report on:

1 Measures for assessing the level of risk of fraud* on the Commonwealth** overall and in particular departments and agencies;

2 The extent to which there should be coordination of the assessment, prevention and control of fraud in the Commonwealth, the responsibility for any such coordination and the scope for improved liaison and cooperation among all agencies;

3 Progress made by departments and agencies in developing and implementing fraud prevention and control strategies, including the role of internal and external audit and the adequacy of performance information to assess the success of the strategies;

4 The adequacy of the penalties and administrative sanctions which can be applied in cases of fraud;

5 The need for training of staff for fraud awareness, prevention, detection and control;

6 The appropriateness and adequacy of mechanisms for the investigation and follow up of less significant instances of fraud by departments and agencies, and the consistency of treatment of offenders by various agencies;

7 The adequacy of existing working arrangements and mechanisms between referring agencies and the AFP/DPP for the referral of instances of fraud;

8 The capability and capacity of the AFP and the DPP and other agencies to investigate and prosecute fraud matters;

9 The potential for the use of information exchange, including the use of information technology, in combating fraud and the privacy implications of such exchange;

10 The adequacy of current codes of conduct and ethics for the Commonwealth public sector, including the post separation employment of public servants and the need for guidelines for Australian companies doing business with the Commonwealth; and

11 The desirability of whistleblower legislation as a means of combating fraud.

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

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

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

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

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

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

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

- *ANAO Report No. 11 1992-93: Department of Administrative Services - Procedures for Dealing with Fraud on the Commonwealth* referred by the House of Representatives on 17 December 1992.

Acronyms and Abbreviations[1]

AAT	Administrative Appeals Tribunal
ACS	Australian Customs Service
AFP	Australian Federal Police
AFPA	Australian Federal Police Association
AGS	Australian Government Solicitor
AIC	Australian Institute of Criminology
ANAO	Australian National Audit Office
APS	Australian Public Service
ATO	Australian Taxation Office
AUSTEL	Australian Telecommunications Authority
CJC	Criminal Justice Commission
DAAS	Department of the Arts and Administrative Services
DEET	Department of Employment, Education and Training
Defence	Department of Defence and the Armed Services
DEST	Department of the Environment, Sport and Territories
DFAT	Department of Foreign Affairs and Trade
DIEA	Department of Immigration and Ethnic Affairs
DIR	Department of Industrial Relations
DITRD	Department of Industry, Technology and Regional Development
DOF	Department of Finance
DOTC	Department of Transport and Communications
DPP	Director of Public Prosecutions
DPIE	Department of Primary Industries and Energy
DSS	Department of Social Security
DVA	Department of Veterans' Affairs

1 During the course of the inquiry administrative arrangements were altered with the effect that some portfolio responsibilities changed. In this report, for ease of reading, the current names for each department are used.

EARC	Electoral and Administrative Review Commission
FCC	Fraud Control Committee
GBEs	Government Business Enterprises
HIC	Health Insurance Commission
HHLGCS	Department of Health, Housing, Local Government and Community Services
ICAC	Independent Commission Against Corruption
LEAN	Law Enforcement Access Network
MoU	Memorandum of Understanding
MPRA	Merit Protection and Review Agency
NCA	National Crime Authority
NPS	National Priority System
Ombudsman	Commonwealth and Defence Force Ombudsman
PSC	Public Service Commission
PSU	Public Sector Union
SCAG	Standing Committee of Attorneys-General

General conclusion

It has been some six years since the Government totally changed its fraud control policy. The Committee supports the basic thrust of the policy which makes managers responsible for dealing with fraud against their programs. This approach, however, has created a more dispersed system for fraud control at the Commonwealth level than in other jurisdictions. This means that more attention must be given to ensuring there is consistency, minimum duplication of effort, and accountability in the way in which the strategies are implemented.

Despite its general support for the policy, the Committee believes sections of it need to be revised to achieve a clearer definition of the roles of all agencies involved and to provide more guidance on how some strategies are used. As well, there is a need to redirect the policy to achieve a more appropriate balance between agency independence and a Commonwealth-wide approach, and more emphasis must be given to developing a picture of overall performance at the Commonwealth level.

The outstanding achievement of the policy to date has been to put fraud control on the agenda of managers. The significance of this achievement should not be underestimated. All agencies that are required to do so are meeting their obligations to prepare risk assessments and fraud control plans or statements on an ongoing basis, albeit that the quality of the documents produced is variable. To enhance performance in this area the Committee recommends roles for both the Attorney-General's Department and the Auditor-General in evaluating the documents and that more attention be given to providing agencies with constructive feedback.

The focus for the nineties is to ensure that the plans are actually implemented. The Committee is looking for improved performance in this area. To facilitate this, it supports the improved accountability arrangements for fraud control proposed for the new audit legislation whereby it would be a statutory requirement to prepare and implement plans and heads of agencies would be held accountable for the efficiency, effectiveness and ethics of their agency. Internal audit and the ANAO also have crucial roles in evaluating the effectiveness of the strategies introduced.

One of the most contentious issues which the inquiry addresses is the impact of the policy change which gave all agencies responsibility for investigating routine instances of fraud thereby drawing them into the law enforcement process. The AFP has been required to focus its resources on the more complex or larger in

scale frauds. There was mutual suspicion between internal investigation units, which want to get into the really interesting fraud work, and the AFP, which wants a much greater involvement in internal agency fraud investigation.

To make the policy work more effectively, as well as efficiently, the Committee recommends the role statements on investigation work, of both the AFP and agencies, be strengthened. Standard criteria for the referral of fraud cases to the AFP for investigation are recommended. These include, as a general rule, Crimes Act investigations being carried out by the AFP with the exception of investigations by those agencies which can demonstrate, to both the AFP and the DPP, that they have the capacity and capability to undertake criminal investigations. A benchmark figure for fraud above which the matter should be referred to the AFP for a decision whether to investigate, is also recommended. The Committee also recommends that the AFP have an enhanced role in training and coordinating fraud investigation work.

Under the new policy arrangements there is a need for the AFP, the DPP and the AGS to accept that agencies have ongoing responsibility for the cases of fraud which agencies refer to them. Accordingly, the level of client services offered by those agencies is an important issue. While the DPP has done well in this area, there is considerable room for improvement on the part of the AFP.

Greater emphasis has been placed on the use of administrative remedies for dealing with offenders who commit minor frauds. The major problem is that disciplinary measures are not always implemented effectively. To redress this, the Committee recommends the PSC give a high priority to training managers in the understanding and formal use of measures under the Public Service Act. An unwanted consequence of relying more on administrative remedies is that serious cases of fraud are being dealt with inappropriately by using administrative remedies rather than prosecution. Heads of agencies must ensure this does not happen in their agency. If managers take up the offer of the DPP to provide advice at an early stage in a case this would help as well.

Under the new arrangements substantial emphasis is placed on enhancing ethical behaviour in organisations. It is self evident that this is directly affected by the attitude and behaviour of management. While developing codes of conduct, guidelines for companies doing business with the Commonwealth and post-separation guidelines are important, the critical issue is that staff are aware of them, understand their importance and conduct themselves accordingly. The Committee stresses the PSC's important role in training in this area.

From the foregoing discussion it is clear that the range of skills required to deal with fraud control is diverse. It encompasses audit, legal, investigative and administrative expertise. The Committee strongly supports the use of multi-disciplinary teams in undertaking fraud investigation and control tasks where possible.

Unfortunately, the adequacy of the new policy arrangements is difficult to assess since basic information on the extent and nature of fraud is frequently not available at agency, let alone Commonwealth, level. Accordingly, the Committee recommends enhanced data collection and analysis systems for both policy and program evaluation and criminal intelligence purposes. Information technology would facilitate this occurring.

Whistleblowing on serious fraud and maladministration is a necessary activity in the public sector. Support for whistleblower legislation was much greater than anticipated. With the basic theoretical work already completed by Finn and the Gibbs Committee, a three-tiered approach to whistleblower reporting and protection is recommended. It is recommended the Ombudsman be the independent reporting and protection agency. Legislation is not the panacea for dealing with whistleblower complaints and protection. Changes in community and agency' attitudes to whistleblowing and whistleblowers are also needed.

The Committee does not support the DOF proposal for a formal reward system for informants.

While the Committee is supportive of the critical role which advanced information technology can and does play in combating fraud, it remains concerned about a number of facets of the LEAN project. The Committee reiterates the need to put this project on a sound legislative footing as a matter of priority.

In this dispersed fraud control system coordination is essential if it is to work efficiently and effectively. While the Committee recommends the Attorney-General's Department retain responsibility for this task, it believes this decision should be reviewed in the light of any recommendations of the Steering Committee on Commonwealth Law Enforcement Arrangements for a new law enforcement agency which could take over this responsibility.

Despite the scope for improvement found in the Commonwealth's approach to fraud prevention and control, when its achievements are compared to those of other jurisdictions, the Commonwealth can be confident it has a firm base on which to build.

Chapter Two - Defining the problem

Defining fraud

While the Committee recognises the difficulty of developing a definition of fraud it notes that agencies are making decisions on this matter even if the definition is restricted to cases so defined by the courts. Although it would be desirable to have a common definition of fraud used throughout the APS this would be difficult to achieve given that many cases of fraud are defined as something else and that these

offences are often embodied in various legislation. It would be virtually impossible to have all agencies use the same definition, however, each agency should make it clear what definition of fraud it is using and continue to report in its annual report on both fraud and losses by incorrect payment and non-collection of revenue. (2.11)

The Committee recommends:

1 a. **in reporting details of fraud cases in annual reports and elsewhere agencies clearly state how they are defining fraud; and**

b. **when reporting fraud, agencies include all losses to the Commonwealth whether by incorrect payment or non-collection of revenue.** (2.12)

Losses through fraud on the Commonwealth

The collection and analysis of data on fraud and fraud control activities are essential in the fraud policy development and evaluation process. The Committee believes the Attorney-General's Department should be providing more assistance to agencies in developing their fraud data collection capabilities. This should include better defining the fraud data required in the guidelines for annual reports.

On the criminal intelligence side, the Committee supports the view that the AFP is the agency best placed to develop and maintain fraud data for the Commonwealth as a whole for criminal intelligence purposes. (2.34 - 2.35)

The Committee recommends:

2 a. **all agencies continue to maintain appropriate records of cases, losses, activities and resource allocations in relation to fraud;**

b. **the Department of the Prime Minister and Cabinet in consultation with the Attorney-General's Department and agencies revise the fraud control section of the annual report guidelines to improve the relevance and consistency of the data requested from agencies;**

c. **all agencies that are not already doing so advise the Australian Federal Police, at regular agreed intervals and in an agreed format, of the action taken on all fraud matters identified by the agency, but not referred to the Australian Federal Police, and details of these arrangements be set out in agreements between the Australian Federal Police and each agency;**

d. **the Australian Federal Police be responsible for collating data on the extent, nature and costs of fraud from all agencies on a national basis to maintain a criminal intelligence capability;**

e. the Australian Federal Police makes the statistical information from the national criminal intelligence information system available to the Attorney-General's Department as required for that Department's coordinating role; and

f. the Commonwealth Government fund, as a matter of high priority, the development of the criminal intelligence information system. (2.36)

Chapter Three - The framework for dealing with fraud on the Commonwealth

Role of new audit legislation in fraud control

The Committee recommends:

3 as a matter of priority, the Government introduce the proposed new audit legislation. (3.38)

General conclusion

The Commonwealth's approach to fraud control when introduced was different and innovative. Compared with most State and overseas jurisdictions, more emphasis was placed on prevention and management of the fraud problem. The State and overseas jurisdictions have largely maintained the traditional focus on detection, investigation and prosecution of fraud. The Committee supports the Commonwealth's policy emphasis.

The Committee is concerned though that this framework has been introduced without a clear picture of the nature and extent of the fraud problem confronting the Commonwealth. Without this basic information it is difficult to assess the adequacy of the approach adopted and unfortunately the management approach to fraud control has put in place few strategies to redress this information deficiency.

Fraud control in almost all jurisdictions is to some extent fragmented. However, this situation now is accentuated at the Commonwealth level because all agencies whose systems are the subject of fraud have responsibilities for preventing, detecting and handling fraud. This responsibility includes the investigating of routine instances of fraud against them, whether the investigation is likely to be followed by the application of an administrative remedy or by reference of the matter for prosecution. In this context, clear definition of the roles of all agencies involved in fraud control and ensuring there is consistency, minimum duplication of effort and accountability in approach must be prime objectives.

Consistent with most of the management reforms of the 1980s, the emphasis in fraud control has been on 'letting the managers manage'. This has been desirable as a means of making managers responsible both for dealing with fraud which is perpetrated on their agency and for the introduction and operation of fraud control measures. However, insufficient priority has been given to developing and maintaining a Commonwealth-wide approach to fraud, rather, the focus has been almost entirely on independence at the agency specific level. In a dispersed system effective coordination and monitoring are essential. The mechanisms put in place for doing this under the management approach to fraud have been minimal and have relied on informal means, and it is not clear that this was seen as an ongoing function. Monitoring resource needs, which was initially considered a significant coordination function, appears to have fallen by the wayside with time.

Similarly, priority given to the development of a comprehensive picture of overall performance in fraud control at the Commonwealth level appears to be low. This is of particular concern since it is an important step in policy development and evaluation.

Before addressing solutions to these policy concerns, the impact of these matters in operation is examined. (3.50 - 3.55)

Chapter Four - Management approach to fraud control

Fraud risk assessment

The FCC and Fraud Policy Unit's approach to coordinating the preparation of fraud risk assessments has not worked and needs to be changed. After some six years, agencies are still experiencing major problems in preparing fraud risk assessments and continue to seek detailed guidance on how to proceed. There has not been a consistent approach to the development of risk assessments and the assessments produced do not appear to be comparable, which means the Commonwealth's overall exposure to fraud cannot be assessed.

The Committee considers there should be scope for and would be benefit from increased consistency in the overall approach to the assessment of the risk of fraud. This could be achieved through the application of compatible methodologies and by the sharing of resources for the conduct of the analyses. (4.13 - 4.14)

The Committee recommends:

4 a. the Attorney-General's Department, with other agencies, develop fraud risk assessment methodologies and measures which will allow for the collation of agency risk assessments to produce an overall assessment of the Commonwealth's risk of fraud and the changes to that risk over time;

b. agencies develop their fraud risk assessment processes to meet the requirements of the methodologies and measures developed in the process outlined above; and

c. the issue of fraud risk assessments be a major topic for discussion in the fraud liaison forums so agencies can improve their performance in this area. (4.15)

Fraud control plans and statements

The requirements for preparing risk assessments and fraud control plans or statements as set out in the Review of Fraud are still relevant. Although the documents are being prepared and updated at fairly regular intervals, there is still substantial room for improvement in their preparation, evaluation, and most significantly, their implementation. (4.34)

The Committee recommends:

5 a. the new audit legislation include requirements for the preparation and *implementation of risk assessments and fraud control plans or* statements as set out in the Review of Fraud. These documents should be reviewed at intervals of no more than two years for ongoing programs and whenever major program changes occur or new programs are introduced;

b. all agencies give a higher priority to preparing and implementing their fraud control plans or statements;

c. the Attorney-General's Department be responsible for developing and providing to agencies, advice and guidelines on the preparation of risk assessments and fraud control plans;

d. making reference to the guidelines prepared for agencies by the Attorney-General's Department, the Auditor-General conduct a review of fraud risk assessments and fraud control plans, on a two year cycle, with the resultant detailed reports going to the executives of the relevant agencies and the Attorney-General's Department;

e. the Auditor-General table in Parliament a report each year summarising the outcomes of the reviews conducted during that year and making recommendations with regard to individual agencies and the guidelines produced by the Attorney-General's Department;

f. the Attorney-General's Department report annually to Parliament on fraud control in the Commonwealth and on the Department's activities in its coordination role; and

g. **the new audit legislation include a requirement for heads of agencies to be responsible for fraud control activities and for all agencies, which have not already done so, to establish a high level committee to monitor their fraud prevention and control functions.** (4.35)

Codes of conduct and ethics

There appear to be few problems with agencies developing organisation specific codes of conduct as long as those codes continue to be based on the principles of the *Guidelines on the Official Conduct of Commonwealth Public Servants* and are directed towards raising awareness within the agency of the importance of high standards of conduct. Development and promulgation of such codes should be undertaken in conjunction with ethics training. (4.48)

The Committee recommends:

6 a. **the Public Service Commission give a high priority to finalising the review and making available the new sections of the *Public Service Act 1922* relating to conduct and ethics;**

b. **the Public Service Commission continue to give a high priority to raising awareness of ethical issues within the Australian Public Service; and**

c. **heads of agencies take action to enhance ethical behaviour in their organisations.** (4.49)

. **Post-separation employment**

Post-separation employment did not emerge as a major problem with agencies. However, it is likely that with increased emphasis on mobility between the public and private sectors this will become a more significant issue. Heads of agencies should ensure that their policy on this matter is current and well publicised given the reliance on individual officers to identify conflicts of interest in this context. There is no need for specific legislation on this matter at this time. While the current arrangements are adequate the PSC should continue its work in raising awareness of this issue. The Committee supports the PSC's decision to consider the related issues of outsourcing and privatisation arrangements as part of the review of the Public Service Act. (4.55)

. **Guidelines for Australian companies doing business with the Commonwealth**

While the Committee commends Defence for its work on the *Business Ethics for Defence and Industry*, the need for guidelines for all companies doing business with the Commonwealth does not appear to be a major requirement of most agencies. A service-wide code for such purposes would, therefore, be of little value at this time. Given the trend towards greater contracting out of functions and commercialisation

of government activities, the need for such guidelines may become more prevalent in the future. Defences' package provides a model for other agencies undertaking contracting. DAAS should monitor developments in this policy area with a view to expanding the range of advice it provides to purchasers and suppliers if required. If further action is necessary DAAS should ensure that there is not an excessive impact on companies. (4.61)

Role of internal and external audit in fraud control

The Committee recommends:

7 a. **the internal audit sections implement strategies to improve their performance in detecting fraud; and**

b. **where appropriate, in conducting performance audits the Auditor-General continue to evaluate the effectiveness of fraud control arrangements implemented.** (4.68)

Performance information and the evaluation of strategies

The Committee believes that, despite the difficulty of achieving them, consistent and comprehensive measures of agencies' performance in combating fraud are essential. Progress by agencies in the development of management information systems and performance indicators to monitor and evaluate the adequacy of their fraud control strategies is patchy. (4.74)

The Committee recommends:

8 **the Attorney-General's Department establish a working party to identify performance information required to assess the adequacy of fraud control strategies and agencies then be required to implement those measures and report. In so doing the working party should have regard to the information requirements for annual reports.** (4.75)

Chapter Five - Fraud investigation

Inhouse fraud investigations

. Quality of investigations and the skills of investigation staff

The Committee shares the concerns of the AFP, the DPP and the ANAO regarding the poor quality of inhouse fraud investigations. While the Committee generally supports agencies having responsibility for investigating routine cases of fraud, it

believes that a significant effort needs to be made to ensure that those agencies have the skills to deal with such investigations. Better training in fraud investigation clearly is needed and the AFP should play a major role. (5.25)

The Committee recommends:

9 a. **the Australian Federal Police in consultation with the Director of Public Prosecutions cooperate to develop a national training program for fraud investigation;**

b. **to encourage skills transfer the Australian Federal Police and agencies should form joint investigation teams for appropriate investigations; and**

c. **the Australian Federal Police conduct quality assurance reviews of a sample of investigations in selected agencies annually and list the agencies reviewed and outcomes in its annual report. The Australian Federal Police should also use the results of those reviews in identifying important matters for inclusion in the national training program for fraud investigation.** (5.26)

. Investigative powers

The Committee believes that if a fraud investigation has proceeded to the stage where more significant investigative powers are required then the case should be passed to the AFP for investigation. It does not see the need to grant enhanced investigative powers to agencies to deal with instances of routine fraud. (5.31)

. **Liability of investigators and defamation actions**

The existing arrangements for protecting the personal liability and reputation of agency investigators are adequate. (5.34)

Referral of matters to the AFP for investigation

While recognising the limitations of MoUs the Committee supports their development between the AFP and referring agencies, but considers there is scope for significant improvement in the current arrangements. As the detail in the agreements is still subject to a significant degree of interpretation, both the AFP and referring agencies should give a high priority to increasing the precision of the documents and to keeping them up to date as circumstances alter. (5.50)

The Committee recommends:

10 a. Memoranda of Understanding between the Australian Federal Police and agencies reflect the requirement that the Australian Federal Police conduct all investigations directed towards a *Crimes Act 1914* prosecution, subject to two exceptions:

i. **first, agencies which prosecute fraud cases under their own legislation (such as the Department of Social Security, the Australian Customs Service, the Australian Taxation Office and the Health Insurance Commission) should continue to investigate matters where the Crimes Act is considered more appropriate and the Director of Public Prosecutions is satisfied that the prosecution brief does not require Australian Federal Police involvement; and**

ii. **second, agencies which can satisfy both the Australian Federal Police and Director of Public Prosecutions that they have the capacity and capability to investigate criminal cases;**

b. the Australian Federal Police in consultation with agencies develop standard criteria for the referral of fraud matters to the Australian Federal Police;

c. *the standard criteria should include a benchmark figure for fraud* above which the matter must be referred to the Australian Federal Police for a decision whether to investigate. This benchmark may be varied from agency to agency depending on the capacity and capability of an agency's investigative resources;

d. the Australian Federal Police renegotiate Memoranda of Understanding with agencies to reflect this standard set of criteria. The Committee expects this to be done as a matter of high priority and completed within one year; and

e. the Australian Federal Police and agencies meet regularly to review Memoranda of Understanding and the progress on fraud cases. (5.51)

Capacity and capability of the AFP

While the Committee acknowledges that the AFP has improved its handling of fraud cases, including through refinement of its National Priority System, agencies are seeking a more service-oriented approach from the AFP in its task. Improved consultation and accountability are sought. The AFP does not seem to have fully accepted that agencies have an ongoing responsibility for cases of fraud perpetrated on them. The Committee considers that the AFP should ensure that investigation teams include, or have access to, skills appropriate to the investigation. (5.64)

The Committee recommends:

11 a. within one month of receiving a referral, the Australian Federal Police must make the decision whether to retain the case to investigate;

b. the Memoranda of Understanding between the Australian Federal Police and referring agencies should set out service standards for the Australian Federal Police in dealing with referrals and the Australian Federal Police summarise in its annual report instances where it has failed to meet these standards;

c. the Australian Federal Police provide regular case management reports at a national level to agencies on cases which those organisations have referred to the Australian Federal Police for investigation; and

d. where appropriate, the Australian Federal Police recruit and use specialist investigative skills to supplement current investigative staff. (5.65)

Coordination and liaison regarding fraud investigation

The Committee considers there is a need for further coordination of fraud investigations to make them more effective and to achieve a greater degree of consistency and accountability. It supports the AFP performing this coordination role in relation to investigations. In particular, the Committee has previously recommended the AFP receive and collate data on all fraud matters on a national basis to allow it to maintain a criminal intelligence capability and the AFP take on a greater role in training agency fraud investigators as well as recommending ways of improving liaison between the AFP and agencies. Given the Committee's support for agencies being responsible for their fraud control activities, it does not endorse the AFPA's recommendation for the transfer of all public service investigation staff to the AFP. (5.74)

Chapter Six - Administrative sanctions and prosecution

Penalties and administrative sanctions

The Committee agrees that the range and level of penalties and administrative sanctions that can be applied in cases of fraud are largely adequate but need to be reviewed regularly to ensure they remain appropriate. It supports the development of the national criminal code, the review of the Public Service Act and the implementation of the Gibbs Committee recommendation for a penalty relating to the misuse of official information by public servants for private gain. It considers

that these legislative amendments should be accorded a high priority. Various agencies raised matters with general relevance to legislation dealing with fraud. The Committee suggests that the Attorney-General's Department, the PSC and agencies with relevant program specific legislation consider those matters when reviewing aspects of legislation related to fraud. (6.16)

Use of administrative and disciplinary remedies

Agencies reported few difficulties with the use of administrative sanctions under their legislation and with recovery action. Disciplinary measures have been less effectively implemented and therefore there is a need to enhance managers' understanding and formal use of those measures. The PSC is currently assisting managers with this task. The major concern is to ensure that serious cases of fraud are dealt with by criminal sanctions and not administrative or disciplinary measures, but this is not easy to achieve. (6.26)

The Committee recommends:

12 a. **the Public Service Commission give a high priority to providing training for public sector managers on the understanding and formal use of disciplinary procedures;**

b. **all agencies which have not already done so, send their managers to the Public Service Commission courses on disciplinary procedures; and**

c. **all agency heads ensure that administrative and disciplinary measures are not being used in their agencies to deal with serious cases of fraud which should be dealt with by criminal prosecution.** (6.27)

Prosecutions

The Committee believes the DPP has adapted well to the new policy arrangements for fraud control and supports its decision to have agreements with all agencies which have an investigative function. The DPP has developed a good service orientation to non-police investigators but there is obviously still room for improvement. (6.42)

The Committee recommends:

13 a. **where appropriate, to assist non-police investigators in handling their fraud cases, the Director of Public Prosecutions continue to become actively involved at an early stage in the investigation;**

b. as part of its role in the proposed national training program for fraud investigation, the Director of Public Prosecutions assist more in the training of investigators, particularly regarding the preparation of briefs of evidence; and

c. the Director of Public Prosecutions provide more feedback, including appropriate statistics, to all agencies on progress with the prosecution of the agencies' fraud cases. (6.43)

Consistency of treatment of offenders

While consistency in the treatment of offenders is a difficult and contentious issue, this does not preclude the need to strive towards it is a desirable goal. Even though the Committee appreciates the PSC view that in the disciplinary area the objective is to correct the behaviour and what may work in one set of circumstances may not in another, the Committee believes there is need to strive for consistency here as well.

There is no simple solution to trying to achieve consistency. Awareness and acceptance of the objective, however, is the first step. Many of the recommendations made in earlier sections of the report, such as the removal of anomalies in legislation dealing with fraud, improved guidelines on how to handle fraud cases, improved training in the use of disciplinary measures, better definition of the roles of the various participants in the fraud control process and improvements in the standards of service from the AFP and the DPP, will assist in achieving consistency. (6.56 - 6.57)

Chapter Seven - Whistleblowing and informants

Whistleblower legislation

Whistleblowing 'in the public interest' should be recognised as a necessary and lawful activity as a means of identifying and remedying illegal and improper conduct in the public sector. Whistleblowing can thus save taxpayers' funds. There is an obligation on the part of the Commonwealth Government to provide a measure of protection to those who expose fraud and malpractice.

There is a need for a comprehensive scheme for dealing with whistleblowing both to provide a measure of protection for those who blow the whistle and to make it easier to deal with those who knowingly make false or misleading reports.

The three-tiered approach outlined by both Finn and the Gibbs Committee is the most effective way to proceed regarding reporting with the emphasis on confidentiality in the first two stages. The aim is to have a comprehensive scheme

with the emphasis on inhouse reporting and if, for whatever reason, the complainant is unwilling to stay inhouse the facility exists for making serious complaints to an independent external body. If these systems work credibly and effectively there should be little or no need to go public. The Committee does not see this as necessarily being a sequential approach.

Much of the debate in whistleblowing surrounds the choice of an independent agency for both reporting and providing protection. There are significant advantages in building on existing institutions rather than creating a complete new structure.

Given the Ombudsman's ability to investigate, and to redirect for investigation, a wide range of complaints raised by whistleblowers it is the most appropriate agency to receive whistleblowers' complaints.

The sorts of reprisals which whistleblowers may be subjected to go beyond employment related matters. Accordingly, the Ombudsman is the agency best placed to deal with this variety of situations and should also be responsible for the protection scheme.

For the scheme to be effective it is vital that agency officials have trust and confidence in the proposed lines of communication. This would only be achieved with time and use of the scheme. To ensure the scheme is working efficiently and effectively it should be reviewed after two full years of operation.

Legislation is not the panacea for dealing with whistleblower complaints and protection. Changes in community and agency' attitudes to whistleblowing and whistleblowers are also needed.

Although the scheme which the Committee has recommended is directed specifically at whistleblowers, in the strict sense of the term, it could also be used for external informants though this was not examined as part of the Committee's work. (7.38-7.46)

The Committee recommends:

14 a. **a scheme be introduced whereby if a current or former employee or contractor of the Commonwealth, or any Commonwealth agency, reasonably believes they have information which evidences an indictable offence against a law of the Commonwealth, a State or a Territory; gross mismanagement or gross waste of funds; or substantial and specific danger to public health or safety, then they may disclose that information on a confidential basis to:**

i. **the officer in the agency to which they belong designated to receive such complaints;**

ii. **the Inspector-General of Intelligence and Security in the case of intelligence or security service officers; or**

iii. the Commonwealth and Defence Force Ombudsman in the case of other persons;

b. all agencies designate an appropriate high level officer to receive and investigate such complaints and to document, implement and publicise within their agency the internal procedures for dealing with allegations raised through whistleblowing;

c. the fraud control section of the new audit legislation include the requirement for all agencies to undertake these whistleblowing responsibilities;

d. a reporter who fails or refuses to use the established reporting procedures but who 'goes public' (including to the media) will be entitled to protection from disciplinary procedures if they reasonably believed the allegation was accurate and, notwithstanding their failure to avail themselves of alternative procedures, the course taken was excusable in the circumstances. Such a reporter should not be given any special protection regarding defamation laws or any other law of general application;

e. serious harassment or discrimination of a person who has blown the whistle be made a criminal and disciplinary offence;

f. a person who has made a disclosure be given protection against discrimination or retaliatory action;

g. the Commonwealth and Defence Force Ombudsman be given the responsibility of seeing to the implementation and the enforcement of the protection provisions as well as providing counselling and guidance to whistleblowers;

h. individual agencies and the Commonwealth and Defence Force Ombudsman report in their annual reports on the number and nature of complaints and the responses thereto;

i. the making of reports known to be false or misleading be made both a criminal and disciplinary offence;

j. the necessary statutory provisions be inserted as a new part of the *Crimes Act 1914* and amendments of the *Inspector-General of Intelligence and Security Act 1986,* and the *Ombudsman Act 1976*;

k. the Commonwealth Government provide the resources necessary for the Commonwealth and Defence Force Ombudsman to undertake the whistleblower reporting and protection role; and

l. the whistleblower reporting and protection arrangements be reviewed after two full years of operation. (7.47)

Reward system for informants

As it is a citizen's duty to report fraud, theft etc and it is part of the responsibilities of public servants to do the same and there is no proof that reward systems promote whistleblowing, the Committee considers the benefits of the proposal do not outweigh the difficulties. (7.59)

The Committee recommends:

15 there be no formal reward system for informants. (7.60)

Chapter Eight - Information exchange and LEAN

Financial viability

Based on the information presented, while there may be substantial benefits to the Commonwealth in increased use of advanced technology in the campaign against crime etc, the Committee has not been presented with any evidence to dissuade it from its initial view, outlined in its first report on LEAN, that the cost-benefit ratio of the LEAN project in monetary terms is not substantial. (8.13)

The Committee recommends:

16 as a matter of priority, the need for the LEAN facility be reviewed and a new cost-benefit analysis using up-to-date data be prepared, by an independent consultant, with the results made public immediately. (8.14)

Administration and accountability

The Committee recommends:

17 a. as a matter of priority, legislation be introduced to govern the operation of LEAN; and

b. all aspects of the Memorandum of Understanding be finalised and publicly available before any contracts are entered into for the supply of data for LEAN. (8.17)

Management of the system

The proposed arrangements for the management of the LEAN facility seem appropriate. (8.20)

Data on LEAN

An appropriate level of quality and timeliness of data on LEAN is essential to the success of the data base. Any State and Territory concerns about the quality of data on LEAN, and their need to take responsibility for this, must be resolved by the Attorney-General's Department before contracts are entered into for the supply of data. (8.22)

Public access and amendment rights

The Committee recommends:

18 a. the Attorney-General's Department ensure the final Memorandum of Understanding includes a requirement for individuals and corporate entities to have access to data about themselves which is contained on the LEAN facility and that such information be provided promptly and at no cost to the individual or corporate entity concerned; and

b. the Attorney-General's Department ensure the final Memorandum of Understanding includes a requirement that individuals and corporate entities be given the right to comment on the LEAN data used by an agency in making a decision about them, such as termination of a benefit, within a reasonable time period before any adverse decision becomes final. (8.24)

Privacy issues

The Committee reiterates that the MoU should include administrative procedures which reflect the principles of the Commonwealth's Privacy Act that will apply to State and Territory participants in LEAN. (8.29)

The Committee recommends:

19 a. the Attorney-General's Department ensure the final Memorandum of Understanding for LEAN includes a uniform system of penalties for misuse of the facility and a system to compensate persons or corporations having proven grievances involving breaches of confidentiality; and

b. **all agencies using data from LEAN for data-matching include in their annual report details of compliance with the Privacy Commissioner's data-matching guidelines for LEAN data-matching, and provide a copy of that statement to the Privacy Commissioner.** (8.30)

State Government participation

The strategy the Attorney-General's Department has adopted to complete negotiations with the State and Territory Governments on the provision of land data seems appropriate. However, the Committee is concerned that the Attorney–General's Department had allowed this situation to develop to the stage where it has been mentioned by the Privacy Commissioner that financial incentives have been offered to finalise this aspect of the scheme. (8.32)

General conclusion

The Committee notes that in the 1993-94 budget the Government announced it had deferred implementing the LEAN project until the 1994-95 budget cycle. This was to allow further development of the system, including agreements with the States and Territories on the supply of the basic land data.

There has been limited progress with the development of LEAN since the Committee initially reported on it in November 1992. The Attorney-General's Department has been more open and public in its approach to the project, and the administrative arrangements have progressed to a stage where a draft MoU is being considered by the State and Territory Governments. However, while a strategy is in place to finalise negotiations with the State and Territory Governments on the provision of land data, no agreements have been signed and some basic privacy concerns still have to be resolved. The Committee remains unconvinced that the cost-benefit ratio of the project in monetary terms for the Commonwealth is substantial.

The Committee has reiterated the need to put this project on a sound legislative footing and has recommended legislation be introduced as a matter of priority.

The Committee's concerns with the particular way in which the LEAN project has been implemented should in no way be seen as it not being supportive of the critical role which advanced information technology can and does play in combating fraud. (8.33 - 8.36)

Chapter Nine - Coordination

Future coordination arrangements

The Committee recommends:

20 **the Attorney-General's Department be responsible for the coordination of fraud control arrangements.** (9.10)

In July 1993 the Minister for Justice established an internal Steering Committee to review the Commonwealth's total law enforcement arrangements, whereas this inquiry has only looked at fraud control. Following its broader review, the Steering Committee may recommend the establishment of a new agency with a multi-disciplinary approach to law enforcement and with responsibilities which include coordination of fraud control. Should that happen, this Committee would support the transfer of the coordination function to the new body. Such a body could give this responsibility the focus and variety of expertise it needs, and may be cost effective when viewed in the broader context. (9.11)

Liaison and cooperation

Rather than putting in place a new liaison structure the Committee believes the current arrangements regarding fraud liaison forums should be revised. (9.13)

The Committee recommends:

21 **the Attorney-General's Department revise the arrangements for fraud liaison forums to achieve a more targeted agenda with agencies such as the Department of Finance, the Australian National Audit Office and the Public Service Commission invited to participate in sessions to discuss their roles in the fraud control process.** (9.14)

Chapter One

Introduction

Background to the inquiry

1.1 Fraud control in the Commonwealth has always been a complex activity involving such basic problems as definition, determination of its scale and type, and detection as well as the complex set of interrelationship between agencies involved in investigation and prosecution.

1.2 In recognition of these complexities and that in some areas fraud and its control had outgrown single agency solutions[1], in June 1986 the Government commissioned a wide-ranging analysis of the measures adopted to combat fraud on the Commonwealth. The report of the analysis the *Review of systems for dealing with fraud on the Commonwealth*[2] (hereinafter referred to as the Review of Fraud) was presented in September 1987 and the Government proceeded immediately to implement all but two of the Review's recommendations. The major policy changes were that the principal responsibility for the prevention and detection of fraud rest with the agencies affected and that all agencies accept responsibility for the investigation of 'routine' instances of fraud against their programs, referring mostly 'more complex and large scale' frauds to the Australian Federal Police (AFP) for investigation. Improved arrangements for consultation and information exchanges between agencies were also introduced. The Fraud Control Committee (FCC) was established to monitor the development and implementation of fraud control mechanisms within government agencies and in October 1989 these responsibilities were taken over by the Fraud Policy Unit (now the Fraud Policy and Prevention Branch) of the Attorney-General's Department.

1.3 In response to the findings of the Review of Fraud the Australian National Audit Office (ANAO) in 1990 commenced a series of performance audits on fraud against the Commonwealth. In addition, the ANAO conducted a further seven audits where matters relating to fraud were included in the respective reports to Parliament.[3] In May 1991 the House of Representatives Standing Committee on Banking, Finance and Public Administration had referred to it the ANAO's report on fraud investigation by the AFP[4] and also decided to seek a more general reference on fraud on the Commonwealth to examine the progress made by

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1 *Review of systems for dealing with fraud on the Commonwealth.* March 1987. Australia, Special Minister of State. Canberra, AGPS, p. 18.

2 ibid., 205p.

3 See Evidence p. S167 for a list of the audits.

4 The Auditor-General. *Australian Federal Police - Efficiency and effectiveness of fraud investigations.* Audit Report No. 25 1990-91. Canberra, AGPS, 79p.

departments and agencies in implementing the major policy changes stemming from the Review of Fraud. However, progress on having the broader inquiry referred was delayed during 1991 until the Committee completed its report on the banking inquiry.

Inquiry into fraud on the Commonwealth

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

1.5 As well as the general reference on fraud and the AFP audit report, the Committee also sought and received the referral of three other audit reports on fraud. These reports focus on the procedures for dealing with fraud on the Commonwealth in the Departments of Defence, Social Security and Administrative Services. Details of the reports are listed at page x. These reports assisted the Committee in its investigation of the law enforcement issues and provide detailed case studies on the way in which fraud is managed by Commonwealth departments.

1.6 As the inquiry was not completed in the 36th Parliament the general reference and four audit reports were referred again in the 37th Parliament. On 26 May 1993 the Attorney-General, the Hon Michael Lavarch, MP referred the general inquiry and on 10 June 1993 the Special Minister of State, the Hon Frank Walker, MP referred the audit reports.

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

> inducing a course of action by deceit involving acts or omissions or the making of false statements orally or in writing with the object of obtaining money or other benefit from or of evading a liability to the Commonwealth.[5]

Consistent with the approach adopted in the Review of Fraud the Committee accepted that when the context requires, the term 'fraud' includes 'possible or suspected fraud'.[6]

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5 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., p. 16.

6 ibid., p. 14.

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

1.9 Within those constraints, in undertaking its inquiry the Committee has not sought to curtail its investigation except that, like the Review of Fraud, the Committee did not examine the impact on the Commonwealth of private sector fraud.

1.10 This is the Committee's second report on fraud, and it addresses all terms of reference of the inquiry in detail except information exchange and privacy issues (Term of Reference 9) which were the subject of the Committee's first report *Matching and catching: Report on the Law Enforcement Access Network*[7]. It deals with the four audit reports referred and concludes the Committee's work on the inquiry.

1.11 In November 1992, in its first report on fraud, the Committee reported on information exchange and privacy issues focussing on an examination of the Law Enforcement Access Network (LEAN) system being developed by the Attorney-General's Department to assist in preventing and detecting fraud. The Committee reported early on those matters so that its concerns on LEAN could be taken into account when decisions are made on the implementation of the system. This report addresses the information exchange and LEAN issues which, in its first report, the Committee indicated it would follow-up and examines developments with the LEAN system since the Committee initially reported.

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

1.13 In this report the term agencies or agency is used to refer to departments or agencies of the type which are the topic of the report. The term heads of agencies is used to refer to Secretaries of Departments and Chief Executive Officers of other agencies.

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7 House of Representatives Standing Committee on Banking, Finance and Public Administration. November 1992. *Matching and catching: Report on the Law Enforcement Access Network.* Canberra, AGPS, 73p.

Structure of the report

1.14 The remainder of the report is structured to reflect the major concerns arising from the inquiry. Chapter 2 looks at the definition of fraud and the losses through fraud on the Commonwealth; Chapter 3 examines the framework for dealing with fraud against the Commonwealth and compares it with the approaches adopted overseas and by the States; Chapter 4 considers the management approach to fraud control; Chapter 5 discusses fraud investigation; Chapter 6 addresses administrative sanctions and prosecution; Chapter 7 covers whistleblower protection; Chapter 8 follows-up on information exchange and the LEAN system; and Chapter 9 looks at coordination issues.

Chapter Two

Defining the problem

Defining fraud

2.1 Fraud is a 'generic term which refers to the numerous and diverse criminal activities in which deceit or deception in one form or another is an ingredient. The term 'fraud' encompasses a great variety of offences.'[1]

2.2 There is no statutory or other unequivocal definition of fraud. In fact it was not until 1984 that the statutory offence of 'defrauding' the Commonwealth was added to the *Crimes Act 1914* (section 29D) but neither that section nor section 86A (conspiracy to defraud) define 'defraud'.

2.3 Despite its major research on fraud the Review of Fraud was not able to advance the definition of fraud beyond the broad description given in Chapter 1. In relation to that definition the Minister for Justice noted:

> This definition is not confined to monetary gain and includes any benefit that could be gained from the government, including intangibles, such as 'rights' of entry to the country, documentation conferring identity, information etc.[2]

2.4 The Attorney-General's Department has described that definition as including but not being limited to:

- evasion of payments owing to the Commonwealth (for example income tax, sales tax, licensing fees);
- obtaining, by deceit, benefits to which the recipient is not entitled (for example welfare benefits, education allowances, travel allowances);
- charging the Commonwealth for goods and services not delivered or only delivered in part (for example fraud in procurement);

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1 Maher, G. 1990. *Fraud awareness.* Canberra, Education Design Systems Pty Limited, p. 9.

2 Tate, M. September 1988. Defining fraud and examining it as an issue which governments need to address. *Canberra Bulletin of Public Administration.* No. 56, p. 11.

- theft of Commonwealth property;
- theft of information for financial gain;
- abuse of discretions (for example accepting a bribe to grant a licence, approve a drug); and
- abuse of Commonwealth facilities (for example producing a sporting club newsletter on Commonwealth word processing and printing resources).

Activities which are definitely outside the scope of fraud are waste and mismanagement, theft of information for ideological purposes and theft between Commonwealth employees.[3] However, fraud is closely related to waste, abuse and mismanagement in terms of cause, effect and means of control.

2.5 The Committee accepted the Review of Fraud definition of fraud recognising its focus on a law enforcement rather than a management approach to the topic. It has been noted by the ANAO that such a definition could be seen to require a successful prosecution to establish fraud but the majority of cases involving loss to the Commonwealth are not taken to such a conclusion.[4] The Department of Social Security (DSS) believes that '...in a sense, it is really only if there is a conviction that you can say that there has been an instance of fraud...'.[5]

2.6 A major difficulty facing an agency in dealing with an instance of suspected fraud is proof of criminal intent on the part of the suspected offender. Agencies have responded to this situation in various ways. For example, where a taxpayer has made false or misleading statements or omissions from statements such conduct is described as 'evasion' and is dealt with by the ATO through administrative remedies, and therefore all that has to be determined is the offence occurred and it was committed voluntarily. However, as indicated above such behaviour is fraud.[6] Another example is the HIC's approach to 'overservicing' by medical practitioners. It is difficult to prove an offence involving overservicing therefore it is often impractical to deal with medical fraud as a criminal offence. A similar situation exists with DSS 'incorrect payments' and with the Department of Employment, Education and Training (DEET) 'improper receipt of payment' where it is difficult to prove criminal intent is involved in 'mistakes' in filling out an application for a benefit.

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3 Roberts, P. February 1992. Fraud control, Commonwealth initiatives & LEAN. *The Australian Banker*. 106(1), p. 21.

4 Evidence, p. S167.

5 Evidence, p. 409.

6 For further details see *Review of systems for dealing with fraud on the Commonwealth*. March 1987. Australia, Special Minister of State. Canberra, AGPS, p. 23.

2.7 Given the size of the task of processing a large number of cases expeditiously, it is impossible and inappropriate to deal with them all as criminal fraud. As a result some instances of fraud are described as something else, leading to a blurring of the definition. A further element of complexity is introduced when the discretion to use administrative remedies is exercised where an agency decides to recover the losses without attempting to determine criminality. There is debate between the proponents of quick and efficient recovery action and those who see the deterrent value of prosecution.[7]

2.8 The ANAO notes that as a consequence, all losses to the Commonwealth may not be interpreted as fraud by agencies[8] and the Review of Fraud suggests the above situation '...arguably contributes to public perceptions that such conduct is relatively innocuous.'[9]

2.9 With the exception of the Australian Federal Police Association (AFPA), few other agencies raised definitional issues as a problem.[10]

2.10 Given these difficulties it is not surprising that there is no common definition of fraud that is applied by all agencies. This was apparent from the evidence presented to the Committee and it can also be seen in details of fraud included in departmental annual reports. Since April 1991 the guidelines for the preparation of departmental annual reports[11] have required agencies to report fraud control activities in their annual reports. However, those guidelines do not define fraud. The results of the Committee's examination of the fraud control section of the 1991-92 annual reports of the executive departments reveals it is by no means clear how departments are defining fraud.

Conclusion

2.11 While the Committee recognises the difficulty of developing a definition of fraud it notes that agencies are making decisions on this matter even if the definition is restricted to cases so defined by the courts. Although it would be desirable to have a common definition of fraud used throughout the Australian Public Service (APS) this would be difficult to achieve given that many cases of fraud are defined as something else and that these offences are often embodied in

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7 Roberts, P. October 1992. Estimates of fraud against the Commonwealth. Unpublished letter to Dr P. Grabosky, Australian Institute of Criminology, p. 2.

8 Evidence, p. S167.

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

10 Evidence, pp. S223 and S1078.

11 *The preparation of departmental annual reports*. 1991. Canberra, Department of Prime Minister and Cabinet, 35p. and
The preparation of departmental annual reports: Draft consolidation incorporating future proposed amendments. April 1992. Canberra, Department of Prime Minister and Cabinet, 40p. These guidelines were used for the preparation of 1991-92 annual reports even though the guidelines contained a number of proposed amendments which did not have the force of law. Details of the information departments are required to include in their annual reports on fraud control are set out at Appendix 6.

various legislation. It would be virtually impossible to have all agencies use the same definition, however, each agency should make it clear what definition of fraud it is using and continue to report in its annual report on both fraud and losses by incorrect payment and non-collection of revenue.

2.12 **The Committee recommends:**

- **in reporting details of fraud cases in annual reports and elsewhere agencies clearly state how they are defining fraud; and**

- **when reporting fraud, agencies include all losses to the Commonwealth whether by incorrect payment or non-collection of revenue.**

Losses through fraud on the Commonwealth

2.13 The amount of Commonwealth funds lost to fraud is important in determining the type and scale of the response. Without some knowledge of the scale and scope of the problem it is impossible to set up effective strategies to address fraud or to monitor the effectiveness of those strategies.

2.14 A number of problems have been identified in obtaining estimates on the dimensions of the fraud problem.

2.15 First, as outlined above there is no common definition of fraud applied across agencies and consequently data cannot be aggregated in any meaningful way. Agencies have adopted working definitions of losses such as 'overpayments' and 'overservicing'. In this way agencies' definitions of fraud would not encompass all activities which the public might consider as fraud. It is inevitable that relying on a definition of fraud which satisfies evidential requirements will cause the problem to be understated; some criminal acts will inevitably be unprovable.

2.16 Second, associated with this is the added complexity of attempting to quantify fraud in a particular case even when it gets to the prosecution stage. For example, in some fraud cases charges may be laid for only part of the fraud because the Director of Public Prosecutions (DPP) will only proceed with those transactions where there is reasonable prospect of a successful prosecution.[12] Similarly, the DPP and the courts may consider it appropriate to proceed with only some of the charges where the extent of the criminality can been demonstrated by those charges.

2.17 Third, the AFP notes that not all cases of fraud are detected or reported.[13] For example, Crawford states research by the South Australian Police

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12 Roberts, P. October 1992, op. cit., p. 2.

13 Evidence, p. S112.

Fraud Task Force indicates that only five to ten per cent of fraud is reported.[14] As a result the instances of fraud that are actually dealt with or detected constitute no more than an indicator of the size of the problem and are merely the tip of the iceberg. This has been confirmed on numerous occasions by inquiries and royal commissions into fraud and corruption such as those by McCabe and Lafranchi, Costigan, Fitzgerald, and those into 'WA Inc.', and the building and construction industries in Victoria and New South Wales.[15] Further, the Attorney-General's Department noted that better fraud control means a greater sensitivity to fraud issues and '...the number of fraud cases being reported by some agencies, even when procedures have quite clearly been improved, is rising because of that increased sensitivity...we hope that in the longer term the number will decrease.'[16]

2.18 Fourth, it is alleged by the ANAO and Walker that agencies have an interest in underestimating the degree of fraud against their programs.[17] This is strongly refuted by the Attorney-General's Department which cites the preparedness of major revenue and expenditure agencies to nominate savings through increased compliance action in the budget context as a countervailing argument.[18]

2.19 Finally, as pointed out by the Review of Fraud, the ANAO and the AFP, poor statistics on fraud are kept by agencies[19] though some efforts now are being made to redress this situation. This is being done, for example, by reporting on fraud in annual reports and some agencies periodically advising the AFP of the

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14 Evidence, p. S1768.

15 McCabe, P. W. and Lafranchi, D. J. 1982. *Report of inspectors appointed to investigate the particular affairs of Navillus Pty Ltd and 922 other companies.* Melbourne, Government Printer, 5 vols.
Royal Commission on the activities of the Federated Ship Painters and Dockers Union. 1984. Commissioner: Mr Frank Costigan, Q.C. Melbourne, Government Printer, 6 vols.
Queensland. Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. 1989. *Report of a Commission of Inquiry pursuant to orders in council.* Chaired by Mr G. E. Fitzgerald. Brisbane, Government Printer, 388p, 242p.
Report of the Royal Commission into Commercial Activities of Government and Other Matters. 1992. Perth, Government Printer, 7 vols.
Grimshaw, G. A. and Smith, G. R. Commissioners. September 1988. *Inquiry into the building and construction industry: Report to Full Bench Australian Conciliation and Arbitration Commission.* Melbourne, Australian Conciliation and Arbitration Commission, 1 vol.
Royal Commission into Productivity in the Building Industry in New South Wales. 1992. Sydney, Government Printer, 10 vols.

16 Evidence, p. 9.

17 Evidence, p. 67 and Walker, J. August 1992. Estimates of the costs of crime in Australia. *Trends and Issues in Crime and Criminal Justice.* No. 39, p. 5.

18 Roberts, P. October 1992, op. cit., p. 3.

19 *Review of systems for dealing with fraud on the Commonwealth,* op. cit., recommendations 8-10 and pp. 46-50 and Evidence, pp. S112 and S169.

action taken on all fraud matters identified by the agency but not referred to the AFP. The latter case is in response to a recommendation in the ANAO audit report on the AFP.[20]

2.20 Even if the above problems were overcome, measurement of fraud is difficult because the scale and type of fraud changes quickly. It is made up of a wide variety of activities which are changing in an environment which is also changing. Direct crediting, electronic data interchange, corporate credit cards, user pays and outsourcing all open up new opportunities of fraud. The impact on fraud of a changing environment is illustrated by findings of the ANAO in Report No. 25 concerning the DSS initiative of the payment of benefits direct to individuals' bank accounts rather than to the individual.

> It was not possible to identify the effects of direct crediting on the number of fraud referrals to the AFP by all agencies but the effects of the DSS initiative were significant. Since the introduction of direct crediting by the DSS, offences reported to the AFP have fallen from 43 700 (1986-87) to 7 200 (1988-89) and were estimated by the AFP to be 9 400 for the year ended June 1990.[21]

2.21 Given this particular problem it seems essential that any estimates of fraud be updated at frequent intervals.

2.22 Despite these difficulties several estimates have been made of the extent of fraud on the Commonwealth. As expected the figures are wide ranging. For example in November 1985 an inhouse report by the AFP and the Department of the Special Minister of State estimated annual fraud at $4 billion[22]. In October 1988 the AFPA suggested fraud costs as high as $9 billion[23], in 1990-91 combined departmental estimates listed it at $2.3 billion[24] and a recent review by the Australian Institute of Criminology (AIC) using those figures put fraud in the public sector at between $6.71-$13.77 billion[25]. The Attorney-General's Department has been critical of the AIC's and other agencies' estimates and does not endorse any of the figures quoted by the AIC.[26] The Review of Fraud was not tasked with establishing the scale of fraud on the Commonwealth.[27]

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20 Evidence, pp. S4-S5.

21 The Auditor-General. *Australian Federal Police - Efficiency and effectiveness of fraud investigations.* Audit Report No. 25 1990-91. Canberra, AGPS, p. 54.

22 Evidence, p. S1089.

23 Davis, B. and Blue, T. October 1988. Fraud is big business. *Australian Business.* 19 October 1988, p. 56.

24 Overpayments for social security $214m: report. 16 July 1990. *Canberra Times* and Chamberlin, P. 20 March 1991. Fighting forces too partial to fraud. *Sydney Morning Herald.*

25 Walker, J, op. cit., p. 5.

26 Roberts, P. October 1992, op. cit., p. 1.

27 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., p. 19.

2.23 The result is that it is becoming accepted amongst agencies[28] that it is almost impossible to establish the extent of fraud on the Commonwealth as there are too many variables and very little statistical evidence to support any particular estimates. The Attorney-General's Department observed in response to a question on quantification:

> ...We have not seen it as part of our responsibilities in terms of coordinating. We have basically looked at making sure that we fix the problems up rather than spending a lot of time and effort in trying to quantify it.[29]

The Attorney-General's Department sees measurement of the extent of fraud, if it were to be done, as the responsibility of management of individual departments rather than an outside body.[30]

2.24 The efforts of agencies at quantifying the level of fraud are improving and being made more publicly available, due, at least in part, to the requirement of reporting on fraud in annual reports according to the annual reporting guidelines previously outlined. There are, however, a number of significant shortcomings with this system as highlighted by the AFP's work in this area.[31] Only a limited number of statistics are sought (such as the number of cases referred to the AFP for investigation and the number of cases handled by administrative means) with departments not obliged to calculate or estimate important data such as the amount of fraud discovered. The information requested is not well defined and some departments are experiencing difficulties in reporting all the requested information. Another shortcoming with the guidelines is that they are not mandatory for statutory authorities which are only required to comply with them '...to the extent that the officeholder responsible for the authority's annual report judges it reasonable to do so.'[32]

2.25 The results of reporting fraud in annual reports is an improvement on the past. With further definition of the requirements and improved statistical input by departments the collation of such information (based on the tabulation and analysis of all the information) would allow a more complete picture for the Commonwealth to be built up. The AFP considers such a result will be difficult to obtain.[33]

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28 Evidence, p. 124.

29 Evidence, p. 8.

30 Evidence, p. 8.

31 Evidence, pp. S1874-S1875.

32 *The preparation of departmental annual reports: Draft consolidation incorporating future proposed amendments*, op. cit., p. 4.

33 Evidence, p. S1875.

2.26 Developments in computerised management information systems, however, which have enhanced the capacity of many agencies to store, process and analyse data should facilitate the task.

2.27 The nature of fraud is more clearly defined than its extent. The Attorney-General's Department identified three trends in fraud cases. These are an increasing recognition of the risks to the Commonwealth in its contracting activities, stability in the number of cases referred to the AFP and the DPP, and increasing complexity in the cases being detected.[34] The latter trend was confirmed by both benefits and contracting agencies and by the National Crime Authority (NCA)[35].

2.28 To some extent, concern with assessing the scale and type of fraud has been subsumed by the agency fraud risk assessment process discussed at paragraphs 4.2 - 4.15. Again, the focus in that process is at the agency level with little or no picture developed for the Commonwealth as a whole.

2.29 There are two obvious solutions to improving the data available on the extent and nature of fraud. First, agencies need to continue to improve their collection and maintenance of data on their fraud cases and second, the data from individual agencies needs to be combined and collated at Commonwealth level by a specified agency.

2.30 Two levels of collated data are required at the Commonwealth level. These are data at a general level for fraud policy decisions and at a detailed level to develop and maintain an effective criminal intelligence capability for the Commonwealth as a whole.

2.31 The ANAO has suggested:

> In order to ensure that there is a full assessment of possible fraud against the Commonwealth, the ANAO considers that a central downstream agency should maintain data in respect of all fraud cases (however defined), regardless of whether the action was taken by the department or the downstream agency. The data so maintained could then be utilised to predict the likely level and incidence of fraud against the Commonwealth. It could also be used for planning for future activities.[36]

2.32 Clearly the Attorney-General's Department does not see this as part of its current fraud coordination responsibilities.

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34 Evidence, pp. 7-9.
35 Evidence, pp. S1095-S1096.
36 Evidence, p. S1057.

2.33 The AFP supports the ANAO suggestion and states:

> If the Government is to have an accurate understanding of the extent of fraud on the Commonwealth, the national costs of such fraud, and the ability of the Commonwealth to react effectively, it is necessary to co-ordinate the handling of information on a national basis. ...The AFP is the Commonwealth agency best placed to assume such a co-ordination function, due to its position in the Government's law-enforcement strategy.[37]

The AFP believes it has the policy responsibility, structure and expertise needed to undertake such a role. Its only concern relates to the cost, both to the AFP and participating agencies, particularly the necessity of creating a national information system with standard reporting formats to which all participating agencies would contribute.[38]

Conclusion

2.34 The collection and analysis of data on fraud and fraud control activities are essential in the fraud policy development and evaluation process. The Committee believes the Attorney-General's Department should be providing more assistance to agencies in developing their fraud data collection capabilities. This should include better defining the fraud data required in the guidelines for annual reports.

2.35 On the criminal intelligence side, the Committee supports the view that the AFP is the agency best placed to develop and maintain fraud data for the Commonwealth as a whole for criminal intelligence purposes.

2.36 **The Committee recommends:**

- **all agencies continue to maintain appropriate records of cases, losses, activities and resource allocations in relation to fraud;**
- **the Department of the Prime Minister and Cabinet in consultation with the Attorney-General's Department and agencies revise the fraud control section of the annual report guidelines to improve the relevance and consistency of the data requested from agencies;**

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37 Evidence, p. S115.

38 Evidence, pp. S115-S116.

- all agencies that are not already doing so advise the Australian Federal Police, at regular agreed intervals and in an agreed format, of the action taken on all fraud matters identified by the agency, but not referred to the Australian Federal Police, and details of these arrangements be set out in agreements between the Australian Federal Police and each agency;

- the Australian Federal Police be responsible for collating data on the extent, nature and costs of fraud from all agencies on a national basis to maintain a criminal intelligence capability;

- the Australian Federal Police makes the statistical information from the national criminal intelligence information system available to the Attorney-General's Department as required for that Department's coordinating role; and

- the Commonwealth Government fund, as a matter of high priority, the development of the criminal intelligence information system.

Chapter Three

The framework for dealing with fraud on the Commonwealth

Background to fraud control by the Commonwealth

3.1 In the early 1980s investigations made by, and the reports of, a series of royal commissions and inquiries revealed a picture of major criminal activity in Australia. The McCabe and Lafranchi Report, the Costigan Commission and concentration by the media on the community's concern about fraud practised on health, social security and taxation administrations, raised the profile of law enforcement issues. The extent of such fraud was revealed by those inquiries, in particular, the growth in tax evasion including 'bottom-of-the-harbour' and other tax schemes. Costigan also suggested the involvement of the Federated Ship Painters and Dockers Union in large-scale social security fraud.[1]

3.2 In response to those revelations legislative and administrative changes were made in the form of taxation, social security and general law enforcement initiatives. Those initiatives included:

- the Charter of the AFP was amended to place large scale fraud against Commonwealth revenue high on the list of the AFP's priorities;
- the Office of the DPP was established and took over the roles of the Special Prosecutors Messrs Gyles and Redlich when their commissions expired in 1984;
- the NCA was set up with fraud and tax evasion being offences subject to the NCA's special powers;
- the *Crimes (Taxation Offences) Act 1980* and *Taxation (Unpaid Company Tax) Assessment Act 1982* were enacted to address the 'bottom of the harbour' schemes, the *Income Tax Assessment (Amendment) Act 1981* was aimed at avoidance schemes and existing mechanisms were strengthened through legislation;[2] and

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

2 ibid., 17.

- in 1986 the DSS introducing direct crediting of payments to individual's bank accounts rather than to individuals.

3.3 At the same time considerable changes were being made in the Commonwealth's approach to the management of the public service with major structural, industrial, human resource management, financial/budgeting, commercial and planning/reporting reforms introduced.[3] These changes involved a focus on outcomes rather than process with managers being given greater flexibility to use their resources while making them more accountable for their actions. The catchcry of the eighties was 'let the managers manage'.

3.4 It was against this background of progressive management reform in the Commonwealth public sector and a period of concentrated attention on the nature and extent of fraud on the Commonwealth, that the Government saw a need for a review of its fraud control practices.

3.5 The Cabinet decision of 2 June 1986 to set up the *Review of systems for dealing with fraud on the Commonwealth* stemmed from a number of internal papers and reports commissioned under the portfolio of the Special Minister of State. In particular, in 1985 the then Commissioner of the AFP became concerned that there was a considerable imbalance between the demands for attention to fraud against the Commonwealth and the resources available to address that task. Extra funding was sought for the Australian Federal Police to deal with the increased number of fraud cases being reported by agencies.

3.6 It was also recognised that cases of suspected fraud referred by agencies to investigation and prosecution organisations ranged from trivial matters to the more serious. The desire to concentrate scarce investigation and prosecution resources on more significant instances of fraud also underpinned the desire for a more wide ranging analysis than had previously been carried out.

The *Review of Fraud* [4]

3.7 The terms of reference of the Review of Fraud concentrated upon the arrangements in place to deal with instances of fraud after they had been identified, and the interrelationships between agencies involved in that process. This focus derived from a recognition that the investigation and prosecution of fraud could cross normal organisational boundaries in public administration. Decisions by one

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3 See The Task Force on Management Improvement. December 1992. *The Australian Public Service reformed: An evaluation of a decade of management reform.* Canberra, AGPS, 624p.

4 The Steering Committee of the Review of Fraud was headed by the Secretary of the Department of the Special Minister of State and included the Chairman of the Public Service Commission, the Secretaries to the Departments of Finance, Social Security and Health, the Commissioner of Taxation, the Comptroller-General of Customs, the Director of Public Prosecutions and the Health Insurance Commissioner.

agency could have an impact on the activities of others which may result in an imbalance between the demand by some agencies for services in relation to fraud and the capacity of other agencies to supply the services.

3.8 The Review of Fraud considered arrangements for dealing with detected financial fraud, it did not examine losses by the Commonwealth other than financial loss. This occurred despite the recognition that fraud may take other forms, such as documentary fraud, which were not considered. The Review of Fraud was not tasked to determine the scale of fraud, nor to inquire into the detail of measures for preventing or detecting fraud. In addition, it did not examine the impact on the Commonwealth of private sector fraud although such activity may be presumed to have an effect on public sector revenue by reducing taxable profits.

3.9 It focussed on agencies which generated most work for others in the fraud control area, that is the principal revenue collecting agencies (ATO and the Australian Customs Service (ACS)), those with expenditure programs of a welfare and community-support character (HIC, DSS, the Department of Veterans' Affairs (DVA) and the Departments of Education, Health and Community Services) and the downstream agencies (AFP, DPP and the Australian Government Solicitor (AGS)).[5]

3.10 The Steering Committee, which reported in March 1987, made 27 recommendations to the Commonwealth Government. The underlying premise of the report was that it was preferable that agencies develop 'front-end' systems to reduce the incidence of fraud as far as possible. The major focus of the report was, therefore, that responsibility and accountability for preventing, detecting and handling fraud should be more clearly directed to those agencies whose systems are the subject of fraud and that instances of fraud which are referred to the AFP for investigation should generally be those which are more complex or larger in scale than the most routine cases.

3.11 The main recommendations were that government agencies should:

- take responsibility for the prevention and detection of fraud against their programs and should also investigate 'routine' instances of fraud against their programs (Recommendations 1 and 2);

- be required to pursue a systematic approach to fraud control including assessing the risk of fraud against programs and the development of plans and arrangements for fraud control (Recommendations 3 and 4);

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5 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., pp. 20-22.

- improve communication and develop formal links with the AFP and the DPP to allow resourcing in the AFP and the DPP to be responsive to the demands resulting from agency activity in fraud matters (Recommendations 5 and 6);

- develop the use of administrative remedies as a cost-effective means of dealing with minor instances of fraud (Recommendation 7);

- maintain records of activities and resource allocations relevant to dealing with fraud (Recommendations 8,9,10);

- provide appropriate training to staff in the prevention, identification, detection and investigation of fraud (Recommendation 11 and 18);

- publicise in general terms the existence of measures to detect fraud (Recommendation 12); and

- where it was consistent with legislation, adopt co-operative policies in providing information to other agencies and consider matching information relevant to identifying instances of fraud (Recommendation 24).

3.12 In September 1987 the Government announced that it accepted 25 of the 27 recommendations. Two recommendations which relate to access to information by law enforcement agencies (Nos 25 and 26) were held in abeyance pending the outcome of a separate review by the Attorney-General's Department on the overall issue of secrecy provisions in all Commonwealth legislation.[6]

Fraud as a management responsibility

3.13 The Commonwealth's approach to fraud control has arisen directly from the adoption of the recommendations of the Review of Fraud.[7] The focus on the management issues of fraud control has had the most direct impact upon agencies and has led directly to the requirement to prepare risk assessments and fraud control plans.

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

7 Detailed comments by the Attorney-General's Department on the implementation of each of the recommendations of the Review of Fraud as at 30 May 1992 are at Evidence, pp. S242-S250.

3.14 Recommendation 3 of the Review of Fraud provided:

> That all agencies be required to pursue a systematic and explicit approach to the control of fraud and, to this end, that:
>
> - those which have not already done so assess the risk of fraud against their programs and report to their respective ministers within six months of the date of acceptance of this recommendation;
>
> - agencies whose programs are subject to a significant risk of fraud, and which have not already done so, develop detailed plans for fraud control (however described);
>
> - other agencies, with programs subject to a less significant risk of fraud, and which have not already done so, develop arrangements for fraud control for inclusion in corporate plans, internal audit plans and/or other internal management plans, as appropriate; and
>
> - assessments of the risk of fraud and arrangements for fraud control be reviewed at intervals of no more than two years. (Such reviews could be included as part of each agency's management improvement plan as appropriate).[8]

3.15 Recommendation 27 of the Review provided that Ministers were to advise the Attorney-General of the reasons why any statutory authority or other body should not be defined as an agency for purposes of the Review of Fraud. The Attorney-General was advised by a number of Ministers that GBEs in their portfolio would not be covered by the arrangements. Some 400 other Commonwealth entities were identified as being covered by the Government's decisions on fraud control. The vast majority of these were committees and advisory bodies with no independent financial authority. The Government's decisions on fraud control specifically did not cover the revenue activities of the ATO.[9]

3.16 Each of the portfolio coordinating departments were asked to identify which agencies would be providing separate risk assessments and fraud control plans. Some 80 agencies were nominated as independent reporting units to deal with the Fraud Policy Unit of the Attorney-General's Department.[10] However, there was

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8 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., pp. 39-40.
9 Evidence pp. S218-S219.
10 Evidence, p. S219.

no consistency across portfolios as to what constituted a separate reporting unit. Some departments included all agencies in the portfolio in the one risk assessment and fraud control plan, while others arranged for every entity with their own independent financial authority to provide separate documents.

3.17 The Commonwealth Government's direction required each agency to advise its Minister of the risks of fraud on its programs. Where the risk was assessed as significant agencies were required to prepare fraud control plans. Where the risk was less significant agencies were required to prepare fraud control statements. A list of agencies and comments regarding their compliance with the requirements was provided by the Attorney-General's Department.[11]

3.18 The Review of Fraud quite clearly advocated an approach which took account of the differences between agencies. There were few prescriptive 'rules' laid down for agencies. The Attorney-General's Department stressed that its principal position since it became involved in fraud control is that:

> ...fraud is primarily an issue for management...In a sense, we regard it as being far more important that managers run their operations in ways that either prevent or substantially reduce the risk of fraud. This is almost more important than the proper coordination and linking up of the efforts of the agencies involved in investigating and ultimately prosecuting instances of fraud when they occur.[12]

3.19 The Review of Fraud also saw a similar flexibility in response to the need for agencies to investigate fraud:

> It is not considered appropriate to recommend that all or most agencies establish their own investigation teams to deal with fraud.[13]

Coordination and monitoring

3.20 In September 1987 immediately after its decision to accept the recommendations of the Review of Fraud, the Commonwealth Government also established the Fraud Control Committee (FCC) to facilitate the implementation of those recommendations. Membership of the FCC comprised the Secretaries to the

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11 Evidence, pp. S255-S279.

12 Evidence, p. 4.

13 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., p. 37.

Attorney-General's Department, and the Departments of Finance and Social Security with heads of other agencies involved in the Committee's work as appropriate.[14]

3.21 The functions of the FCC were to:

- coordinate and monitor the implementation of the recommendations of the Review of Fraud endorsed by Cabinet;
- facilitate the sharing of skills and knowledge between agencies for preventing, detecting and dealing with fraud;
- identify areas in which priority should be given to new or improved arrangements for dealing with fraud; and
- monitor the use of resources required for dealing with fraud, with particular attention to assessing agencies' existing and proposed plans and arrangements for fraud control, information recording systems and training; providing expert advice to agencies on the development of fraud control strategies and systems; recommending guidelines to agencies for preventing, detecting and otherwise dealing with fraud; and monitoring coordination arrangements between agencies in dealing with fraud.[15]

3.22 The arrangements included all agencies, except for the ATO, which was already well advanced in reviewing its procedures and improving its audit systems for dealing with fraud.

3.23 The Fraud Policy Unit in the Attorney-General's Department was responsible for secretariat support of the FCC. The Unit assisted the Committee in its work which included:

- conducting a series of seminars throughout Australia to alert all departments and agencies of their obligations and providing assistance in the risk assessment and fraud control plan process;
- through consultations, ensuring that all decisions arising from the Review were acted upon by departments and agencies;
- instituting a series of fraud control liaison forums Australia wide as proposed under Recommendation 6 of the Review;

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14 News release by Lionel Bowen, Deputy Prime Minister and Attorney-General. *Fraud review and Fraud Control Committee.* 29 September 1987, 5p.

15 News release by Lionel Bowen, Deputy Prime Minister and Attorney-General, ibid., pp. 4-5.

- approving guidelines for the evaluation of risk assessments and fraud control plans; and

- approving the evaluations undertaken by the Fraud Policy Unit.[16]

3.24 The Attorney-General was also requested to report back to the Government on progress in implementing the policy changes. In October 1989, the Attorney-General advised the Government that there had been substantial compliance with many elements of the new policy, but that the task of fraud control must continue and that all agencies and the Attorney-General's Department had ongoing responsibilities in this area.[17]

3.25 As a result of the report, the Government agreed to disband the FCC and that the Fraud Policy Unit should continue with the function of monitoring compliance with the Government's policy for no longer than two years (that is, until October 1991). The Unit was given the responsibility of continuing to evaluate risk assessments and fraud control plans, providing assistance to agencies in fraud matters, exchanging information on fraud control and arranging regular meetings between upstream and downstream agencies in all States and Territories regarding emerging problems, resource needs, priorities and training.

3.26 Since October 1989 the Fraud Policy Unit played a central role in coordinating the implementation of the Government's fraud control policy. The Fraud Policy and Prevention Branch, as it is now known, has listed its activities in May 1992 to include:

- reminding agencies of their obligations to review their fraud control arrangements and evaluating those reviews;

- arranging fraud control liaison forums;

- in consultation with the AFP, the DPP and Defence[18], developing a manual to assist managers in dealing with specific instances of fraud;

- providing policy input on fraud control to the Government; and

- advising other jurisdictions of the Commonwealth's activities in fraud control.[19]

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16 Evidence, pp. S216-S217.

17 Evidence, p. S217.

18 Except where the context indicates otherwise, Defence is used to refer to the public service Department of Defence and the three Armed Services.

19 Evidence, p. S217.

3.27 Informal advice from the Attorney-General's Department is that these activities may be divided into four broad areas.

3.28 First, the Branch has responsibility for the policy aspects of fraud control. While fraud control is an individual agency responsibility, when the matter affects the Commonwealth's administration as a whole it is dealt with centrally and becomes a matter for the Attorney-General's Department. When matters impinge on financial management policy there is an overlap with the Department of Finance (DOF). The proposed new Financial Management and Accountability Act of the new audit legislation requirements for fraud control plans are being jointly handled by the Departments.

3.29 Second, the Branch is also responsible for setting standards. A considerable amount of work was done in this area in the first two years after the Government adopted the recommendations of the Review. With the risk assessments, fraud control plans and reviews the Branch outlined the nature of the requirements and, through a process of evolution, a Commonwealth standard emerged.

3.30 Third, at the present time the Attorney-General's Department believes the monitoring of fraud control matters is the primary focus of the work of the Branch. This is achieved primarily through the practice of all risk assessments, fraud control plans and reviews being referred to the Branch for assessment. There is also significant feedback from agencies seeking assistance on particular fraud issues.

3.31 Finally, the Branch also has a role in facilitating some exchange of information. At the procedural level, the Branch arranges fraud liaison meetings where agencies can discuss with the AFP and the DPP problems they have with fraud. Also, these meetings are a vehicle for transmitting information on developments in fraud control. At the level of exchange of bulk data, the Branch is implementing the LEAN project which will make available companies and land ownership records.

Role of new audit legislation in fraud control

3.32 One of the most significant changes in the finance and public administration arena that is planned for the 37th Parliament is the repeal of the *Audit Act 1901* and its replacement with modern legislation better able to deal with the Commonwealth's auditing function and its financial administration. DOF has primary carriage of the development of the new legislation. It is proposed that the existing Act would be replaced by three new Acts, namely:

- an Auditor-General Act to define the powers, functions and responsibilities of the Auditor-General;

- a Financial Management and Accountability Act to provide the regulatory framework for departments and those statutory authorities which financially are agents of the Commonwealth in that they do not own moneys or assets separately from the Executive Government of the Commonwealth; and

- a Financial and Reporting Provisions (Commonwealth Entities) Act to contain financial and reporting provisions related to Commonwealth-controlled companies and those financially autonomous statutory authorities (even if Budget-funded) whose enabling legislation gives them legal ownership of their moneys and assets.[20]

3.33 Early advice from DOF is that it is intended that the new audit legislation would provide the framework to actively discourage fraud and to positively encourage agencies to have fraud control plans. It would specifically address fraud unlike the current Audit Act. While the Department stresses that it is accepted that it cannot legislate to prevent fraud nor to achieve ethical behaviour, the proposed changes to the audit legislation would attempt to put in place legislation that deters fraud and unethical behaviour. DOF has said it is intended this would be done in three ways.[21]

3.34 First, there would be a more focussed responsibility on the chief executive officers of 'agencies' - that includes departments and central Commonwealth statutory authorities - to keep better account of the operations of their agencies with the objective of ensuring that efficiency, effectiveness and ethics are achieved. By putting this in legislation there would be some basis for assessing the performance of chief executives. The Act would also require chief executives to establish high-level audit committees within their agencies under whose guidance the functional needs for sound internal audit, program evaluation and fraud prevention and detection would be coordinated.

3.35 Second, there would be a statutory requirement for agencies to prepare and implement fraud control plans. By enshrining this in legislation it is intended to give a clear indication of how serious the Government is about doing something to combat fraud.

3.36 Third, the legislation is intended to contain a provision that would provide a reward system for informants. This issue is discussed at paragraphs 7.48 - 7.60.

3.37 This new audit legislation would have a significant impact on fraud control by making agencies more accountable for their activities in this area.

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20 Kennedy, M. September 1992. Audit Act 1901 - Goodbye! Paper presented to *AIC Conference, Performance management in the Australian Public Service*, Canberra, 1 September 1992, pp. 3-6. and Evidence, p. 42.

21 Evidence, pp. 43-44 and Kennedy, M, op. cit., pp. 6-8.

3.38 **The Committee recommends:**

- **as a matter of priority, the Government introduce the proposed new audit legislation.**

Comparison with overseas and State strategies

3.39 The approach for dealing with fraud adopted by the Commonwealth differs significantly from those in State Governments and overseas jurisdictions. South Australia is the only State to adopt aspects of the Commonwealth approach to fraud control by replicating some of what they consider to be its better features.

3.40 Many fraud jurisdictions have sought to deal with like problems and have developed similar solutions. For example, the United Kingdom and New Zealand each have established a 'Serious Fraud Office' intended to coordinate investigations and to investigate only serious fraud. This approach parallels that of the establishment of the NCA in Australia in that these bodies have been given extremely wide powers for dealing with criminal investigations.

3.41 Many other bodies have been set up in a number of States in response to a perceived need for special skills or powers in the investigation of fraud and/or corruption. New South Wales' Independent Commission Against Corruption (ICAC), Queensland's Criminal Justice Commission (CJC) and Western Australia's Official Corruption Commission are examples of some of these bodies.

3.42 In the United Kingdom there is no all-embracing statute directed at fraud, prosecutors frequently rely on 'theft' and 'false accounting' offences when prosecuting fraud cases. The United States, however, differs from the United Kingdom in that while it also does not have an all-embracing statute there is a great deal of legislation, both state and federal, directed at specific sorts of fraud or abuse. In Canada control is also through legislation. The Canadian Criminal Code contains a comprehensive range of provisions for fraud offences.

3.43 While criminal codes in the Australian States provide for general crimes involving fraud, only some States have taken particular action to combat public sector fraud. In most States the mechanisms for fraud control do not go beyond normal audit requirements though this is quickly changing.

3.44 The New South Wales *Crimes Act 1990* contains a range of offences for fraud and deception which whilst, not specifically directed at the public sector, are nonetheless used in that context. In 1989 the New South Wales Government implemented a policy of departments and agencies preparing a strategy to prevent fraud. As performance in this area has been patchy the New South Wales Auditor-General is developing guidelines on how to avoid fraud as a means of assisting agencies to more effectively undertake the task.

3.45 Recently Queensland has reviewed public sector auditing and is moving to introduce changes such as strengthening the role of the Auditor-General, introducing audit committees and improving internal auditing; a Fraud Control Unit has been set up in the Treasury; the CJC has been established; and codes of conduct are being looked at.

3.46 State departments and authorities in Western Australia are required to develop and implement control strategies, including internal audit and assessment of performance. The Western Australian Auditor General observed that inadequacies in accounting expertise and ineffective internal audit functions are often evident and addressing these issues are strategic imperatives which assist fraud prevention and control without being narrowly restricted to that issue.

3.47 The Fraud Policy and Prevention Branch of the Commonwealth Attorney-General's Department has provided advice and assistance on fraud control to public sector agencies outside the Commonwealth. In particular, the Branch has consulted with the South Australian Attorney-General's Department over the development of that State's fraud control policy. As a result the approach to fraud control in South Australia is not dissimilar to the Commonwealth's.[22] The Commonwealth's Fraud Policy and Prevention Branch has also provided information on the Commonwealth's activities to the Northern Territory administration which is examining the way in which the Commonwealth has developed its policy.

3.48 The Victorian *Crimes Act 1958* contains a number of general 'fraud' provisions. Informal advice from the Victorian Premier's Department is that to date there is no formal central coordination and monitoring of fraud activities in Victoria. Each agency is responsible for dealing with its own fraud control activities and there are no formal arrangements for referring cases for investigation or prosecution to the Victorian Police or the DPP respectively.

3.49 Besides the general fraud provisions in criminal law the Committee has not been informed of any particular initiatives the Tasmanian Government has adopted to combat fraud.

General conclusion

3.50 The Commonwealth's approach to fraud control when introduced was different and innovative. Compared with most State and overseas jurisdictions, more emphasis was placed on prevention and management of the fraud problem. The State and overseas jurisdictions have largely maintained the traditional focus on detection, investigation and prosecution of fraud. The Committee supports the Commonwealth's policy emphasis.

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22 Evidence, pp. S293-S307.

3.51 The Committee is concerned though that this framework has been introduced without a clear picture of the nature and extent of the fraud problem confronting the Commonwealth. Without this basic information it is difficult to assess the adequacy of the approach adopted and unfortunately the management approach to fraud control has put in place few strategies to redress this information deficiency.

3.52 Fraud control in almost all jurisdictions is to some extent fragmented. However, this situation now is accentuated at the Commonwealth level because all agencies whose systems are the subject of fraud have responsibilities for preventing, detecting and handling fraud. This responsibility includes the investigating of routine instances of fraud against them, whether the investigation is likely to be followed by the application of an administrative remedy or by reference of the matter for prosecution. In this context, clear definition of the roles of all agencies involved in fraud control and ensuring there is consistency, minimum duplication of effort and accountability in approach must be prime objectives.

3.53 Consistent with most of the management reforms of the 1980s, the emphasis in fraud control has been on 'letting the managers manage'. This has been desirable as a means of making managers responsible both for dealing with fraud which is perpetrated on their agency and for the introduction and operation of fraud control measures. However, insufficient priority has been given to developing and maintaining a Commonwealth-wide approach to fraud, rather, the focus has been almost entirely on independence at the agency specific level. In a dispersed system effective coordination and monitoring are essential. The mechanisms put in place for doing this under the management approach to fraud have been minimal and have relied on informal means, and it is not clear that this was seen as an ongoing function. Monitoring resource needs, which was initially considered a significant coordination function, appears to have fallen by the wayside with time.

3.54 Similarly, priority given to the development of a comprehensive picture of overall performance in fraud control at the Commonwealth level appears to be low. This is of particular concern since it is an important step in policy development and evaluation.

3.55 Before addressing solutions to these policy concerns, the impact of these matters in operation is examined in the following chapters.

Chapter Four

Management approach to fraud control

4.1 The major components of the management approach to fraud control are discussed in detail in this chapter.

Fraud risk assessment

4.2 The basic building block for an agency's approach to fraud control is the fraud risk assessment. If they can get that right the other parts of the task and reassessing the risks in the future becomes more straight forward.

4.3 The Review of Fraud did not attempt to impose a common methodology upon agencies for undertaking the assessment process since it was accepted that:

> In practical terms, the scale and variety of activities militated against such an approach. It is highly unlikely that a methodology suitable for small single purpose organisations, for example, the Australian Heritage Commission with a budget of under $0.5m could be usefully applied to the Department of Defence with its diverse functions and an annual budget of over $8 billion.[1]

This view was supported by the FCC. However, the FCC engaged consultants to develop broad guidelines for agencies on the preparation of risk assessments and fraud control plans.[2] That paper was widely circulated in 1988.

4.4 The Attorney-General's Department notes that in preparing risk assessments there are a number of equally valid methodologies that have been applied by agencies and 'The nature of the functions that the Department or agency performs will determine which is the most appropriate methodology.'[3] These methodologies range from techniques to produce a mathematical representation of the risks to the application of a number of key factors by the person undertaking the

1 Evidence, p. S213.

2 *Guidelines on the preparation of risk assessments and fraud control plans* developed by consultants to the Fraud Control Committee. 32p.

3 Evidence, p. S214.

risk assessment.[4] Defence has put considerable effort into this process having developed a fraud risk evaluation data base to do this work[5] and ACS has tailored an operational modelling technique to suit its needs.[6]

4.5 Many agencies have engaged external consultants to undertake the assessment with most consultants coming from the large accounting firms, for example, the Department of Primary Industries and Energy (DPIE), the Department of Industry, Technology and Regional Development (DITRD) and the Department of Foreign Affairs and Trade (DFAT) used Ernst and Young and both DEET and the Department of Health, Housing, Local Government and Community Services (HHLGCS) used KPMG Peat Marwick. Under the circumstances it is not surprising that private sector methodologies have been applied to the public sector.[7]

4.6 The risk assessments undertaken by agencies are evaluated (but not in great detail[8]) by the Attorney-General's Department in consultation with DSS and DOF[9] in accordance with evaluation criteria developed by the FCC.[10] In May 1992 the Attorney-General's Department reported that:

> The risk assessment process has, by and large, been completed for Commonwealth Departments and agencies. 79 risk assessments have been submitted and one is outstanding.[11]

However, nearly 40 per cent of agencies were more than one year late producing a fraud risk assessment, 16 per cent were more than two years late and one was still outstanding.[12]

4.7 It was also reported by the Attorney-General's Department that overall the areas at greatest risk are the collection of monies (income tax, sales tax, excise tax, licence fees etc), the payment of benefits (welfare, education, health etc), the procurement of major items such as defence equipment and computing systems and the payments of grants. Agencies most at risk are those handling the large finances such as DSS, DEET, ACS and Defence. Also there is an emerging trend of the risks the Commonwealth has in its contracting activities especially in the Department of the Arts and Administrative Services (DAAS), Defence and the Australian International Development Assistance Bureau.[13]

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4 Evidence, p. S214.
5 Evidence, pp. S762-S765.
6 See Australian Customs Service. nd. *Operational modelling.* 7p. for details on the technique.
7 Evidence, p. S214, S286, S348, S1012, S1863 and S1948.
8 Evidence, p. 13.
9 Evidence, pp. 12-13.
10 *Guidelines for the evaluation of fraud risk assessments, fraud control plans and reviews* are provided at Evidence, pp. S251-S254.
11 Evidence, p. S215.
12 Evidence, pp. S255-S265.
13 Evidence, pp. 5, 10 and S215.

4.8 The Attorney-General's Department noted the differences in assessing the risks in their raw form and the risks after the fraud control mechanisms are in place. Agencies at high risk do not necessarily equate with vulnerability because those organisations may have very elaborate control procedures. The Attorney-General's Department however could not give an assessment of the overall level of risk of fraud on the Commonwealth and stated that such an assessment would be subjective and difficult to provide. Neither was the Department able to provide definitions of high, medium and low risk of fraud.[14]

4.9 While the Attorney-General's Department outlined a number of limitations of the risk assessment process mainly related to its being based upon assessing the probability of particular threats against an agency's programs, the willingness of criminals to test the adequacy of controls, a tendency for managers to overestimate the effectiveness of controls and rapid change in the public sector, it stressed that to an extent these limitations are offset by the requirement to review the effectiveness of fraud control arrangements every two years.[15]

4.10 Based on its audits undertaken between 1989 and 1992 the ANAO identified major deficiencies and weaknesses in the fraud risk assessment procedures such as: they failed to take account of materiality of the resources at risk; there were variations in the depth of analysis for similar functional areas; they lacked objectivity; risk categorisations were unsophisticated; the format of the risk assessments were out of date due to restructuring of programs; there was a lack of risk profiles for potential target groups; and there was a lack of statistical data base and sampling programs. The ANAO considers that:

> ...the risk assessments carried out by the various Agencies were inadequate and thus did not provide a sound basis on which to develop detection and investigation strategies and plans.[16]

4.11 Agencies also have significant concerns regarding the fraud risk assessment process. Defence has stated:

> There is little in the way of detailed guidance to assist agencies to objectively measure and assess the real scope of the risks of fraud on their programs. Fraud risk assessment is, even five years after the Government's fraud control decision, a fledgling field.[17]

4.12 This view is also supported by CSIRO which suggests while there is no shortage of method or expertise available from accounting/auditing firms some mechanism would be useful which allows agencies to exchange experience in

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14 Evidence, pp. 4-5 and 7.
15 Evidence, pp. S215-S216.
16 Evidence, p. S171.
17 Evidence, p. S760.

common functional areas.[18] DITRD proposes a peer review mechanism so that risk assessments can be viewed across the Commonwealth and performance assessed.[19] HHLGCS recommended the adoption of a standard fraud risk assessment methodology across most or all departments to provide greater efficiencies and cost savings in fraud control strategies.[20] DEET stressed the need for a consistent approach in risk assessment.[21]

Conclusion

4.13 The FCC and Fraud Policy Unit's approach to coordinating the preparation of fraud risk assessments has not worked and needs to be changed. After some six years, agencies are still experiencing major problems in preparing fraud risk assessments and continue to seek detailed guidance on how to proceed. There has not been a consistent approach to the development of risk assessments and the assessments produced do not appear to be comparable, which means the Commonwealth's overall exposure to fraud cannot be assessed.

4.14 The Committee considers there should be scope for and would be benefit from increased consistency in the overall approach to the assessment of the risk of fraud. This could be achieved through the application of compatible methodologies and by the sharing of resources for the conduct of the analyses.

4.15 **The Committee recommends:**

- **the Attorney-General's Department, with other agencies, develop fraud risk assessment methodologies and measures which will allow for the collation of agency risk assessments to produce an overall assessment of the Commonwealth's risk of fraud and the changes to that risk over time;**

- **agencies develop their fraud risk assessment processes to meet the requirements of the methodologies and measures developed in the process outlined above; and**

- **the issue of fraud risk assessments be a major topic for discussion in the fraud liaison forums so agencies can improve their performance in this area.**

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18 Evidence, p. S1028.
19 Evidence, p. S288.
20 Evidence, p. S1016.
21 Evidence, p. 187.

Fraud control plans and statements

4.16 Fraud control plans were generally produced by the larger portfolio coordinating departments and some agencies which assessed themselves to be at a high risk of fraud. A little less than half of departments and agencies which prepared fraud risk assessments went on to prepare fraud control plans.

4.17 In May 1992 the Attorney-General's Department reported:

> ...37 fraud control plans (one outstanding) have been submitted, 32 fraud control statements prepared (9 are outstanding) and 23 reviews (46 are outstanding).[22]

4.18 The fraud control plans and statements are usually developed using a similar approach to the fraud risk assessment outlined above.

4.19 Through its audits the ANAO also reviewed several fraud control plans stating that:

> While the Agencies reviewed had generally done substantial work on the development of their fraud control plans, there were deficiencies.[23]

4.20 Some of the deficiencies identified by the ANAO were that some of the plans were inconsistent with or not incorporated in corporate plans; did not contain specific guidance on fraud control measures, goals to be achieved nor benchmarks against which performance could be measured; and/or covered only those functions which were assessed as 'very high' or 'high' risk of fraud.[24]

4.21 The Committee received three fraud control plans as part of evidence from DFAT, Defence and DAAS.[25] The Department of the Environment, Sport and Territories (DEST) and ACS also provided their plans but on a confidential basis. The plans varied considerably in terms of the formats adopted and the information included.

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22 Evidence, p. S221. A list of the departments and agencies that have provided each document is at Evidence, pp. S255-S265.

23 Evidence, p. S171.

24 Evidence, pp. S171-S172;
The Auditor-General. *Australian Federal Police - Efficiency and effectiveness of fraud investigations.* Audit Report No. 25 1990-91. Canberra, AGPS, pp.12-20;
The Auditor-General. *Department of Social Security: Systems for the detection of overpayments and the investigation of fraud.* Audit Report No. 40 1991-92. Canberra, AGPS, pp. 35-38; and
The Auditor-General. *Department of Administrative Services: Procedures for dealing with fraud on the Commonwealth.* Audit Report No. 11 1992-93. Canberra, AGPS, pp. 7-8.

25 Evidence, pp. S363-S458, S842-S869 and S1225-S1576.

4.22 Few critical comments were made by agencies regarding their fraud control plans and statements. Information provided was mainly descriptive of the approach used, the stage reached and improvements between the first and second plan.

4.23 The Review of Fraud stressed the ongoing nature of the risk assessment and fraud control process by recommending that both documents be reviewed at intervals of no more than two years.

4.24 Greater accountability in this area will be achieved when the proposed new audit legislation is introduced to make it a statutory requirement to prepare and implement fraud control plans.

Evaluation

4.25 The fraud control plans are reviewed by the Attorney-General's Department (in consultation with DSS and DOF) which described its role in this process as:

> ...to cast a critical eye over the plan so that, where areas of significant risk have been identified, the action proposed is an adequate response and, if it is not, suggest the plan be rectified.[26]

This is consistent with its emphasis on fraud control as a management responsibility.

4.26 The non-rigorous approach which the Attorney-General's Department uses to review these documents is of considerable concern. While there are advantages in having this monitoring role undertaken by the agency with policy responsibility and expertise in the field, this is not essential since there is also a substantial evaluation component to the work.

4.27 Accordingly, comment was sought from the Auditor-General on a proposal for his Office to take over this role. The Auditor-General considered it practical for the ANAO to carry out this work provided the necessary financial resources were allocated for the additional function. He suggested the task could be undertaken by the staff who carry out audits of particular entities and feedback could be provided to the Attorney-General's Department for the policy making process.[27] The Public Sector Union (PSU) proposed a considerably greater role for

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26 Evidence, p. S221.

27 Evidence, pp. S1960-S1961.

the ANAO involving the establishment of a Fraud, Security and Integrity Unit. The proposed roles included investigation of allegations, assistance with the risk assessment, providing advice, education and identifying opportunities for corruption and proposing changes to minimise the risks.[28]

4.28 On balance, however, there is benefit in having both agencies contributing their particular expertise with the overriding objective of providing constructive feedback on the documents to the agency concerned.

Implementation of fraud prevention and control strategies

4.29 Based on their fraud control plans or statements agencies have implemented strategies designed to prevent and control fraud. The strategies adopted include:

- promoting awareness of fraud control within the organisation. For example, Defence arranged a formal launch of the fraud control plan with the Minister present to give a strong message that he expected the fraud control plan to be implemented[29] and DFAT publicised the conduct of the fraud risk assessment and progress with implementation of the fraud control plans in its monthly newsletters and other departmental publications[30];

- the introduction of training programs for staff at all levels to increase awareness about fraud control issues. The DSS's work in this area has been particularly impressive[31];

- management encouraging ethical behaviour in the organisation. Defence has given substantial attention to this matter in relation to its own personnel via the Defence Ethics and Fraud Awareness Campaign, as well as with industry through its guidelines on *Business ethics for Defence and industry*[32];

- arrangements for financial authorisations and the separation of the procurement and payments functions are in place in most agencies;

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28 Evidence, pp. S1935-S1945.
29 Evidence, pp. S222 and S768.
30 Evidence, p. S349.
31 Evidence, p. S705.
32 Evidence, pp. S768-S771, S794-S796 and S890-S893.

- running the protective security regime, such as proper perimeter security, vetting of staff and classification of sensitive information, in parallel with the fraud control regime. ATO has given particular attention to this issue over a long period of time and has developed a detailed *ATO Specific Security Manual* to supplement the *APS Protective Security Manual*[33]; and

- computer security.

4.30 Despite the progress outlined and the outstanding performance by some agencies on particular strategies, the Attorney-General's Department expressed reservations about the extent to which the strategies specified in the fraud control plans and statements are actually implemented.

4.31 This view is shared by the ANAO which found from its audits that there was a failure to carry out all the strategies set down in the fraud control plans; a failure to review and update manuals, procedures and operating instructions throughout an agency to take account of the new fraud control measures introduced; and a lack of performance measures and inadequate management information systems to collect information for evaluating the effectiveness of the plan and its implementation.[34]

4.32 The Attorney-General's Department also stressed: the leadership role of the executive in implementing the strategies; its concern that, with some exceptions, the day-to-day responsibility for fraud control has tended to be at a relatively low level in agencies; the importance of effective and clearly defined internal organisational arrangements for fraud control; and the need for a high level agency committee to monitor the operations of the area.[35] While these arrangements tend to be in place in the larger agencies such as DSS, ACS, ATO, Defence, HIC and more recently DEET, there is room for improvement in many others.

4.33 Employee awareness is essential to a successful fraud control strategy since without it many fraudulent practices would go undetected. While comments on specific types of training are made elsewhere in this report it is important to note that the Public Service Commission (PSC) believes there is a need for more training of APS staff in fraud control.[36]

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33 Evidence, p. S43.
34 Evidence, pp. S171-S172.
35 Evidence, p. S222.
36 Evidence, p. S1074.

Conclusion

4.34 The requirements for preparing risk assessments and fraud control plans or statements as set out in the Review of Fraud are still relevant. Although the documents are being prepared and updated at fairly regular intervals, there is still substantial room for improvement in their preparation, evaluation and, most significantly, their implementation.

4.35 **The Committee recommends:**

- **the new audit legislation include requirements for the preparation and implementation of risk assessments and fraud control plans or statements as set out in the Review of Fraud. These documents should be reviewed at intervals of no more than two years for ongoing programs and whenever major program changes occur or new programs are introduced;**
- **all agencies give a higher priority to preparing and implementing their fraud control plans or statements;**
- **the Attorney-General's Department be responsible for developing and providing to agencies, advice and guidelines on the preparation of risk assessments and fraud control plans;**
- **making reference to the guidelines prepared for agencies by the Attorney-General's Department, the Auditor-General conduct a review of fraud risk assessments and fraud control plans, on a two year cycle, with the resultant detailed reports going to the executives of the relevant agencies and the Attorney-General's Department;**
- **the Auditor-General table in Parliament a report each year summarising the outcomes of the reviews conducted during that year and making recommendations with regard to individual agencies and the guidelines produced by the Attorney-General's Department;**
- **the Attorney-General's Department report annually to Parliament on fraud control in the Commonwealth and on the Department's activities in its coordination role; and**
- **the new audit legislation include a requirement for heads of agencies to be responsible for fraud control activities and for all agencies, which have not already done so, to establish a high level committee to monitor their fraud prevention and control functions.**

Codes of conduct and ethics

4.36 The management approach to fraud control focuses greater attention on ethics in the fraud prevention and control process. The terms of reference of the inquiry highlighted three particular ethics strategies to be examined as part of this inquiry, namely, codes of conduct, post-separation employment and guidelines for companies doing business with the Commonwealth.

4.37 The PSC believes policies for managing the conduct of staff should focus on establishing the standards of conduct desired in APS workplaces and only then providing deterrents to illegal conduct such as fraud.[37]

4.38 A general statement of the duties of all APS staff is set out in Public Service Regulations 8A and 8B. Rather than operating directly to prevent fraud, these regulations specify what is required of staff in the performance of their duties. Disciplinary action can be taken if officers fail to comply. These regulations can also be regarded as the statutory expression of the three main principles on which the *Guidelines on the Official Conduct of Commonwealth Public Servants* are based, that is, public servants should perform their duties with professionalism and integrity and efficiently serve the Government of the day; behave with fairness and equity in official dealings with the public and other public servants; and avoid real or apparent conflicts of interest.[38]

4.39 The Guidelines on Official Conduct are sometimes called the Code of Conduct for the APS and deal with the relationships between politicians, their staff and public servants; with the use of official information; and with the participation by public servants in public interest groups. Of particular interest to this inquiry are the sections dealing with financial and other private interests of public servants. Matters covered include conflict of interest; acceptance of gifts and other benefits; the taking up of outside employment; and exercise of undue influence by staff. The Guidelines set down general principles to be followed rather than attempting to resolve every problem which might arise.

4.40 The PSC has a policy role in establishing an appropriate framework for managing people in the APS, including the establishment of standards of conduct.[39] It has policy responsibility for the dis pline code and in so doing sees itself as providing a broad framework to resolve ethical dilemmas. In particular, the PSC views its role as furthering awareness of ethical issues and promoting ethical conduct by ensuring staff comply.

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37 Evidence, p. S1068.

38 Evidence, pp. S1068-S1069.

39 Public Service Commission. 1992. *A framework for human resource management in the Australian Public Service.* Canberra, Public Service Commission, 101p.

4.41 The PSC has said that within the APS:

> At a very general level...there is an awareness of the need to behave ethically and to observe proper standards of conduct in the workplace. However, what that means in practice, in particular situations, is not always clear to all staff in the Service.[40]

4.42 In 1992 and 1993 as part of its review of the *Public Service Act 1922*[41] the PSC has been examining the content of the Guidelines but believes its more important task is to raise the level of awareness across the APS of the importance of high standards of conduct. A pamphlet outlining the standards of conduct expected in the APS was widely distribution in late 1992 to raise the profile of ethical issues. This will be supplemented by training in relation to ethics.

4.43 In commenting on the Guidelines the Department of Industrial Relations (DIR) stressed that 'The critical issue...is that staff are aware of them, understand their importance and contents and conduct themselves accordingly.'[42]

4.44 Agencies are generally supportive of codes of conduct as a strategy to assist in combating fraud. Some have taken this a step further by attempting to relate the service-wide code to their own circumstances. ATO, Defence and DAAS have developed their own codes[43], DSS has been working with the PSC on the development of such a code[44], ACS in consultation with the PSU is considering publication of a code[45] and the Department of Immigration and Ethnic Affairs (DIEA) has in place an instruction on official conduct which outlines similar issues[46].

4.45 On the other hand departments such as DFAT are awaiting the PSC's review of the existing code before examining in detail the need for developing their own code.[47] DEET considers the current service-wide code adequate but supports the PSC comments that training programs are needed to ensure it is understood by employees.[48] DITRD, however, believes the adequacy of the service-wide code is generally untested.[49]

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40 Evidence, p. 442.

41 At the opening of the 37th Parliament the Governor-General announced that a high priority would be given to the passage of a new Public Service Act. *House of Representatives Hansard*. 4 May 1993. p. 31.

42 Evidence, p. S1856.

43 Evidence, pp. S46-S47, S794-S795 and S1204.

44 Evidence, p. S708.

45 Evidence, p. S730.

46 Evidence, p. S747.

47 Evidence, pp. S357-S358.

48 Evidence, p. S999.

49 Evidence, p. S291.

4.46 The PSC supports the initiatives by departments to relate the APS standards of conduct to their specific circumstances and notes that '...it is very difficult other than at that quite specific level to try to codify those issues because they can be so diverse.'[50] The PSC said many departments have sought their advice and, because the individual codes are consistent with the fundamental principles of the Guidelines for Official Conduct, problems with inconsistency have not tended to arise. The ANAO, however, as a result of its work with DAAS warned of possible difficulties. The ANAO warned that:

> There is the risk that through increasing the range of guides with which staff are expected to be familiar agencies will have the counterproductive effect of contributing to a 'mountain of paper' which staff either do not refer to, or else find confusing.[51]

4.47 In conjunction with the work on codes many agencies have designed and implemented ethics training modules. These modules involve activities such as: inclusion of ethics in induction courses as well as specific inhouse courses on this issue; publicising and use of external courses and conferences to provide such training; publicising fraud control activities in agency publications such as fraud control handbooks, pamphlets, newsletters, security manuals, circulars; and ensuring staff participate in the development of fraud control plans.

Conclusion

4.48 There appear to be few problems with agencies developing organisation specific codes of conduct as long as those codes continue to be based on the principles of the *Guidelines on the Official Conduct of Commonwealth Public Servants* and are directed towards raising awareness within the agency of the importance of high standards of conduct. Development and promulgation of such codes should be undertaken in conjunction with ethics training.

4.49 **The Committee recommends:**

- **the Public Service Commission give a high priority to finalising the review and making available the new sections of the *Public Service Act 1922* relating to conduct and ethics;**
- **the Public Service Commission continue to give a high priority to raising awareness of ethical issues within the Australian Public Service; and**
- **heads of agencies take action to enhance ethical behaviour in their organisations.**

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50 Evidence, pp. 441 and 445.

51 Audit Report No.11 1992-93 p. 28.

Post-separation employment

4.50 Chapter 13 of the *Guidelines of Official Conduct of Commonwealth Public Servants* sets out procedures, sensitivities and improprieties relating to the acceptance by public servants of business appointments on retirement or resignation, that is, post-separation employment. The situations covered include the use of confidential information gained by virtue of a former public servant's position and the use of agency contacts or personal influence by a former public servant to secure preferential treatment for a new employer. There is no legislative provision which regulates behaviour in this area.

4.51 Since the abolition of the Public Service Board in 1987, these procedures are no longer centrally administered, except with respect to departmental secretaries. The primary mechanism is for the secretaries of departments to specify conditions regulating these procedures. The general conditions upon which the procedures are based are that mobility between the public and private sectors should not be unduly hindered and the post-separation employment should not be detrimental to the Commonwealth or give the proposed employer an unfair advantage.[52] Such conditions usually state the nature of the contacts with the agency and the APS and could operate for a specified period up to two years. It is the responsibility of a public servant who is accepting a business appointment to identify this conflict of interest situation as being relevant to themself. Defence was the only agency to outline its policy on this matter.[53]

4.52 DIR stated that '...the existing arrangements for post separation employment strike a reasonable balance between the need for flexibility in the labour market and the need to avoid conflicts of interest.'[54] The DIR did not see the need for stricter rules across the public service or in specified areas.

4.53 The Guidelines on Official Conduct provides that departments in their annual reports outline the use made of those Guidelines.[55] An examination of the 1991-92 annual reports of all portfolio departments revealed that in 1991-92 there were no applications for post-separation employment except in the Department of the Prime Minister and Cabinet and the Department of Transport and Communications (DOTC).

4.54 In the absence of legislation and having regard for common law rules against restraint of trade, the PSC believes if procedures are followed the aforementioned processes provide adequate regulation in this area. However, this is another area that the PSC has said it will look at closely in its revision of the Guidelines on Official Conduct. The PSC also noted that closely aligned to this issue

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52 Evidence, pp. 446-449 and S1073.

53 Evidence, p. S795.

54 Evidence, p. S1856.

55 See *The preparation of departmental annual reports: Draft consolidation incorporating future proposed amendments.* April 1992. Canberra, Department of Prime Minister and Cabinet, pp. 22-23 (Section 45).

on a theoretical level are the broader policy issues raised by outsourcing and privatisation arrangements.[56] These areas will also be addressed as part of the PSC's review.

Conclusion

4.55 Post-separation employment did not emerge as a major problem with agencies. However, it is likely that, with increased emphasis on mobility between the public and private sectors, this will become a more significant issue. Heads of agencies should ensure that their policy on this matter is current and well publicised given the reliance on individual officers to identify conflicts of interest in this context. There is no need for specific legislation on this matter at this time. While the current arrangements are adequate the PSC should continue its work in raising awareness of this issue. The Committee supports the PSC's decision to consider the related issues of outsourcing and privatisation arrangements as part of the review of the Public Service Act.

Guidelines for Australian companies doing business with the Commonwealth

4.56 With the increasing commercialisation of government activities and the contracting out of functions, the potential for collusive tendering and other fraudulent activities between companies and Commonwealth employees is immense.

4.57 As a measure to crack down on fraud in this area, in June 1992 Defence released a statement to ensure proper practices in businesses that supply Defence. Entitled *Business Ethics for Defence and Industry*, the statement was produced as a result of extensive consultation between Defence and industry. It is intended to assist suppliers in promoting their interests productively and to avoid unproductive and possibly questionable activities. It also clarifies for the employees of Defence the standard business behaviour they should expect from, and develop with, outside commercial interests.[57]

4.58 While DAAS has provided guidance to purchasers and suppliers on the disclosure of confidential information in its Purchasing Circular No.3[58], Defence is the only agency which has developed specific guidelines for companies it conducts business with.

4.59 The PSC had some involvement in the preparation of Defence's guidelines which it considers a useful initiative. It argued that it is appropriate for such guidelines to be developed at the agency level since any attempt to centrally formulate principles would fall into the trap of being too generic to be particularly useful. The Commission's role is to provide some central monitoring and oversighting of how the development of the guidelines was progressing.[59]

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56 Evidence, p. 447.
57 Evidence, p. S796.
58 Evidence, p. S1205.
59 Evidence, p. 456.

4.60 DEET suggested that guidelines for companies would be constructive and should be extended to include companies and agencies to whom the Commonwealth provides grants.[60]

Conclusion

4.61 While the Committee commends Defence for its work on the *Business Ethics for Defence and Industry,* the need for guidelines for all companies doing business with the Commonwealth does not appear to be a major requirement of most agencies. A service-wide code for such purposes would, therefore, be of little value at this time. Given the trend towards greater contracting out of functions and commercialisation of government activities, the need for such guidelines may become more prevalent in the future. Defence's package provides a model for other agencies undertaking contracting. DAAS should monitor developments in this policy area with a view to expanding the range of advice it provides to purchasers and suppliers if required. If further action is necessary DAAS should ensure that there is not an excessive impact on companies.

Role of internal and external audit in fraud control

4.62 The role of internal audit groups in fraud detection/prevention/control activities is variable. The Attorney-General's Department reported that:

> There is general recognition that the functions of internal audit and fraud control are very similar. Most Departments and agencies have allocated responsibility for internal coordination of fraud control either in the internal audit function, or within the same administrative unit. Attorney-General's Department has strongly encouraged agencies to see fraud control as part of proper financial management and welcomes this linking of internal audit and fraud control.
>
> Internal auditors with their skills, training and autonomy within the organisation are ideally placed to oversight the implementation of the fraud control plan.[61]

4.63 Examples of the different types of arrangements are DOTC having its Fraud Control Coordinator report to the Director, Internal Audit; in DPIE the role of Internal Audit in the function is to ensure compliance with the fraud control requirements; DFAT's internal audit function which traditionally provided a fraud deterrent role has now been augmented by the independent Fraud Prevention and Discipline Section; DAAS's Fraud Control Unit and Internal Audit are both located

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60 Evidence, p. S999.
61 Evidence, p. S222.

in Corporate Review and Audit Branch; and Defence has separated the responsibility for investigating fraud from that of detecting fraud through audits in separate branches under the direction of the Inspector-General with its auditors no longer simply required to 'keep an eye open' for fraud but must be pro-actively involved in building audit tests to detect fraud.[62] In some smaller agencies or those with a low level of risk of fraud, for example DEST, responsibility for dealing with specific cases of alleged fraud resided with the internal audit unit.[63]

4.64 It is generally agreed, however, that auditors should restrict their involvement to detecting fraud and not take on a fraud investigation caseload because of the potential for conflicting priorities. This emphasis is reflected in the Internal Auditing Standards. The Institute of Internal Auditors of Australia has pointed out that this is an issue which creates a considerable degree of discussion in the internal audit profession. Material put out by the Institute stressed that auditors particularly should not be involved in conducting interviews of suspects.

4.65 The Institute has also suggested that only about 25 per cent of all fraud identified are detected by auditors (either internal or external), management detects about 40 per cent and the balance is detected through informants. Despite limitations on the scope and resources available to auditors for this task the Institute believes there is room for improvement in their success rate in detecting fraud.[64]

4.66 Internal audit also has an important role in advising management on the adequacy of the fraud control network in place to prevent and detect fraud.[65]

4.67 External audit has a key role in the Commonwealth's fraud control activities. In recent years the ANAO involvement largely has been in response to the findings of the Review of Fraud when it commenced a series of performance audits on fraud against the Commonwealth and conducted a number of further audits where matters relating to fraud were included in the respective reports to Parliament (see paragraph 1.5). The ANAO prepared a summary document for the Committee drawing together their findings from the various audits. With its powers under the Audit Act together with its accumulated skills and resources, the ANAO is the only Commonwealth agency with the capacity to evaluate the effectiveness of fraud control arrangements.

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62 Evidence, pp. S345-S346, S773, S1201, S1859 and S1949.

63 Evidence, p. S1883.

64 Graham, T. National Vice President, Institute of Internal Auditors. nd. *Role of the internal auditor in preventing and detecting fraud.* Unpublished. 10p.

65 Evidence, pp. S335, S349, S702, S726 and S774.

4.68 **The Committee recommends:**

- **the internal audit sections implement strategies to improve their performance in detecting fraud; and**

- **where appropriate, in conducting performance audits the Auditor-General continue to evaluate the effectiveness of fraud control arrangements implemented.**

Performance information and the evaluation of strategies

4.69 Recommendation 9 of the Review of Fraud provided for agencies to maintain records of activities and resource allocations in relation to fraud as a means of assessing the success of strategies introduced.

4.70 The Attorney-General's Department has indicated:

> The sheer size and complexity of Commonwealth administration means that the impact of such a fundamental shift in approach will take a long time to be realised in measurable terms.[66]

4.71 A working party of agencies with experience in dealing with a large number of cases of fraud reviewed the record keeping requirements and subsequently highlighted the difficulties associated with the task.[67] Some progress has been made in providing a public record of fraud activities by departments' obligatory reporting on fraud in their annual reports but there are major deficiencies in the current arrangement as outlined at paragraphs 2.24 - 2.25.

4.72 The ANAO audits revealed inadequacies in the management information systems being maintained to monitor and evaluate the success of fraud control strategies and that the measures used for assessing performance were inadequate and/or inappropriate.[68] The Privacy Commissioner pointed to the lack of cost-benefit methodologies in the fraud control area.[69]

4.73 Agency advice on this issue indicates that agencies are at various stages in maintaining performance information.[70] Few agencies though are in the position of DSS which reported it has a plethora of information to assess the success of overall strategies.[71] The ANAO commented that at the time it conducted its audit of DSS that management information systems were not utilised effectively for fraud

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66 Evidence, p. S223.
67 Evidence, p. S223.
68 Evidence, p. S172.
69 Evidence, pp. 254 and S1892.
70 Evidence, pp. S777 and S1866.
71 Evidence, p. S702.

control.[72] Several agencies indicated that various components of their fraud control program will be reviewed as part of the normal internal evaluation and audit cycle.[73]

Conclusion

4.74 The Committee believes that, despite the difficulty of achieving them, consistent and comprehensive measures of agencies' performance in combating fraud are essential. Progress by agencies in the development of management information systems and performance indicators to monitor and evaluate the adequacy of their fraud control strategies is patchy.

4.75 **The Committee recommends:**

- **the Attorney-General's Department establish a working party to identify performance information required to assess the adequacy of fraud control strategies and agencies then be required to implement those measures and report. In so doing the working party should have regard to the information requirements for annual reports.**

72 Audit Report No.40 1991-92 p. 3.
73 Evidence, pp. S335, S348-S349, S702 and S726.

Chapter Five

Fraud investigation

Introduction

5.1 With fraud control being an agency management responsibility, agencies affected by fraud have a degree of choice in how they will deal with it. They can manage it inhouse by administrative means, investigate and prosecute it themselves, or refer it to another agency for investigation (normally the AFP) or for legal advice or prosecution (the DPP for criminal prosecutions or the AGS for civil proceedings).[1] The Attorney-General's Department has stressed that this choice of process is not simple with such basic decisions to be taken as:

- should any action be taken;
- who should initially investigate the matter;
- whether to proceed with administrative or legal action;
- whether to prosecute or not;
- at what stage should these decisions be made;
- who should be consulted and involved in decisions;
- who should make these decisions.[2]

These decisions cannot be taken in isolation as a decision to proceed along one course of action influences and is influenced by the other decisions.

5.2 This chapter deals with the decisions to investigate fraud cases and the roles of the various agencies involved and the next chapter addresses issues associated with administrative and legal action once a case has been investigated.

Policy

5.3 Overall policy guidance on how an agency should proceed on the investigation side was provided in the Review of Fraud. It recommended all Commonwealth agencies accept the responsibility for investigating 'routine' instances of fraud against them whether followed by the application of an administrative remedy or by reference of the matter for prosecution. The cases which are referred to the AFP for investigation should generally be those which are complex or larger in scale. It further recommended that agencies which in the past three years have

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1 *Review of systems for dealing with fraud on the Commonwealth.* March 1987. Australia, Special Minister of State. Canberra, AGPS, p. 33.

2 Evidence, p. S230.

referred to the AFP more than 20 cases of fraud (excluding cheque fraud) should, in consultation with the AFP, develop and implement criteria and guidelines on the basis of which future references are to be made. This signalled a significant shift in the relationship between the AFP and other agencies.

5.4 The delineation of fraud into 'routine' or 'less significant' cases and 'serious' or 'complex and larger in scale' cases was a response by the Review of Fraud to the impracticality of the previous requirement of referring to the AFP every incident where there was a suspicion of fraud. The Attorney-General's Department pointed out that the earlier approach ignored the resource limitations of the AFP, unnecessarily removed from management the responsibility for an aspect of fraud control and was not the most cost efficient way of dealing with cases.[3]

5.5 In making this recommendation the Review of Fraud accepted that, in principle, there was no reason why the police should necessarily be used to investigate all or any particular types of offences against Commonwealth law, nor any reason why society should expect that all breaches of the law be dealt with by prosecution.[4]

5.6 At the time of the Review of Fraud apart from the general assumption that the AFP 'ought' to handle fraud investigations, the basis of the AFP investigating cases of fraud was: its special powers of investigation as set out in legislation; its investigative and evidence gathering skills not possessed by some other agencies; and its responsibility to provide police services in relation to Commonwealth law as set out in the *Australian Federal Police Act 1979*.[5]

5.7 Given that agencies such as ATO, DSS, ACS and the HIC already performed a high proportion of their fraud investigations under their own legislation without recourse to the AFP, it was recommended other agencies which are subject to a significant incidence of fraud should perform a similar role. Agency staff were considered to be better informed than the AFP of the detailed workings of programs defrauded and of the varieties of possible illegal conduct against them.[6]

5.8 The major arguments against the new arrangements were the potential for increased resources for investigation in agencies, the loss of potential intelligence information to the AFP and a decline in standards of investigations. After examination these arguments were dismissed by the Review of Fraud and the new arrangements were accepted as being desirable to bring about a re-emphasis of the AFP's and DPP's resources on the most important cases of fraud.[7]

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3 Evidence, p. S228.
4 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., p. 33.
5 ibid., p. 34.
6 ibid., pp. 34-35.
7 ibid., pp. 35-37.

5.9 These investigative arrangements are one of the more contentious issues addressed by the Committee.

5.10 The difficulties stem largely from the use of general terms such as 'routine' and 'complex or larger in scale' to define agencies' and the AFP's responsibilities. This left considerable scope for interpretation and several agencies raised concerns over this lack of clarity. The Attorney-General's Department stated it sees considerable difficulties in procedures based on the delineation of fraud cases into categories.[8] In a similar vein Defence stated 'Simply put, the terms 'routine fraud' and 'larger and more complex' are not useful distinctions for any central agency attempting to apply the Government's decision.'[9] Clearly as previously stated, 'routine' did not mean handled by administrative remedies. Clarifying the responsibilities is the crux of the fraud investigation problem.

5.11 This situation is made more difficult as there is mutual suspicion between the internal investigation units which want to get into the really interesting fraud work and the AFP which wants a much greater involvement in the internal agency fraud control function.

5.12 The Committee does not support a reversal of policy giving the AFP responsibility again for most fraud investigation. However, there have been some major practical difficulties with these policy arrangements. These are: there is no simple definition of routine fraud that can be applied before a case is fully investigated; all agencies potentially have had to take on a fraud investigation caseload and their capacity to take action is variable; the working arrangements and mechanisms for referring cases between agencies and the AFP have not been clearly defined; the AFP's role in fraud investigation is largely defined in terms of those functions agencies should not or could not carry out; and there has been a fragmentation of the investigation process characterised by limited central management. These issues are examined in the following sections. There is considerable overlap between the issues and changes in one area obviously impact on the other areas.

Inhouse fraud investigations

5.13 Although all agencies were given a fraud investigation responsibility, the ability and capacity of agencies to investigate fraud was not homogenous. Some agencies such as the HIC, ATO, ACS and DSS already had well established investigation units dealing with matters which are offences against legislation administered by those agencies. These investigative units predated the Review of Fraud. Other agencies with significant fraud caseloads such as Defence, DEET, DAAS and DFAT established such units by administrative decision in response to the new investigation responsibilities. These two categories of investigation units are

8 Evidence, p. S228.
9 Evidence, p. S789.

often described as quasi-law enforcement units. In many other agencies, the low incidence and risk of fraud makes it uneconomic to set up an investigation unit. Most agencies however now have designated officers to handle fraud cases.

5.14 The Attorney-General's Department reported that few units have been established because of the significant resources in staffing, skills training, equipment and accommodation required to operate such units. It notes however that the benefits of such units are that agencies with investigation units' ...have much less of a dilemma in how to differentiate, how to deal with, the broad spectrum of fraud cases than organisations that do not have that.'[10]

5.15 The Privacy Commissioner has suggested these units have created a new type of police force in the public sector, a force often with extensive powers but which is not subject to the traditions of discipline, hierarchy and training of the ordinary police forces.[11]

5.16 Several arguments against internal investigations foreshadowed in the Review of Fraud have been outlined above. Six years later these arguments appear to be more relevant. Although the Committee did not undertake a survey of the numbers of investigation staff in individual agencies, the evidence suggests there has been an increase in the number of investigative staff within agencies as a consequence of the greater responsibilities of agencies to deal with fraud against their own programs. The loss of potential intelligence information has occurred and a strategy to redress that situation has been discussed at paragraphs 2.30 - 2.36. Although it is not possible to assess whether there has been a decline of investigation standards with the new arrangements compared to when the AFP undertook all investigations, it is clear that there are difficulties with the quality of internal investigations and the skills of investigation staff. This matter and a number of other difficulties with non-police fraud investigations have been identified and a discussion of these follows.

Quality of investigations and the skills of investigation staff

5.17 Audits by the ANAO revealed inadequacies in the quality of fraud investigations being undertaken by agencies. There were poor administrative procedures for investigating cases, a lack of timeliness in the completion of cases and insufficient care exercised in maintaining the confidentiality of details of allegations. The ANAO recommended that material related to fraud investigations be treated in the strictest confidence and access restricted to personnel on a 'need-to-know' basis.[12] The Committee supports that recommendation.

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10 Evidence, p. 34.

11 O'Connor, K. 1992. The Privacy Act: Relevance for fraud control and investigation. Paper presented to *IIR Fraud Management Series, Combating fraud and corruption in government.* 24 March 1992, Sydney, p. 2-3.

12 Evidence, p. S175.

5.18 The DPP and AFP have identified problems with inhouse investigation staff and their skills.[13] The DPP, however, notes that investigators who are former police officers tend to be an exception. The DPP believes there is inadequate training in investigation skills especially for complicated fraud cases which are hard for even trained, experienced investigators to properly investigate.

> The quality of briefs prepared by non-police investigators varies, but it is fair to say that, with some notable exceptions, many investigators lack a proper understanding of how to go about investigating a complicated case and how to construct a brief of evidence.[14]

The problem is compounded by high staff turnover in many investigation units because such units are small and the work specialised usually with little prospect for internal advancement. The DPP also noted that although it did not have figures on the number of investigators employed by the Commonwealth, it believed many agencies have fewer investigators than they needed even taking into account budget constraints.

5.19 To rectify these deficiencies the DPP commented there was little that could be done to give people in small investigation units a proper career structure within the unit but recommended improved training to increase the level of investigative skills within those units.[15]

5.20 Recommendation 11 of the Review of Fraud stated the AFP should assist agencies in developing an investigative capability. The AFP outlined training courses it has offered for non-police investigators together with details of agency participation rates and noted its responsibility in this area. This creates some consistency across the Commonwealth in those skills and in investigation procedures. The AFP has suggested it should have a pivotal role in this training.[16]

5.21 While recognising this good work, the DPP said more needs to be done and recommended a coordinated national training program for investigators to build on the work commenced by the AFP. Agencies supported this recommendation. The DPP also suggested there may be scope for rationalisation of investigative resources by several small agencies pooling their investigative staff rather than for each agency to develop its own investigative unit and supported the development of 'best practice' guides.[17]

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13 Evidence, pp. S121 and S321-S323.
14 Evidence, p. S321.
15 Evidence, p. S322.
16 Evidence, pp. S121-S124.
17 Evidence, pp. 471-472 and S322-S323.

5.22 The ANAO pointed out that the decentralised nature of fraud control allows for the exercise of discretion by officers involved in fraud control, including investigations. Without adequate quality assurance procedures, the exercise of discretion can lead to inconsistencies. The ANAO observed that:

> Based upon the evidence collected by the ANAO, the quality assurance procedures being exercised within Agencies are not adequate to ensure...the appropriateness of decisions being made at each stage.[18]

5.23 Given the critical role of the investigation process in fraud control and the deficiencies already outlined, there would be considerable benefit in the AFP developing and implementing a program for conducting quality assurance reviews of a sample of agency fraud investigations annually and list the agencies reviewed and outcomes in its annual report. The emphasis in this process should be on providing constructive feedback to agencies on their investigative procedures.

5.24 Joint investigations with staff from the AFP providing investigator skills and the department affected by fraud providing the department specific technical expertise were recommended by Defence.[19] Such investigations and the coordination and liaison activities of the AFP discussed later in this chapter also will assist in enhancing the investigative capability of agencies.

Conclusion

5.25 The Committee shares the concerns of the AFP, the DPP and the ANAO regarding the poor quality of inhouse fraud investigations. While the Committee generally supports agencies having responsibility for investigating routine cases of fraud, it believes that a significant effort needs to be made to ensure that those agencies have the skills to deal with such investigations. Better training in fraud investigation clearly is needed and the AFP should play a major role.

5.26 **The Committee recommends that:**

- **the Australian Federal Police in consultation with the Director of Public Prosecutions cooperate to develop a national training program for fraud investigation;**

- **to encourage skills transfer the Australian Federal Police and agencies should form joint investigation teams for appropriate investigations; and**

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18 Evidence, p. S176.

19 Evidence, p. S791.

- **the Australian Federal Police conduct quality assurance reviews of a sample of investigations in selected agencies annually and list the agencies reviewed and outcomes in its annual report. The Australian Federal Police should also use the results of those reviews in identifying important matters for inclusion in the national training program for fraud investigation.**

Investigative powers

5.27 The new policy arrangements have highlighted discrepancies between the investigative powers of officers in different agencies. Some agencies with long standing internal investigation units and requirements beyond basic fraud investigation such as ACS, DSS, Telecom, ATO and the Defence Services have their investigative powers, especially search and seizure powers, embodied in legislation with investigative officers appointed by the head of the agency.

5.28 Defence has observed these powers have mainly been given to revenue raising agencies rather than expenditure agencies with the exception of DSS. It notes that it is recognised that revenue raising attracts particular investigative procedures and powers because of the potential of avoidance and these powers are conferred for the purposes of administering the statutory scheme. It argues expenditure fraud is comparable with other forms of fraud and recommends the codification of certain government expenditure programs as statutory schemes (other than transfer payments such as social security) and/or the granting of limited powers to other agencies to deal with instances of routine expenditure fraud.[20] This could be achieved by a general amendment to the Crimes Act.

5.29 The specific power to obtain warrants and arrest independently of the police has only been given to ACS, ATO, DIEA and the Defence Service Police. Because of the sensitivity of this responsibility for other agencies there is a view that once search warrants are required, carriage of the investigation should pass to the AFP. However, Defence has advice from the DPP that there is scope for the AFP to provide another agency with material seized by the AFP by search warrant to allow that agency to continue to pursue its fraud investigations. Traditionally the AFP has been reluctant to pass carriage of a fraud matter back to an agency when search warrants have been executed because of the seriousness and sensitivity of this responsibility. Defence, however, believes this approach is consistent with recommendation 22 of the ANAO's audit of the AFP on this matter and suggests the DPP and the AFP work with the Attorney-General's Department to develop common form standards and formal accreditation for investigative units in agencies to handle material seized pursuant to search warrant. This would make those agencies accountable to the AFP and the DPP in a qualitative manner for the standards of their investigations.[21]

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20 Evidence, pp.S783-S784

21 Evidence, pp. S784-S787.

5.30 The AFP reported that this is an area that presents some difficulties and its initial reaction is that if search warrants are required the investigation should pass to the AFP.[22] Privacy considerations are a major problem and the AFP highlighted concerns in this area by pointing to the report by the Privacy Commissioner which found that the AFP breached the *Privacy Act 1988* by giving DSS details of people arrested at the Aidex demonstrations in November 1991.[23]

Conclusion

5.31 The Committee believes that if a fraud investigation has proceeded to the stage where more significant investigative powers are required then the case should be passed to the AFP for investigation. It does not see the need to grant enhanced investigative powers to agencies to deal with instances of routine fraud.

Liability of investigators and defamation actions

5.32 Defence and DFAT have expressed concern that where no legislative framework exists specifically setting out the investigative powers of an agency the risks of exposure to possible personal liability for investigators are salient. The Attorney-General's Department advised under Finance Direction 21/18 (a) to (f) that if Commonwealth officers are operating reasonably and responsibly within their lawful bounds of office they will be provided with assistance by the Commonwealth for defence and legal costs.[24]

5.33 DFAT raised the issue of mounting defamation actions against persons who have impugned or defamed the reputation of the agency or an officer in respect of his official functions related to fraud investigations.[25] The Attorney-General's Department advised that a corporate public authority is not entitled at common law to sue for libel to protect its governing reputation and in a defamation action it would be very difficult to establish a significant monetary loss to the Commonwealth. Individual officers 'targeted' in such circumstances can pursue the matter as a personal defamation case but there is no authorisation for departmental assistance to be provided under the Public Service Act and Regulations, the Personnel Management Manual or the Finance Regulations and Directions.[26] This view was supported by the PSC which stated that historically, the proposition is grounded in the notions of anonymity of public servants and that public servants have to wear some of the criticisms. It would also be inappropriate for the Commonwealth or departments to fund such actions which, if they succeed, would

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22 Evidence, p. 97.

23 See Privacy Commissioner. June 1992. *Advice and report to Ministers: Disclosure of arrest details of Aidex demonstrators: Australian Federal Police and Department of Social Security.* Sydney, Privacy Commissioner, ii, 22p.

24 Evidence, p. S1931.

25 Evidence, p. S362.

26 Evidence, pp. S1731-S1732.

enrich the officer personally. This raises some difficult conflict of interest situations.[27]

Conclusion

5.34 The existing arrangements for protecting the personal liability and reputation of agency investigators are adequate.

Referral of matters to the AFP for investigation

5.35 While the Review of Fraud recommended that the more complex or larger in scale than the most routine cases of fraud should be referred to the AFP for investigation it foreshadowed some difficulties in this area. In an effort to clarify responsibilities it recommended that upstream agencies in consultation with the AFP develop and implement criteria and guidelines as the basis on which future referrals would be made. These referral criteria are embodied in agreements called Memoranda of Understanding (MoUs) between the AFP and the referring agencies.[28] The current roles of both the referring agency and the AFP in investigations are largely defined by the MoUs. These agreements are not restricted solely to fraud but apply to crime upon the Commonwealth as a whole.

5.36 In its 1991 audit report, the ANAO identified major deficiencies in the MoUs between the AFP and referring agencies. The ANAO stated that although there were twenty MoUs between referring agencies and the AFP there was a lack of consistency in MoUs and inadequate administration; MoUs tended to reflect almost exclusively the needs of agencies and not the core functions of the AFP; and working relationships between the AFP and other agencies did not always facilitate the efficient investigation of fraud matters.[29]

5.37 The ANAO recommended a number of referral criteria for inclusion in the MoUs, though these criteria were not exhaustive.[30] The criteria included a benchmark figure and the ANAO argued that any fraud with a value more than the benchmark should be referred to the AFP to look at. This did not necessarily mean that the AFP would investigate all of those cases. The ANAO believed the benchmark would provide a consistent basis for referral of fraud matters and suggested a figure of $20,000 as a starting point. The benchmark would be adjusted in the light of experience.[31] It was argued that this would provide a simple, unarguable and easily understood guide to assist agencies.

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27 Evidence, p. 460.

28 Evidence, pp. S129 and S134-S135.

29 The Auditor-General. *Australian Federal Police - Efficiency and effectiveness of fraud investigations*. Audit Report No. 25 1990-91 pp. 10-14. and Evidence pp. S178-S179.

30 ibid., pp. 10-14.

31 ibid., p. 13 and Evidence, p. 110.

5.38 The AFP rejected the ANAO's recommendation for a benchmark figure as it believed this would give legitimacy to fraud below a certain level. The AFP's major objection was that the monetary value is not the only guide to the seriousness of an offence and stressed that it is difficult in the early stages of a fraud investigation to determine the monetary value of the fraud accurately. If a benchmark figure is used the AFP believes it should be used within its environment, as is current practice, to determine whether the AFP should investigate the case.[32]

5.39 In May 1992 the ANAO undertook a follow-up audit of the AFP to examine progress in implementing the recommendations of its initial audit. The ANAO found some progress had been made. The AFP had documented MoUs with twenty agencies and a further ten MoUs were being updated or prepared; criteria for referral were included in MoUs; there was greater consistency in MoUs between agencies; MoUs were endorsed at Ministerial or head of agency level; the MoUs are now combined into an AFP central register; and liaison arrangements with agencies have improved.[33] In addition, in August 1993 the AFP reported that in a number of cases the MoUs have been complemented by supplementary arrangements at regional level.[34]

5.40 There have been few negative comments from agencies regarding their relationship with the AFP and most are satisfied with their MoUs. MoUs, however, could be improved by defining terminology used such as scale, seriousness and complexity[35], and by including service standards in the documents.

5.41 The Privacy Commissioner told the Committee that while the phenomenon of an MoU is a helpful procedural discipline, it is a set of administrative undertakings and is not legally binding.[36] There is no effective pressure or sanction on agencies to comply with the MoU requirement.

5.42 Informally the Attorney-General's Department has said it has reservations about the effectiveness of the MoUs and is concerned at the time taken to develop relatively simple and similar agreements. The Attorney-General's Department, however, has no responsibility for the lack of progress in this area. The Committee's examination of MoUs from Defence, DEET, DFAT and DAAS confirm the Attorney-General's Department's comments regarding timing and shows that the arrangements are still subject to a significant degree of interpretation. This latter comment has been acknowledged by the AFP itself.[37]

5.43 Clearly the current arrangements are not working efficiently and effectively. Since the Committee does not support a reversal of policy giving the AFP responsibility again for all fraud investigation, a strategy is needed for more clearly

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32 Evidence, p. S4.
33 Evidence, pp. S162-S163 and S1021-S1024.
34 Evidence, pp. S1872-S1873.
35 Evidence, p. S178.
36 Evidence, pp. 255-256.
37 Evidence, p. S137.

defining the responsibilities of the agencies involved and improving the performance of agencies in undertaking their responsibilities. It is important to recognise that there is no simple solution to achieving this.

5.44 To date the solution has tended to be a function of the legal powers of the agency to handle the case together with its perceived ability to handle the investigation.

5.45 The Committee accepts that agencies such as DSS, ACS, ATO and HIC continue prosecuting cases under their own legislation and that all agencies are able to investigate cases dealt with under the Public Service Act. Further it believes as a general rule the AFP, as the Commonwealth primary law enforcement agency, should be responsible for all Crimes Act investigations. There are however a few exceptions to this. These are:

- first, the aforementioned agencies which prosecute fraud cases under their own legislation (such as DSS, ACS, ATO and HIC) should continue to investigate matters where the Crimes Act is considered more appropriate and the Director of Public Prosecutions is satisfied that the prosecution brief does not require the AFP's involvement; and

- second, agencies which can satisfy both the AFP and the DPP that they have the capacity and capability to investigate criminal cases.

In the latter case the Committee has in mind consideration being given to agencies such as DEET, HHLGCS, Defence and DAAS which have developed a substantial investigative capacity.

5.46 This is not intended to lead agencies into making greater use of their own legislative and administrative sanctions.

5.47 A benchmark figure should also be introduced which may vary from agency to agency above which cases must be referred to the AFP for a decision on investigation. The AFP will need to investigate all cases from agencies without an investigative capacity.

5.48 All of these arrangements should be set out as a standard set of referral criteria for all agencies to form the basis of the MoU between the AFP and referring agencies.

5.49 While these MoUs need to be more specific and consistent, they must also be more dynamic to reflect the fluctuations in workload of the parties to the agreement.

Conclusion

5.50 While recognising the limitations of MoUs the Committee supports their development between the AFP and referring agencies, but considers there is scope for significant improvement in the current arrangements. As the detail in the agreements is still subject to a significant degree of interpretation, both the AFP and referring agencies should give a high priority to increasing the precision of the documents and to keeping them up to date as circumstances alter.

5.51 **The Committee recommends:**

- **Memoranda of Understanding between the Australian Federal Police and agencies reflect the requirement that the Australian Federal Police conduct all investigations directed towards a *Crimes Act 1914* prosecution, subject to two exceptions:**
  - **first, agencies which prosecute fraud cases under their own legislation (such as the Department of Social Security, the Australian Customs Service, the Australian Taxation Office and the Health Insurance Commission) should continue to investigate matters where the Crimes Act is considered more appropriate and the Director of Public Prosecutions is satisfied that the prosecution brief does not require Australian Federal Police involvement; and**
  - **second, agencies which can satisfy both the Australian Federal Police and Director of Public Prosecutions that they have the capacity and capability to investigate criminal cases;**
- **the Australian Federal Police in consultation with agencies develop standard criteria for the referral of fraud matters to the Australian Federal Police;**
- **the standard criteria should include a benchmark figure for fraud above which the matter must be referred to the Australian Federal Police for decision whether to investigate. This benchmark may be varied from agency to agency depending on the capacity and capability of an agency's investigative resources;**
- **the Australian Federal Police renegotiate Memoranda of Understanding with agencies to reflect this standard set of criteria. The Committee expects this to be done as a matter of high priority and completed within one year; and**

- **the Australian Federal Police and agencies meet regularly to review Memoranda of Understanding and the progress on fraud cases.**

Capacity and capability of the AFP

5.52 Broad guidance on the AFP's functions is provided by the Australian Federal Police Act and further details on its role are set out in Ministerial Directions, the Finance Directions, matters referred under the *Financial Transactions Reports Act 1988* and of course by the MoUs previously discussed. In December 1991 a new Ministerial Direction reiterated the Government's reliance on the AFP as its chief source of professional advice on policing issues and these matters were embodied in the AFP's new corporate plan for 1992-95.[38] In February 1992 the AFP expanded its strategic capabilities in fraud and general crime. However, the ANAO has stressed that:

> Under current arrangements the AFP has little control over the volume and value of fraud matters referred. The decision to refer matters for investigation rests almost entirely with the agencies...[39]

5.53 As at 30 June 1993 the AFP had a staff of 3075 and its total expenditure in 1992-93 was $168.9 million.[40]

5.54 In its 1991 audit report the ANAO raised several concerns about the capacity and capability of the AFP to investigate fraud cases. These concerns focused mainly on the way in which the AFP went about allocating resources and priorities to fraud investigations. The report highlighted the inadequacy of internal management and security systems and the way that the AFP set priorities for its work.

5.55 Since 1987 the AFP has had a National Priority System (NPS), which is little more than a score sheet, to provide a more consistent basis for handling fraud and general crime referrals from agencies. The system sets priorities and options for handling cases to reflect national objectives and includes a statistical weighting system to direct resources to priority areas. It was used to determine whether the case would be accepted or returned by the AFP and the priority the case should be accorded for investigation.[41]

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38 Evidence, pp. S108 and S150-S153.

39 Audit Report No. 25 1990-91 p. 47.

40 *Program performance statements 1993-94: Attorney-General's Portfolio.* Budget related paper No. 7.2. 1993, Canberra, [AGPS], p. 192.

41 Evidence, pp. S127 and S156-S161.

5.56 At the time of its audit the ANAO found the NPS was not applied rigorously by AFP regions, some cases were attributed scores which were unobtainable, staff did not regard the scheme highly and some regions were able to investigate all matters referred to them.[42] The ANAO also found that the AFP had failed to make the adjustment of resources necessary to accommodate the change in the workload resulting from the implementation of the recommendations of the Review of Fraud and the adoption of direct crediting of payments by agencies. An unduly high proportion (about 70 per cent) of fraud resources was directed towards the investigation of comparatively low value fraud matters. 'The analysis indicated that the average value of fraud under $500,000 for which a COR [Criminal Offence and Modus Operandi Report] was submitted was under $6,000.'[43] It is difficult to reconcile this with the fact that the AFP is prioritising its work.

5.57 For the more effective management of workload the AFP has revised its NPS and applied it more rigorously in all AFP offices. The ANAO reported some improvement at the time of its follow-up audit. However, the ANAO stressed that:

> The AFP is restrained in its efforts to match its investigative capacity to demands in that it does not have any control over the matters referred to it and is unable to see the full picture of the fraud criminal environment...The difficulties with short term resource management will continue while the AFP is unable to influence the number or type of matters that are referred to it.[44]

5.58 There were several criticisms of the NPS and the speed with which cases are handled. DAAS, DSS, DEET and Defence complained of delays in cases being investigated by the AFP.[45] DEET requested the AFP accord a higher priority to investigating cases involving Commonwealth employees even if those cases only involve minor frauds. DEET experience was that the AFP was unable to devote the necessary resources to handle such matters quickly.[46] This occurred although MoUs stated all matters involving Commonwealth officers, employees or persons engaged on contract to Government should be referred to the AFP and if the case involves officers in fraud control units the matter is to be investigated by the AFP if it is within the AFP's jurisdiction. DIEA also noted some criticism has been levelled at the financial threshold at which the AFP is interested in investigating alleged fraud.[47]

5.59 Defence recommended the AFP provide progress reports to agencies on fraud investigations referred as a means of the AFP being more accountable to

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42 Evidence, p. S127
43 Audit Report No. 25 1990-91 p. 47.
44 Evidence, pp. S1023-S1024.
45 Evidence, pp. S707, S792, S998 and S1204.
46 Evidence, p. S998.
47 Evidence, p. S290.

managers for those investigations and DEET suggested the AFP provide case management reports at a national level so that agencies can monitor cases nationally. Apparently the AFP is unable to provide the latter service at present. This is in addition to the existing investigation meetings between the AFP and referring agencies as set out in MoUs.[48]

5.60 The AFP itself acknowledged its inability to respond adequately to each and every referral because of the AFP's wide jurisdiction and finite resources.[49] The AFP's current standard is to make a decision within two months of receiving a referral whether to investigate the case.[50] The Committee considers this time period excessive.

5.61 In response to the ANAO audits and an extensive internal AFP Resources Review carried out in 1992 the AFP has taken a number of measures to overcome the weaknesses identified in reviews of its activities. These measures include new guidelines for allocating priority to referrals; improved management of investigations; designation of liaison officers to maintain contact with agencies; and a proposal to outpost officers to certain key departments.[51]

5.62 Since its establishment the AFP has attempted to develop a substantial core of professional investigative capability in a variety of disciplines by a policy of recruiting more staff with tertiary qualifications, encouraging staff to obtain higher qualifications and providing more advanced inservice training. Problems experienced in the past of retaining qualified staff have been largely overcome by the *1989-90 Career Structure Review* which introduced such fundamental reforms as a complete new rank structure, reorganisation of personnel and fixed term employment. Also, like many other agencies, the AFP's staff attrition rate is down due to the current economic climate.

5.63 The Review of Fraud considered the question of multi-disciplinary investigation teams and the importance of having appropriately skilled investigators available. The comments in the Review were directed specifically at the AFP and referred to the difficulties of the AFP recruiting investigators with specialist accounting, computing and legal skills as well as experience in multi-agency and multi-disciplinary investigations.[52] This was also referred to by the NCA as necessary to effective investigation of fraud.[53] While the AFP has made efforts to increase the number of tertiary qualified investigators these comments are still relevant.

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48 Evidence, pp. S792 and S998.

49 Evidence, p. S141.

50 Australian Federal Police. 1992. *Guidelines for determining priority of AFP investigations into fraud on the Commonwealth.* Canberra, Australian Federal Police, pp. 3 and 5.

51 Evidence, pp. S1872-S1874.

52 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., p. 60.

53 Evidence, p. S1101.

Conclusion

5.64 While the Committee acknowledges that the AFP has improved its handling of fraud cases, including through refinements of its National Priority System, agencies are seeking a more service-oriented approach from the AFP in its task. Improved consultation and accountability are sought. The AFP does not seem to have fully accepted that agencies have an ongoing responsibility for cases of fraud perpetrated on them. The Committee considers that the AFP should ensure that investigation teams include, or have access to, skills appropriate to the investigation.

5.65 **The Committee recommends:**

- **within one month of receiving a referral, the Australian Federal Police must make the decision whether to retain the case to investigate;**
- **the Memoranda of Understanding between the Australian Federal Police and referring agencies should set out service standards for the Australian Federal Police in dealing with referrals and the Australian Federal Police summarise in its annual report instances where it has failed to meet these standards;**
- **the Australian Federal Police provide regular case management reports at a national level to agencies on cases which those organisations have referred to the Australian Federal Police for investigation; and**
- **where appropriate, the Australian Federal Police recruit and use specialist investigative skills to supplement current investigative staff.**

Coordination and liaison regarding fraud investigation

5.66 The need for effective management of the investigation of criminal matters has been recognised for sometime. The problem was stated clearly in the *Annual Report of Special Prosecutor 1982-83*, Robert Redlich QC:

> At a Commonwealth level disorganised law enforcement has had just as pernicious an effect as organised crime. Because of the splintering of responsibility amongst a multiplicity of Commonwealth regulatory agencies and the Australian Federal Police, Commonwealth laws have

not been effectively enforced against criminals who have perpetrated anything but the simplest and most obvious crimes.[54]

5.67 Since that statement was made it could be argued that much has changed, there is a Director of Public Prosecutions, some agencies have become more effective in law enforcement and some laws are now more simple to enforce. Since the Review of Fraud, it is also true to say that in fraud, at least, there are many more regulatory agencies and the potential for disorganised law enforcement has increased.

5.68 The AFPA suggested the Commonwealth's management approach to fraud control has brought with it a fragmented and uncoordinated approach to fraud investigation and this situation is perpetuated by the isolationist departmental structure of the APS. In a total law enforcement sense, fraud on the Commonwealth cannot be viewed in isolation from other crimes as large scale fraud is often committed by criminals who commit many other offences both at state and federal level.[55]

5.69 The AFP has suggested there should be improved coordination in fraud assessment, prevention and control and it should assume the coordination role for the investigation of fraud. To undertake the task it further suggests a national information system be created and managed by the AFP.[56] The AFP believes this role is consistent with its new Ministerial Direction. The ANAO recommended the establishment of a fraud intelligence desk in the AFP which would be a central reference point for fraud inquiries and for the development of the intelligence data base.[57]

5.70 The AFPA also recommended the transfer of all public service investigation staff to the AFP as staff members so they work directly under AFP accountability, training, auditing etc.[58]

5.71 To improve liaison between the AFP and major agencies the ANAO recommended AFP members be nominated as liaison officers for specific agencies.[59] The AFPA suggested senior AFP investigators be outposted to agencies to assist in facilitating the co-ordination.[60] DEET supported short term placements of AFP officers in departments which request this level of assistance.[61]

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54 *Annual report of the Special Prosecutor 1982-83: R.F. Redlich.* 1983. Canberra, AGPS, p. 128.
55 Evidence, p. S1077.
56 Evidence, pp. S115-S116.
57 Evidence, p. S180.
58 Evidence, p. S1086.
59 Evidence, pp. S179-S180.
60 Evidence, p. S1086.
61 Evidence, p. S998.

5.72 In August 1993 the AFP reported on a number of initiatives to enhance its relationships with referring agencies which included officers being designated the responsibility for liaison with specific agencies and outposting officers to certain agencies. The AFP believes that these initiatives will ensure a more coordinated response to fraud against the Commonwealth and will provide improved intelligence to aid in the development and planning of strategies for combating fraud in the mid to long term.[62]

5.73 With the exception of the national criminal data base discussed at paragraph 2.36 it is suggested that these initiatives could be resourced through the redirection of the excess resources which the ANAO audit found were directed towards the investigation of comparatively low value fraud.[63]

Conclusion

5.74 The Committee considers there is a need for further coordination of fraud investigations to make them more effective and to achieve a greater degree of consistency and accountability. It supports the AFP performing this coordination role in relation to investigations. In particular, the Committee has previously recommended the AFP receive and collate data on all fraud matters on a national basis to allow it to maintain a criminal intelligence capability and the AFP take on a greater role in training agency fraud investigators as well as recommending ways of improving liaison between the AFP and agencies. Given the Committee's support for agencies being responsible for their fraud control activities, it does not endorse the AFPA's recommendation for the transfer of all public service investigation staff to the AFP.

62 Evidence, pp. S1872-S1873.
63 Evidence, p. S181.

Chapter Six

Administrative sanctions and prosecution

Penalties and administrative sanctions

6.1 During the past decade there have been a number of legislative amendments which have greatly increased both the level and range of penalties available in fraud cases dealt with under criminal legislation (Crimes Act, *Proceeds of Crime Act 1987* and Crimes (Taxation Offences) Act), legislation dealing with particular programs (for example the Health Insurance Act, *Social Security Act 1991* and *Customs Act 1901*) and other legislation (such as the *Trade Practices Amendment Act 1977* and the Public Service Act).[1]

6.2 Overall the Attorney-General's Department reported that it:

> ...is not currently considering any major amendments to Commonwealth legislation which would affect the nature of the offences relating to fraud nor the penalties or sanctions.[2]

6.3 This view is supported by the DPP which stated:

> ...the range of penalties and administrative sanctions that are presently available to deal with fraud against the Commonwealth are generally adequate.[3]

6.4 The only area the Attorney-General's Department identified as lacking in relevant criminal penalties for fraud was the need for a general crime prohibiting the misuse of official information by public servants for private gain[4] as recommended by the Gibbs Committee report *Review of Commonwealth Criminal Law*[5]. At present only disciplinary sanctions may be imposed for breaches of this activity as set out in Public Service Regulation 8A(h).

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1 Evidence, pp. S224-S225.
2 Evidence, p. S226.
3 Evidence, p. S316.
4 Evidence, pp. S225-S226.
5 Attorney-General's Department. December 1991. *Review of Commonwealth criminal law: Final report.* Chaired by The Right Honourable Sir Harry Gibbs, GCMG, AC, KBE. Canberra, AGPS, pp. 357-362.

6.5 More recently on 8 September 1993 the Minister for Justice announced that a National Criminal Code for Australia was to be considered. In response to a request from the Standing Committee of Attorneys-General (SCAG) a model Criminal Code *General principles of criminal responsibility* has been developed by the Criminal Law Officers Committee. If endorsed by SCAG the code will lead to the application of the same principles for federal offences throughout Australia. The Commonwealth would include the principles in a new Act which would eventually replace most of the Crimes Act. At present, Commonwealth law applies State and Territory law in relation to most offences. This has led to wide variations in legal principles depending on where the offence is committed or tried.[6] This matter was noted by SCAG at its meeting on 4 November 1993.

6.6 Although agencies also are generally satisfied with the adequacy of penalties and administrative sanctions which can be applied in proven cases of fraud, some concerns were raised regarding provisions in the Public Service Act and several suggestions were made for general legislative changes and the procedures for the introduction of such changes. The ACS also highlighted a number of deficiencies in the current penalty and administrative regimes in the Customs Act but these are not outlined as they already have been the subject of a review by The Law Reform Commission.[7]

6.7 The penalties under the Public Service Act for disciplinary action against a Commonwealth officer detected committing fraud range from counselling to dismissal. Although the DPP and PSC both believe the range of penalties is adequate, the PSC is reviewing those disciplinary provisions as part of its review of the Public Service Act. Some anomalies identified, such as DFAT's concern about different disciplinary sanctions for 'attached' and 'unattached' officers (predominantly as career Heads of Mission)[8], already have been remedied and other critical anomalies will be addressed early by the PSC through amendments to the current Public Service Act.

6.8 Several other requests for changes to the Public Service Act were made. DFAT is also seeking to address the anomalous situation whereby no disciplinary measures can be taken against non-career Heads of Mission as they are not 'officers' for the purpose of the Public Service Act.[9] The ANAO is concerned about an apparent anomaly which allows officers accused of fraudulent behaviour to voluntarily retire on full benefits thus avoiding possible actions against them.[10] The DSS recognised the critical role the Disciplinary Appeal Committees have in managing fraud but suggested amending the Public Service Act to remove

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6 Media release by the Hon Duncan Kerr, MP, Minister for Justice. *Minister for Justice announces first step towards national criminal code by centenary of federation.* 8 September 1993, 2p.

7 The Law Reform Commission. 1992. *Customs and excise.* Report No. 60. Canberra, Law Reform Commission, 3 vols.

8 Evidence, pp. S350-S351.

9 Evidence, p. S351.

10 Evidence, p. S176.

Disciplinary Appeal Committees' power to overturn decisions unless there has been a serious breach of the disciplinary process because when such decisions are overturned there is considerable potential to undermine the efforts of departmental secretaries to address the issue of fraud as it relates specifically to their organisation.[11]

6.9 Five suggestions for general legislative changes were made by agencies.

6.10 First, the DSS suggested the range of penalties available in the case of fraud or misconduct by staff is not sufficiently flexible. Depending on the circumstances of the case the penalties may be either too harsh, too lenient or cease to have effect after a short period of time. For example an Administrative Services Officer 1 at the bottom of the salary range cannot be reduced to a lower classification or salary, however other penalties, except for dismissal may not be significant enough to reflect the seriousness of the offence. Where reduction of classification is undertaken, that person is immediately able to apply for promotion to higher level positions. Minimum penalties and increased levels of fines for certain offences would assist in redressing the situation in some cases.[12]

6.11 Second, DSS also commented that penalties need to recognise the fact that perpetrators often retain/spend large amounts of Commonwealth money.[13]

6.12 Third, DITRD submitted that legislation should be amended to reflect penalties specifically relevant to all Commonwealth bodies and suggested the pending revision of the Audit Act may be a suitable avenue for such a task.[14] Defence commented on this approach stating it had been advised by DOF during discussions on the replacement audit legislation that current legal practice does not favour a range of criminal penalties scattered through legislation, rather all criminal penalties should be included in a single piece of legislation, namely the Crimes Act.[15]

6.13 Fourth, DEET considered there may be a case for considering whether 'automatic' penalties should be applicable, consistently, across government programs. This arises from DEET's experience that in some of its programs, for example AUSTUDY, penalties for providing incorrect information are applied by magistrates after court hearings, whereas, in the case of tax legislation such penalties are automatically provided for in legislation.[16]

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11 Evidence, p. S704.
12 Evidence, p. S704.
13 Evidence, p. S704.
14 Evidence, p. S289.
15 Evidence, p. S779.
16 Evidence, p. S996.

6.14 Finally, the ANAO noted that where penalties have an upper limit, their impact can diminish substantially.[17]

6.15 More generally, DEET also suggested there be a '...regular review of legislation to ensure that penalties and sanctions remain adequate and at appropriate levels.'[18] The DPP recommended that no new criminal provisions be enacted until proper consideration has been given to how an offence against the provision can be proven, and that the DPP's advice on such matters should be sought at an early stage.[19]

Conclusion

6.16 The Committee agrees that the range and level of penalties and administrative sanctions that can be applied in cases of fraud are largely adequate but need to be reviewed regularly to ensure they remain appropriate. It supports the development of the national criminal code, the review of the Public Service Act and the implementation of the Gibbs Committee recommendation for a penalty relating to the misuse of official information by public servants for private gain. It considers that these legislative amendments should be accorded a high priority. Various agencies raised matters with general relevance to legislation dealing with fraud. The Committee suggests that the Attorney-General's Department, the PSC and agencies with relevant program specific legislation consider those matters when reviewing aspects of legislation related to fraud.

Use of administrative and disciplinary remedies

6.17 Recommendation 7 of the Review of Fraud encouraged the further consideration of administrative remedies as a means of dealing with minor instances of fraud.

6.18 Administrative remedies tend to fall into two categories: agencies taking action in accordance with the legislation covering their own programs to ensure losses are remitted (for example DSS has the power to recover overpayments by deductions from future entitlements) or, in the case of internal fraud, disciplinary action under the Public Service Act. The disciplinary provisions are used if officers do not comply with the general statement of duties of APS staff set out in Regulations 8A and 8B of the Act. They aim to ensure that a satisfactory standard of public service is maintained and that the reputation of the Public Service is not adversely effected. The emphasis therefore is on the maintenance of effective administration with sanctions that are intended to correct inappropriate behaviour, rather than punish it.[20]

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17 Evidence, p. S1059.
18 Evidence, p. S996.
19 Evidence, pp. S326-S327.
20 Evidence, p. S1071.

6.19 The Review of Fraud noted the advantages of administrative sanctions as: they are simple and direct in operation; immediately available; less costly than court action; may offer greater flexibility; may be applied with consistency and equity (on the basis of appropriate guidelines); and can encourage compliance and have considerable deterrent effect. The major limitation on their use is that they are most effective where the agency concerned has a continuing relationship with the client.[21] Few comments were received from agencies on the use of their administrative sanctions.

6.20 The PSC reported there is a general concern by departments that the disciplinary process is unwieldy and frustrated by technicalities which then contribute to successful appeals against disciplinary decisions.[22]

6.21 The DPP was concerned that, from its limited experience in the area, it appeared the sanctions imposed when matters are dealt with by disciplinary proceedings by agencies vary greatly, and are often derisory. It is also concerned that disciplinary charges are usually investigated and determined by officers with no experience or training in the area. They may lack the expertise to determine an appropriate penalty in the event that they find the matter proved.[23]

6.22 The DPP advised many agencies sometimes favoured administrative solutions to fraud cases these days because of the speed with which a result can be produced relative to criminal proceedings. It believes many quite serious matters are dealt with by administrative or disciplinary proceedings rather than by prosecution.[24] This is particularly a problem with revenue collecting agencies which tend to have alternative procedures available to them for dealing with less serious breaches of legislation. The AFP supported the DPP view stating:

> Although administrative sanctions can validly and effectively be applied by agencies in certain circumstances, the AFP believes that where a high degree of criminality is evident they should not be in lieu of criminal sanctions.[25]

6.23 The PSC would like to see both the administrative and criminal path pursued.[26] Commenting on the effectiveness of disciplinary measures the PSC noted:

> ...appeals brought against action taken by a Department against an officer who has committed a criminal offence

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21 *Review of systems for dealing with fraud on the Commonwealth.* March 1987. Australia, Special Minister of State. Canberra, AGPS, pp. 44-45.
22 Evidence, p. S1071.
23 Evidence, p. S319.
24 Evidence, pp. 470 and S319.
25 Evidence, p. S120.
26 Evidence, p. 451.

have been successful less often than appeals brought against action taken in relation to misconduct which is not associated with a criminal offence.[27]

6.24 Referring to agency concerns about the disciplinary process, the PSC reported it has consulted departments and their concerns are being addressed in the PSC's review of the disciplinary provisions. It is also assisting managers to understand and more confidently use formal disciplinary procedures[28]. But more needs to be done.

6.25 The DPP initially suggested centralising disciplinary proceedings but upon further consideration withdrew the suggestion noting that this option had been considered in the past and suggesting instead a need for better exchange of information about what is appropriate disposition.[29] DIEA suggested that there be improved information on precedents and interpretations and on 'best practice' in this area. Guidelines on the use of administrative action were circulated by the Attorney-General's Department in early 1993.[30] The Attorney-General's Department also suggested there may be value in extending the agreement procedures outlined in Recommendation 5 in the Review of Fraud to include the PSC and the AGS.[31] The Committee sees little merit in the proposal. The efforts of all agencies seeking to develop a consistent set of criteria to guide the referral of matters between agencies and to better define the role of all agencies in fraud control will also facilitate the more effective use of administrative and disciplinary remedies.

Conclusion

6.26 Agencies reported few difficulties with the use of administrative sanctions under their legislation and with recovery action. Disciplinary measures have been less effectively implemented and therefore there is a need to enhance managers' understanding and formal use of those measures. The PSC is currently assisting managers with this task. The major concern is to ensure that serious cases of fraud are dealt with by criminal sanctions and not administrative or disciplinary measures, but this is not easy to achieve.

6.27 **The Committee recommends:**

- **the Public Service Commission give a high priority to providing training for public sector managers on the understanding and formal use of disciplinary procedures;**

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27 Evidence, p. S1071.
28 Evidence, p. S1071.
29 Evidence, pp. 478-479 and S320.
30 *Guidelines for officers dealing with fraud on the Commonwealth.* March 1993. Canberra, [Attorney-General's Department], pp. 10-11.
31 Evidence, pp. S229-S230.

- **all agencies which have not already done so, send their managers to the Public Service Commission courses on disciplinary procedures; and**

- **all agency heads ensure that administrative and disciplinary measures are not being used in their agencies to deal with serious cases of fraud which should be dealt with by criminal prosecution.**

Prosecutions

6.28 The DPP's formal role commences when an investigation has been completed and a brief of evidence prepared, though the DPP often provides legal advice and assistance during the investigative stage. All decisions in the prosecution process are based on the provisions of the *Director of Public Prosecutions Act 1983* and the guidelines laid down in the *Prosecution Policy of the Commonwealth.* The DPP has independent responsibility for these functions though the Attorney-General does have the power to issue directions or guidelines. The DPP is also responsible for recovering the proceeds of Commonwealth crime by action under the Proceeds of Crime Act and other legislation and by enforcing civil remedies on behalf of the Commonwealth in cases where the DPP is authorised to do so. In Tasmania and the Northern Territory prosecutions and criminal assets work is conducted by the AGS on behalf of the DPP. In 1990-91 over half of all prosecutions conducted by the DPP concerned fraud on the Commonwealth in some form.[32]

6.29 The AGS is responsible for undertaking most civil legal action on behalf of the Commonwealth. The Attorney-General's Department reported that the AGS's experience with civil prosecutions relating to fraud are similar to those of the DPP with their prosecutions work.

Referral of fraud cases to the DPP

6.30 Like the AFP the overall policy guidance for the referral of fraud cases to the DPP is provided by Recommendation 5 of the Review of Fraud. More specific guidance for the referral is embodied in the *Prosecution Policy of the Commonwealth* which has been rewritten and reissued since the Review of Fraud. The policy outlines which cases should be prosecuted, how matters should be referred to the DPP and dealt with. There are also additional guidelines for individual agencies that are responsible for the referral of the bulk of the cases referred to the DPP. These are add-ons and deal with machinery provisions. In October 1993 the DPP advised the following guidelines have been prepared with agencies:

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32 Evidence, pp. S312-S313.

- written liaison guidelines are in place with the AFP, ATO, ACS, Australian Securities Commission, NCA, DAAS, Comcare and the Retirement Benefits Office;

- draft liaison guidelines are being discussed with DEET, DVA, Trade Practices Commission, Australian Electoral Commission and Insurance and Superannuation Commission;

- close but less formal arrangements with DSS - draft case selection and referral guidelines with DSS for comment;

- formal liaison arrangements which involve regular two monthly liaison meetings at both State and central level (but no documented agreement) with HIC;

- close though less formal arrangements with Defence; and

- other agencies which refer no more than a few cases each year are handled on a case-by-case basis.[33]

6.31 The DPP is now revising arrangements so that there are formal agreements with all agencies which have an investigative function if only for ensuring that those agencies are aware of the existence of the Prosecution Policy. An agreement with the Retirement Benefits Office is to form the precedent for other agreements. The DPP said:

> ...the arrangements presently in place provide a proper framework for investigative agencies to refer fraud cases to the DPP. The ongoing task is to make the arrangements work. That requires continuing liaison with all investigative agencies. That is a time-consuming and challenging task.[34]

6.32 The following difficulties with the referral process have been identified by agencies.

6.33 First, during its audits on procedures for dealing with fraud in Defence and DSS, the ANAO found there was a need for these agencies to improve their procedures for referral of fraud cases to the DPP.[35]

6.34 Second, Defence commented that preliminary advice provided by the DPP is very useful, however, it has problems with the division of responsibility between the AGS and the DPP especially when proceeding with both civil and

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33 Evidence, pp. S320-S321 and S1953-S1954.
34 Evidence, p. S321.
35 Evidence, pp. S177-S178.

criminal action and different State offices are involved. While provision exits for the DPP to take a formal coordinating role where criminal prosecution and civil recovery action are running concurrently this only appears to be exercised in the very large fraud cases. Defence suggests the DPP may need to coordinate all cases of this kind.[36]

6.35 Third, Defence also said it would like to see improved dissemination of information on the prosecution of fraud cases.[37]

6.36 Fourth, DFAT says it occasionally experiences problems when a case is being passed between DFAT, the AFP and the DPP. If the case is investigated by the AFP and the DPP looks at the legal and public policy considerations and then recommends the case would be better handled internally by the Department the brief of evidence is not, as a matter of course, available to the Department. DFAT therefore suggests there is a need for better hand-over procedures between referring and downstream agencies to make the brief of evidence, or at least its contents, automatically available to the referring agency.[38]

6.37 Finally, DSS identified problems with role definition and a lack of consistency in the handling of cases especially in a timely manner, by the DPP in different States, especially New South Wales, because of resource constraints.[39]

Capacity and capability of the DPP

6.38 As at 30 June 1993 the DPP had a staff of 468, total expenditure in 1992-93 was $45.9 million and receipts for the year were $1.07 million.[40]

6.39 The DPP believes it has the expertise needed to properly prosecute all cases referred to it and its resources, while strained, are adequate to deal with the present workload.[41] There was only one instance, previously outlined, where an agency complained of delays in cases being handled.

6.40 The DPP notes it is receiving an increasing number of briefs from non-police investigators and there is a general trend for those investigators to investigate more complicated matters. The DPP believes many investigators lack a proper understanding of how to go about investigating a complicated case and how

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36 Evidence, pp. S790 and S792.
37 Evidence, p. S792.
38 Evidence, p. S355.
39 Evidence, pp. S706-S707.
40 *Program performance statements 1993-94: Attorney-General's Portfolio.* Budget related paper No 7.2. 1993. Canberra, [AGPS], pp. 307 and 309.
41 Evidence, p. S321.

to construct a brief of evidence.[42] Recommendation 11 of the Review of Fraud provided for the DPP to liaise with agencies about training in the preparation of briefs of evidence,[43] but six years later the DPP is still experiencing problems.

6.41 To redress this situation the DPP stressed that the new fraud management regime requires a change in the DPP's traditional approach and culture to prosecuting fraud cases compared with the approach that it used with the police forces. With the non-police investigators the DPP said it will need to become involved in the investigation process earlier and make an assessment earlier. The DPP said with the police forces no longer the sole source of briefs, it will be unable to have a hands off approach and say 'You send us the product, and we will assess it and you can service it'. Although the DPP already regularly participates in training courses run by the AFP and other agencies, and from time to time runs its own courses, it will need to participate more in training investigators, though its role will essentially be one of assisting not organising and running the courses. The DPP also suggested there is a need for a coordinated national program to train non-police investigators to build on the work commenced in this field by the AFP.[44]

Conclusion

6.42 The Committee believes the DPP has adapted well to the new policy arrangements for fraud control and supports its decision to have agreements with all agencies which have an investigative function. The DPP has developed a good service orientation to non-police investigators but there is obviously still room for improvement.

6.43 **The Committee recommends:**

- **where appropriate, to assist non-police investigators in handling their fraud cases, the Director of Public Prosecutions continue to become actively involved at an early stage in the investigation;**

- **as part of its role in the proposed national training program for fraud investigation, the Director of Public Prosecutions assist more in the training of investigators, particularly regarding the preparation of briefs of evidence; and**

- **the Director of Public Prosecutions provide more feedback, including appropriate statistics, to all agencies on progress with the prosecution of the agencies' fraud cases.**

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42 Evidence, p. S321.

43 *Review of systems for dealing with fraud on the Commonwealth*, op. cit., p. 52.

44 Evidence, pp. 476-477 and S321-S322.

Consistency of treatment of offenders

6.44 The issue of consistency of treatment of offenders relates to the consistency in the use of administrative remedy or prosecution as well as consistency in the use of disciplinary measures. It is a contentious matter. On the one hand, agencies need a guide to ensure consistent treatment while on the other each case needs to be treated on its merits.[45]

6.45 Few agencies have sought to clarify the meaning of consistency of treatment and whether consistency should be sought within agencies and/or between agencies. The DPP stressed the focus is on consistency not uniformity.[46] The only definition of consistency presented was by the ANAO which considers 'the presence of consistency is seen as a means of identifying the presence of justice and equity under the law...'.[47]

6.46 The Attorney-General's Department did not consider differences of treatment of offenders by various agencies to be a problem. It stated 'It certainly has not been presented to the Attorney-General's Department as a problem. That is not to say the problem does not exist.'[48] The PSC questions the need for consistency in the disciplinary area since the objective is to correct the behaviour and what may work in one set of circumstances may not work in another.[49]

6.47 However, in its various fraud audits the ANAO found evidence of significant variations in the treatment and outcome of cases within agencies particularly between regional areas and various investigation units.[50] This, however, is not an issue which has been addressed in detail by agencies. In its report on Defence, the ANAO recommended Defence conduct a review of the disciplinary outcomes of matters dealt with to assess the consistency of treatment and whether improved procedures would provide more equitable outcomes.[51]

6.48 Consistency is of particular concern when comparing the options for the treatment of offenders inside and outside the public service since the former may have administrative/disciplinary remedies or criminal sanctions applied whereas in the latter case there may only be a criminal option.

6.49 A wide variety of factors were identified as contributing to the lack of consistency.

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45 Evidence, p. S706.
46 Evidence, p. 479.
47 Evidence, p. S176.
48 Evidence, p. 35 with other comment at p. 29-30.
49 Evidence, p.455.
50 Evidence, pp. S169 and S175.
51 The Auditor-General. *Department of Defence - Procedures for dealing with fraud on the Commonwealth.* Audit Report No. 15 1991-92. Canberra, AGPS, p. 46.

6.50 First, the decision on how a case is dealt with is largely determined by the agency concerned.[52] Related to this point, the DPP and others emphasise that disciplinary charges are usually investigated, and determined by, officers with no experience and training in the area.[53] The ANAO believes inconsistency can be created by a lack of a consistent set of criteria to guide the referral of matters to the AFP or the DPP. This, combined with the lack of clarity in the definition of the role to be played by fraud investigation units in the fraud investigation process, may have led to matters being investigated by an inappropriate agency.[54]

6.51 Second, the inadequacy of existing guidelines to determine the particular legislation to be used is also a problem. The DVA said the deficiencies in this area were apparent when the Department attempted to draw together all applicable legislation having an impact upon fraud control and codes of conduct in a handbook for the guidance of staff involved in fraud management.[55] The need for improved guidelines to administer penalties was also stressed by DAAS.[56]

6.52 Third, anomalies in specific legislation also lead to inconsistencies and several have been identified in earlier sections of this chapter.

6.53 Finally, processes under legislation other than the Crimes Act may not be as open to the public, nor is there equivalent public access to the records. The DPP is particularly concerned about the application of the *Defence Force Discipline Act 1982* rather than the Crimes Act in cases of fraud committed by service personnel as such offences carry no record of conviction. Also, the ANAO in its audit suggested Defence investigate the reasons for differences in the level of action under the Public Service Act and the Defence Force Discipline Act.[57]

6.54 The ANAO also recommended some general changes in accountability procedures to achieve greater consistency. It suggested that individual agencies improve their quality assurance procedures to monitor the adequacy and appropriateness of decisions being made and that training in fraud control and accountability activities be centrally coordinated and standardised.[58]

6.55 Another area of apparent inconsistency is reparation. Finance Direction 24/1 states that in cases of fraud or misappropriation every effort should be made to obtain recovery in full. If moneys have been improperly obtained, civil proceedings can be instituted to recover that money. If pensions or benefits are ongoing,

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52 Evidence, p. S176.
53 Evidence, p. S319.
54 Evidence, p. S175.
55 Evidence, p. S335.
56 Evidence, p. S1202.
57 Evidence, pp. 164, S327-S328 and Audit Report No. 25 1990-91 pp. 42-49.
58 Evidence, p. S176.

deductions can be made from those payments. In its report on Defence the ANAO referred to cases which it said indicated a failure to comply with Commonwealth policy that 'those involved in crime should not benefit from their criminal activity'.[59]

Conclusion

6.56 While consistency in the treatment of offenders is a difficult and contentious issue, this does not preclude the need to strive towards it as a desirable goal. Even though the Committee appreciates the PSC view that in the disciplinary area the objective is to correct the behaviour and what may work in one set of circumstances may not in another, the Committee believes there is need to strive for consistency here as well.

6.57 There is no simple solution to trying to achieve consistency. Awareness and acceptance of the objective, however, is the first step. Many of the recommendations made in earlier sections of the report, such as the removal of anomalies in legislation dealing with fraud, improved guidelines on how to handle fraud cases, improved training in the use of disciplinary measures, better definition of the roles of the various participants in the fraud control process and improvements in the standards of service from the AFP and the DPP, will assist in achieving consistency.

59 Audit Report No. 15 1991-92 p. 52.

Chapter Seven

Whistleblowing and informants

Whistleblower legislation

7.1 Whistleblowing is one of a number of ethical issues now under consideration by both the Commonwealth and State Governments. It is of particular interest to this inquiry as it is being promoted as a further strategy to be considered to combat fraud.

7.2 While most people intuitively understand the meaning of the term 'whistleblowing', there is no generally accepted definition. What is agreed is that whistleblowing is 'a commonly-used term for the reporting, from within an organisation, of impropriety or maladministration on the part of that organisation or of individuals in it who are endowed with some form of power or responsibility'.[1] More detailed discussions of definition are provided by the Electoral and Administrative Review Commission (EARC), McMillan and Starke.[2]

7.3 Whistleblowing is just one component of the wider issue of the use or disclosure of information in the hands of government. The Attorney-General's Department has stressed that:

> In terms of reforming the laws on disclosure of official information, this Department sees two principal objectives behind whistleblower legislation:
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> . first, to ensure that Commonwealth secrecy provisions do not impede the proper investigation of allegations of illegality or serious misconduct in Commonwealth departments; and

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1 Senate Standing Committee on Finance and Public Administration. December 1992. *Management and operations of the Department of Foreign Affairs and Trade.* Canberra, AGPS, p. 31.

2 Electoral and Administrative Review Commission. October 1991. *Report on protection of whistleblowers.* Brisbane, EARC, 245p.
McMillan, J. September 1988. Blowing the whistle on fraud in Government. *Canberra Bulletin of Public Administration.* No. 56, pp. 118-123.
Starke, J G. April 1991. The protection of public service whistleblowers - Part I. *The Australian Law Journal.* 65(4), pp. 205-219.
Starke, J G. May 1991. The protection of public service whistleblowers - Part II. *The Australian Law Journal.* 65(5), pp. 252-265.

second, to provide a satisfactory level of protection to current or former Commonwealth public servants who make such allegations.[3]

The aim is to achieve the appropriate balance between secrecy and reporting.

7.4 As outlined in its first report on fraud the Committee has not sought to examine secrecy provisions in detail as part of this inquiry because this matter is being considered by the House of Representatives Committee on Legal and Constitutional Affairs as part of its inquiry into 'The Protection of Confidential Personal and Commercial Information Held by the Commonwealth'.[4] A discussion of the second issue, reporting, follows.

The need

7.5 'The desirability of reporting (of 'whistleblowing' on) serious impropriety and maladministration is acknowledged in some degree in almost all Australian jurisdictions...'[5]. Many of the reforms introduced as a result of the Fitzgerald inquiry in Queensland and the work of the ICAC in New South Wales would not have occurred except for those people who were prepared, perhaps illegally, to disclose corrupt practices. It is in the public interest to identify and remedy illegal and improper conduct in the public sector.

7.6 Like the scale of fraud on the Commonwealth and statistics on fraud control activities, there are few details available on the extent of whistleblowing. Whistleblowers Australia (formerly Whistleblowers Anonymous) reported that during its first year of operation (1991/92) it received more than 400 appeals for assistance, 386 of which were considered to be from genuine whistleblowers and 75 per cent of those were from public servants (either Commonwealth or State). The complaints made related to fraud, corrupt practices, funds wrongfully allocated, consultancy rorts, computer service rorts, intellectual suppression, falsified documents and Telecom rorts. The high risk areas which Whistleblowers Australia identified were procurement and consultancies. Three case areas were discussed by Whistleblowers Australia.[6]

7.7 The Commonwealth and Defence Force Ombudsman (Ombudsman) reported only three complaints obviously categorised as fraud-related whistleblower complaints within the 1990/91 and 1991/92 financial years.[7] The Merit Protection and Review Agency (MPRA) '...has investigated some 101 grievances in relation to

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3 Evidence, p. S239.

4 House of Representatives Standing Committee on Banking, Finance and Public Administration. November 1992. *Matching and catching: Report on the Law Enforcement Access Network.* Canberra, AGPS, pp. 8-10.

5 Finn, P. 1991. *Official information.* Integrity in Government Project: Interim report 1. Canberra, ANU, p. 45.

6 Evidence, pp. S1616-S1619.

7 Evidence, p. S1726.

discrimination and victimisation over the last seven years and some of those cases involved officers who purported to be whistleblowers.[8] General details of cases in Defence were discussed by the ANAO in its audit report and the Senate Standing Committee on Finance and Public Administration dealt with cases in DFAT since the early 1980s.[9]

7.8 While the number of cases reported for the Commonwealth public service does not appear to be high, allowance has to be made for those cases unreported for fear of reprisal in the absence of a comprehensive whistleblower protection scheme and for those cases which individuals wish to remain confidential. It seems likely that whistleblowing will become more prevalent in the future.

7.9 In the Commonwealth sphere the concept of whistleblowing is not new. Regulation 30 of the Public Service Regulations requires supervisors in the APS to report breaches of the Public Service Regulations to the secretary of their department. Thus there is a positive obligation under those regulations to blow the whistle on at least one category of behaviour.[10]

7.10 There also are already a number of mechanisms designed to facilitate consideration of complaints about government breaches of ethical standards and to protect whistleblowers from harassment and victimisation. These include the Commonwealth Ombudsman whose functions include receiving, investigating and reporting on complaints concerning actions in public administration. The Ombudsman has certain protection powers, though not the power to protect complainants from reprisals. The MPRA, which is in effect the 'public service ombudsman', was established to ensure actions taken concerning Commonwealth employees in relation to their **employment** are fair and equitable. The MPRA provides advice on grievance and appeal rights and investigates grievances with respect to employment matters including allegations of discrimination and victimisation. Complaints by public servants on matters other than employment are outside the MPRA's jurisdiction. The *Royal Commission Act 1902* and the *Human Rights and Equal Opportunity Act 1986* also contain provisions for individuals to make complaints about government breaches of ethical standards. The AFP's witness protection scheme also affords some protection and parliamentary committees provide an avenue for making allegations public while providing parliamentary privilege for witnesses.

7.11 The importance of taking account of the existence and effectiveness of the current accountability mechanisms developed by the Commonwealth in the past fifteen years when considering whistleblower legislation was stressed by DIR.[11]

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8 Evidence, p. S1744.

9 The Auditor-General. *Department of Defence - Procedures for dealing with fraud on the Commonwealth.* Audit Report No. 15 1991-92. Canberra, AGPS, pp. vii, xi and 17. and Senate Standing Committee on Finance and Public Administration. December 1992, op. cit., pp. 31-52.

10 Evidence, p. S1072.

11 Evidence, p. S1857.

7.12 In addition, a number of Commonwealth agencies such as Defence, DFAT and DAAS have internal strategies in place to receive and investigate such complaints and protect whistleblowers.[12] The systems in the Departments of Defence and Foreign Affairs and Trade were examined by the ANAO and the Senate Finance and Public Administration Committee respectively and both studies identified deficiencies in the strategies implemented. A number of other agencies such as the DSS have an extensive system to deal with denunciations from both inside and outside the agency.[13]

7.13 Many arguments have been put forward on the need for providing legal protection for whistleblowers but the unifying theme is:

> ... the moral imperative that the community should acknowledge an obligation to provide a measure of protection to a person who has the courage to disclose wrongdoing, which it is in the broad public interest to have exposed and corrected.[14]

7.14 On the other hand, a better system of protection must also make it easier for false or misleading behaviour by whistleblowers to be punished. The Senate Committee on Finance and Public Administration has suggested that, in the absence of a comprehensive system for dealing with whistleblowing, there is a greater risk of improper behaviour while reducing the likelihood that real fraud and malpractice will be reported.[15]

7.15 Finn stressed that, depending on the subject matter of a report, in all cases of whistleblowing a balance has to be achieved between the interests of four groups potentially involved. That is, the interests of the reporter because of the need to protect that person from reprisal, the interests of the impugned because of the need to act fairly towards that person, the interests of the agency because of the need to secure its interests both within and outside the subject matter of the complaint, and the interests of the public in maintaining its confidence in the integrity of government, its institutions and officers.[16] DIR reinforced this view pointing to the need for legislation to take account of a broad range of factors including the effects on management and morale in organisations and the difficulties in fully and effectively protecting whistleblowers.[17]

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12 Evidence, pp. S359-S360, S797-S798 and S1915.
13 Evidence, p. S708.
14 Electoral and Administrative Review Commission, op. cit., p. 14.
15 Senate Standing Committee on Finance and Public Administration. December 1992, op. cit., p. 56.
16 Finn, P, op. cit., pp. 47-49.
17 Evidence, p. S1857.

7.16 Many agencies and other organisations, such as DFAT, ACS, DIEA, PSU, CSIRO, ANAO, AFPA, NCA, DAAS and the Ombudsman, recorded in principle support for legislation.[18] Others such as the AFP, DITRD, DVA, DSS and PSC gave qualified support.[19] Neither the Attorney-General's Department nor the DPP commented specifically on the need for legislation.[20]

7.17 Legislation should not be seen as the panacea for dealing with whistleblowing complaints. There will always be some who believe their allegations have not been properly investigated and the results will frequently be open to interpretation.

Overseas and State strategies

7.18 Federal and state administrations in the United States of America have led the world in confronting the problems associated with the protection of whistleblowers. These measures were first introduced federally via the Civil Service Reform Act 1978 which created the Office of Special Council and the Merit Systems Protection Board. Because these measures were not effective in preventing retaliation against whistleblowers the Whistleblower Protection Act 1989 was enacted. By 1991 thirty five states in the United States of America had also legislated some form of protection for public sector employees.

7.19 The recent surge of interest in whistleblowing in Australia has occurred largely in the wake of recommendations by the Fitzgerald inquiry in Queensland and the head of the ICAC in New South Wales, for legislation to protect whistleblowers from organisational reprisal. There is now a burgeoning literature on the subject.

7.20 During the 1990s there have been moves to introduce some form of whistleblower protection in several States and Territories. In Queensland, the *Whistleblowers (Interim Protection) and Miscellaneous Amendments Act 1990* was put in place pending EARC's consideration of the issue. In October 1991 EARC published its *Report on protection of whistleblowers* which is currently being considered by the State Cabinet. Bills have been introduced in New South Wales and South Australia, a royal commission and an independent commission in Western Australia have recommended the introduction of legislation and there have been discussions on the introduction of legislation in the Australian Capital Territory.

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18 Evidence, pp. S360-S361, S730, S748, S1006, S1031, S1063, S1085, S1112, S1205, S1721 and S1917.

19 Evidence, pp. S149, S291, S336, S708-S710 and S1072.

20 Evidence, pp. S241 and S334.

The future: reporting and reporter protection

7.21 Extensive research on whistleblower protection has been undertaken at the Commonwealth level by Finn (1991) in the joint Commonwealth/State Government *Integrity in Government Project* and the Gibbs Committee (December 1991).[21] The Attorney-General's Department has been consulting with agencies on the Gibbs Committee recommendations.[22] In December 1991 Senator Vallentine introduced a Private Members Bill into the Senate to provide for protection of whistleblowers and, following a major rewrite, that Bill was tabled in May 1993 as a discussion document and in October 1993 as a Bill by Senator Chamarette.[23] In 1992 the Senate Finance and Public Administration Committee looked at whistleblowing issues in the context of its inquiry into DFAT.[24] In September 1993, at the initiative of Senator Newman, the Senate established a Select Committee on Public Interest Whistleblowing.[25]

7.22 With most of the research on whistleblower protection done, what is required is a decision on further action. The major issues to be considered fall under the broad headings of reporting and reporter protection.

7.23 Finn stressed the need for the introduction of a channelled and confidential system to review whistleblowing type complaints. He recommended that not withstanding any duty of secrecy to the contrary, it be lawful for any officer or employee of an agency of government to make a confidential report to a designated officer/s of that agency concerning non-compliance within the agency or by agency officials with legislative, governmental or administrative policy; maladministration, particularly where this results in fraud or waste or is likely to pose an immediate threat to public health or safety; misconduct of an agency official; and serious misconduct of a person or body in dealings with the agency. He proposed a three-tiered set of reporting procedures namely inhouse, an independent agency (the Ombudsman) and 'going public' to a parliamentary committee or in the 'public interest' in **exceptional** circumstances. A person going public was entitled to the protection of anti-reprisal procedures including immunity from criminal prosecution if they can show they had reasonable grounds for believing the report was accurate, notwithstanding their failure to avail themselves of established procedures the course taken was excusable in the circumstances and the allegation made was substantially accurate. He outlined set preconditions for protection of reporters and

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21 Finn, P, op. cit., 260p and Attorney-General's Department. December 1991. *Review of Commonwealth criminal law: Final report.* Chaired by The Right Honourable Sir Harry Gibbs, GCMG, AC, KBE. Canberra, AGPS, pp. 335-355.

22 Evidence, pp. S239-S241.

23 *A Bill for An Act to provide protection for persons disclosing illegal conduct or improper conduct, and for related purposes.* 12 December 1991 and *Whistleblowers Protection Bill 1993.* 5 October 1993.

24 Senate Standing Committee on Finance and Public Administration. December 1992, op. cit., pp. 31-52.

25 Media release by Senator J Newman, Shadow Minister for the Family and Health. *Bid to protect whistleblowers.* 31 August 1993, 1p.

a protection scheme which included making it a criminal offence and employment misconduct to commit serious harassment or discrimination, discrimination in employment related matters being made an improper personnel management practice justifying a grievance appeal and an independent agency (the Ombudsman) being charged with the responsibility for the protective scheme. He also recommended that the making of reports known to be false or misleading be a criminal and disciplinary offence.

7.24 Finn also pointed out that the emphasis in inhouse reporting should be on the development of internal reporting procedures which are channelled to an appropriate and responsible officer, providing as far as possible confidentiality to both the reporter and the reported and the officer to whom the report was made coming back to the complainant in writing within a specified period of time on the consideration given to the report, investigations made and the outcomes. For channelling to be effective agency officials must have trust in the lines of communication proposed and if confidentiality is to be respected it must not be seen by potential reporters as a facade for suppressing the reports made. Inhouse reporting has the advantage of agency self-regulation but may not always be effective because of considerations such as systemic failure, official mistrust, agency vested interest, the impact of personality factors, inhouse loyalties and agency misconception of public interest.[26] An independent agency is a vital step between inhouse reporting and the prospect of all cases 'going public'.

7.25 The advantages of an external and independent reporting agency are largely self-evident. It facilitates the exposure of misconduct/maladministration; provides a disinterested and publicly trusted avenue for receipt and investigation of complaints; provides enhanced investigative powers; centralises responsibility and accountability for reports, investigations etc; and by providing an avenue for complaint minimises the need and justification of the complainant 'going public'.[27]

7.26 The Gibbs Committee, following on from Finn's work and that of EARC, recommended the disclosure provisions be extended to include a contractor as well as employee. The Committee restricted the matters to which the allegation may relate to an indictable offence against the law of the Commonwealth, State or Territory; gross mismanagement or a gross waste of funds; or a substantial and specific danger to public health or safety. It supported Finn's three-pronged approach to reporting but left the choice of an independent reporting agency as a decision for Government while suggesting a member of the intelligence or security services report to the Inspector-General of Intelligence and Security with the others reporting to the Ombudsman, the Auditor-General or a special new office. On the provision for a complainant going public the Gibbs Committee supported Finn's first two criteria but considered the requirement of an allegation being substantially

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26 Finn, P, op. cit., pp. 49-52.

27 Finn, P, op. cit., p. 53.

accurate did not appear to be called for. Against this the person would not be given any special protection regarding the law of defamation or any other law of general application. Responsibility for the implementation and enforcement of protection and the provision of counselling and guidance to whistleblowers was given to the MPRA.

7.27 The Attorney-General's Department considered the Gibbs Committee proposals generally satisfactory. However, it has suggested former Commonwealth employees should also be included and believed that public disclosures should not be permitted if there is a scheme in place allowing allegations to be made to an independent body such as Ombudsman.[28]

7.28 The PSC believed that:

> ...there may be value in legislation which makes it clear that a person who in good faith discloses information believed to involve fraud, waste or mismanagement is not breaching the law themselves by making that disclosure.[29]

It favours a scheme requiring whistleblowers to make the disclosure to a statutory office holder such as the Auditor-General or the Ombudsman rather than disclosing information to the media.

7.29 The Senate Committee on Finance and Public Administration in its report on DFAT generally supported the Finn model based on a special complaints area being established within the Ombudsman's Office. This new office would be responsible for filtering the complaints, referring them to other agencies where appropriate, investigating some itself, monitoring the quality of internal investigations and providing protection. It would keep such investigations which may be adversarial separate from the bulk of the work of the Ombudsman's Office which benefit from informal cooperative relationships with agencies. Since the Committee had recommended in its report on the Ombudsman[30] the transfer of employment-related grievances from the MPRA to the Ombudsman, under the Committee's system whistleblower action would be a one stop shop. However, in December 1992 the Government's response to the Ombudsman report rejected the transfer of those functions. The employment exclusion in section 5(2)(d) of the *Ombudsman Act 1976* remains but the Government said it will introduce legislation to facilitate transfer of casework between the Ombudsman and MPRA in recognition of the lack of a distinct border between the Ombudsman's jurisdiction and that of the MPRA.[31]

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28 Evidence, pp. S240-S241.

29 Evidence, p. S1072.

30 Senate Standing Committee on Finance and Public Administration. December 1991. *Review of the Office of the Commonwealth Ombudsman.* Canberra, AGPS, pp. 46-48.

31 *Senate Hansard.* 15 December 1992. Canberra, AGPS, p. 5008.

7.30 The Ombudsman supported the Senate Committee's recommendation that a special complaints section within the Ombudsman's Office be responsible for reviewing whistleblower complaints providing the additional functions were properly resourced. The Ombudsman considers the categories of whistleblowers recommended by the Gibbs Committee should be extended to include employees and former employees of contractors and officious bystanders and not be restricted to information someone obtains because of their position which may undesirably redirect discussion to how the information was obtained when the focus should be on its disclosure and investigation. The Ombudsman also differs from the Gibbs Committee in believing disclosure to the Ombudsman with no wider publicity than is necessary for that purpose should receive full protection from any liability for defamation from such publication.[32]

7.31 The separate investigation unit in the Ombudsman's Office for filtering and directing complaints to other bodies for investigation as well as doing major inhouse investigation has now been established. The Unit's current resourcing is modest and would need to be augmented if it were to perform the role envisaged by the Gibbs Committee in relation to whistleblowers' complaints.[33] The Ombudsman suggested to overcome the employment exclusion in the Ombudsman Act that:

> special provision be made for the employment exclusion in section 5(2)(d) to be varied so that both my office and the MPRA have jurisdiction with respect to such complaints, and the two organisations can determine which body can best handle the matter depending upon its nature, the relative complexity and significance of the reprisal action and the allegation made, and the link between them. Such shared jurisdiction already operates under my Act with respect to several other authorities, such as the Privacy Commissioner [see section 6(4A)] and AUSTEL [see section 6(4D)].[34]

7.32 The MPRA said it supported the Gibbs Committee recommendation regarding the proposed role for the MPRA in whistleblowing and considers this consistent with the objectives for which the MPRA was established. Given its responsibility for investigating employment-related matters it believes that it also would be consistent for it to have responsibility for investigating whistleblower complaints about personnel management issues. However, if a whistleblower were suddenly subjected to a taxation audit or without good reason refused a licence or some other service normally provided by a Commonwealth agency, the MPRA would not deal with such matters. The whistleblower could apply for the Ombudsman to investigate it. Similarly if a person were to receive obscene telephone calls, death

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32 Evidence, pp. S1720-S1725.
33 Evidence, pp. S1917-S1918.
34 Evidence, p. S1724.

threats etc. such a matter should be reported to the police.[35] In commenting on the possibility of the Ombudsman taking over its employment role regarding whistleblowing complaints the MPRA stressed it '...was clearly intended to be the authority with jurisdiction over Commonwealth employment-related complaints and the Commonwealth Ombudsman was clearly intended not to be.'[36] The MPRA would be concerned about the shared jurisdiction arrangement suggested by the Ombudsman as it leads to confusion and uncertainty of responsibility and there are privacy considerations.[37] The MPRA stated that it is extremely difficult to prove whether discrimination or victimisation has occurred. This involves claim and counter claim and it is often difficult to establish the facts of the matter.

7.33 Whistleblowers Australia prefers the Administrative Appeals Tribunal (AAT) as the independent reporting and protection agency since the AAT reports directly to Parliament (rather than through the Prime Minister as is the case with the Ombudsman and the MPRA) and is an independent, judicial body with a welfare role and an open court-like structure. It believes the AAT is the closest existing Commonwealth agency to the Office of the Special Counsel in the United States of America which deals with whistleblowing. It also notes that the majority of whistleblowers that come to the Whistleblowers Australia do so after they have been to the Ombudsman and to the MPRA with neither body being able to assist them. The establishment of a Whistleblowers Advice Unit is also recommended by Whistleblowers Australia and it believes it could provide this service if financed to do so.[38]

7.34 The AAT does not support taking on this function since it is outside the AAT's current responsibilities to conduct merit reviews of administrative decisions made by Ministers, authorities, officials and other tribunals. The AAT suggests:

> It would appear that the Commonwealth Ombudsman and the Merit Protection Review Agency are currently better equipped and structured to undertake the roles proposed under the envisaged legislation.[39]

7.35 The Privacy Commissioner suggested that if legislation were introduced it would be desirable for it to be extended to privacy related allegations (which may not of themselves involve criminal offences) and for the Privacy Commissioner to be one of those bodies to whom public servants could make known their concerns. He said he also would expect to see safeguards applying to those accused of fraud and those involved in investigating cases, up to the point at which such matters are ordinarily made public, as well as to whistleblowers.[40]

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35 Evidence, pp. S1956-S1957.
36 Evidence, pp. S1743-S1745.
37 Evidence, pp. S1957-S1958.
38 Evidence, pp. S1620-S1621 and S1843-S1844.
39 Evidence, p. S1730.
40 Evidence, p. S1895.

7.36 The Bill introduced by Senator Chamarette sought to allow public sector employees and others to disclose, in the public interest, illegal, improper or corrupt conduct and acts that may be of danger to public health, safety or national security. It seeks the establishment of a fully independent statutory authority headed by a commissioner with powers to investigate allegations of wrongdoing within government and its agencies; to protect the interests of employees, former employees and applicants for employment in the public service; to promote the ethic of openness and public accountability and to support the community perception of whistleblowers as responsible citizens. A Parliamentary Joint Committee on the Whistleblowers Protection Agency is also sought to inquire into and report on the activities of the Agency and any other matters that the commissioner has drawn to the attention of the Committee.

7.37 In the research previously outlined there is general agreement on the need for a record to be kept and published in the annual reports of individual agencies, as well as the reports of the independent reporting and protection agency/s, of the number and nature of whistleblowing complaints and the responses thereto.

Conclusion

7.38 Whistleblowing 'in the public interest' should be recognised as a necessary and lawful activity as a means of identifying and remedying illegal and improper conduct in the public sector. Whistleblowing can thus save taxpayers' funds. There is an obligation on the part of the Commonwealth Government to provide a measure of protection to those who expose fraud and malpractice.

7.39 There is a need for a comprehensive scheme for dealing with whistleblowing both to provide a measure of protection for those who blow the whistle and to make it easier to deal with those who knowingly make false or misleading reports.

7.40 The three-tiered approach outlined by both Finn and the Gibbs Committee is the most effective way to proceed regarding reporting with the emphasis on confidentiality in the first two stages. The aim is to have a comprehensive scheme with the emphasis on inhouse reporting and if, for whatever reason, the complainant is unwilling to stay inhouse the facility exists for making serious complaints to an independent external body. If these systems work credibly and effectively there should be little or no need to go public. The Committee does not see this as necessarily being a sequential approach.

7.41 Much of the debate in whistleblowing surrounds the choice of an independent agency for both reporting and providing protection. There are significant advantages in building on existing institutions rather than creating a complete new structure.

7.42 Given the Ombudsman's ability to investigate, and redirect for investigation, a wide range of complaints raised by whistleblowers it is the most appropriate agency to receive whistleblowers' complaints.

7.43 The sorts of reprisals which whistleblowers may be subjected to go beyond employment related matters. Accordingly, the Ombudsman is the agency best placed to deal with this variety of situations and should also be responsible for the protection scheme.

7.44 For the scheme to be effective it is vital that agency officials have trust and confidence in the proposed lines of communication. This would only be achieved with time and use of the scheme. To ensure the scheme is working efficiently and effectively it should be reviewed after two full years of operation.

7.45 Legislation is not the panacea for dealing with whistleblower complaints and protection. Changes in community and agency' attitudes to whistleblowing and whistleblowers are also needed.

7.46 Although the scheme which the Committee has recommended is directed specifically at whistleblowers, in the strict sense of the term, it could also be used for external informants though this was not examined as part of the Committee's work.

7.47 **The Committee recommends:**

- **a scheme be introduced whereby if a current or former employee or contractor of the Commonwealth, or any Commonwealth agency, reasonably believes they have information which evidences an indictable offence against a law of the Commonwealth, a State or a Territory; gross mismanagement or gross waste of funds; or substantial and specific danger to public health or safety, then they may disclose that information on a confidential basis to:**
  - **the officer in the agency to which they belong designated to receive such complaints;**
  - **the Inspector-General of Intelligence and Security in the case of the intelligence or security service officers; or**
  - **the Commonwealth and Defence Force Ombudsman in the case of other persons;**
- **all agencies designate an appropriate high level officer to receive and investigate such complaints and to document, implement and publicise within their agency the internal procedures for dealing with allegations raised through whistleblowing;**

- the fraud control section of the new audit legislation include the requirement for all agencies to undertake these whistleblowing responsibilities;

- a reporter who fails or refuses to use the established reporting procedures but who 'goes public' (including to the media) will be entitled to protection from disciplinary procedures if they reasonably believed the allegation was accurate and, notwithstanding their failure to avail themselves of alternative procedures, the course taken was excusable in the circumstances. Such a reporter should not be given any special protection regarding defamation laws or any other law of general application;

- serious harassment or discrimination of a person who has blown the whistle be made a criminal and disciplinary offence;

- a person who has made a disclosure be given protection against discrimination or retaliatory action;

- the Commonwealth and Defence Force Ombudsman be given the responsibility of seeing to the implementation and the enforcement of the protection provisions as well as providing counselling and guidance to whistleblowers;

- individual agencies and the Commonwealth and Defence Force Ombudsman report in their annual reports on the number and nature of complaints and the responses thereto;

- the making of reports known to be false or misleading be made both a criminal and disciplinary offence;

- the necessary statutory provisions be inserted as a new part of the *Crimes Act 1914* and amendments of the *Inspector-General of Intelligence and Security Act 1986*, and the *Ombudsman Act 1976;*

- the Commonwealth Government provide the resources necessary for the Commonwealth and Defence Force Ombudsman to undertake the whistleblower reporting and protection role; and

- the whistleblower reporting and protection arrangements be reviewed after two full years of operation.

Reward system for informants

7.48 As a part of the rewrite of the Audit Act, DOF has proposed the inclusion of a provision to establish a reward system for informants. At this stage the proposal is only preliminary as the proposed provisions of the new audit legislation are not yet available for discussion.

7.49 The new legislation is intended to contain a provision that would provide a standing appropriation authority under which discretionary rewards could be paid to informants where their information led to the apprehension and conviction of, and the recovery of moneys from, persons who commit fraud, conversion or larceny against the Commonwealth. The reward would be based on up to 50 per cent of the monies recovered from the person, persons or companies convicted and would be made at the discretion of the portfolio Minister in consultation with the Attorney-General. Although people within the public service are not specifically excluded from the proposal, it is envisaged that it is very unlikely that they would be considered for such a reward as the provision of such information is just part of their job.[41]

7.50 DOF acknowledged that the proposal is fraught with some danger. It suggested that the provision merely makes it easier, and more visible, to do what governments may already do in this regard if they wish. The objective is not to make informants rich; rather, it is to make those who could commit fraud feel vulnerable and to deter them. There would be penalties associated with the provision of false information but they are contained in existing laws not in the proposed legislation.

7.51 ACS currently has a system for rewarding external informants whose information leads directly to a prosecution. The system is only used in a very limited way in relation to commercial fraud matters and has most application in criminal cases such as narcotics and prohibited imports and exports. There is no such provision for internal fraud.[42] The AFP also has a policy on informants which includes a payment of rewards. It said this issue is complex and difficult to handle. In relation to the DOF proposal the AFP said while it does not reject it out of hand, it is a matter that needs to be pursued with great care.[43]

7.52 DOF's continuing support for the proposal throughout the inquiry has not generally been matched by that of other agencies.

7.53 The Ombudsman chose not to comment on the merit of the proposal but pointed to the administrative difficulties of the scheme. First, fraud when it occurs is likely to involve large sums of money so that 50 per cent of the amount recovered could often be a considerable sum. Second, the limitation of 50 per cent of the amount recovered could be a disincentive if the informer is aware that the

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41 Evidence, p. 44.
42 Evidence, pp. 180-181.
43 Evidence, pp. 95-96.

proceeds of the fraud already have been dissipated. Finally, the reference of up to 50 per cent may give rise to an expectation of 50 per cent so the basis on which discretions will be exercised in amounts between zero and 50 per cent will need to be deduced. The Ombudsman also suggested other ways of estimating the reward, emphasised that there may be complaints to her about the scheme, suggested that maybe the Ombudsman should be involved in assessing the claims and stressed that DOF should not be seen to be too reluctant to part with the monies particularly when the scheme is first introduced.[44]

7.54 The MPRA noted that although it had no basis to comment on the practicality of the proposal and endorses measures to improve the quality of public administration that there is some potential in the scheme for dispute between the informant and the authority determining the reward as to the payment and level of the reward.[45]

7.55 The DPP expressed mixed views on the proposal. While recognising that it would probably only be relevant in a very small percentage of cases, it stated that from a prosecution point of view it would have '...some difficulty relying on the evidence of a witness who has a direct pecuniary interest in the conviction of the accused.'[46]

7.56 A preliminary view from the PSC was that the reward system is not necessarily appropriate in this field and it perhaps raises some difficult situations in relation to conflict of interest since there is an obligation on the part of public servants to report such matters.[47]

7.57 Significant social and privacy implications of the proposal were raised by the Privacy Commissioner. In particular he stated that the system would turn the community from being a disinterested participant in the criminal justice process into a self-interested participant. He considers such a proposal counter to public expectations and standards, may lead to increased disclosures of personal information without any major returns in fraud control and questions whether the information gained in such circumstances would always be reliable.[48]

7.58 Agencies were divided on their views. Defence supported the system[49] while DFAT strongly opposed it.[50] DEET also expressed concern that such a system would provide encouragement for people to provide information in the hope that there was some substance to it, so that at the end of the day there might be something coming back to them.[51] DSS raised practical difficulties such as does the

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44 Evidence, pp. S1725-S1726.
45 Evidence, p. S1744.
46 Evidence, p. 467.
47 Evidence, p. 455.
48 Evidence, pp. 257 and S1895.
49 Evidence, p. 147.
50 Evidence, pp. 397-398.
51 Evidence, p. 206.

system apply to denunciations, the need for appeal mechanisms, how multiple denunciations would be handled and privacy implications since DSS cannot report to informants on public denunciations.[52] DSS's view was reinforced by the Welfare Rights Centre which argued that the reward system would lead to greater public denunciations of social security fraud resulting in many baseless or unprovable allegations thereby causing an increase in the administrative workload for the department and the unnecessary invasion of privacy of welfare recipients.[53]

Conclusion

7.59 As it is a citizen's duty to report fraud, theft etc and it is part of the responsibilities of public servants to do the same and there is no proof that reward systems promote whistleblowing, the Committee considers the benefits of the proposal do not outweigh the difficulties.

7.60 **The Committee recommends:**

- **there be no formal reward system for informants.**

52 Evidence, pp. 423-424.
53 Evidence, pp. S1187-S1194.

Chapter Eight

Information exchange and LEAN

Introduction

8.1 In its first report on fraud *Matching and catching: Report on the Law Enforcement Access Network*[1] tabled in December 1992 the Committee looked at some general information exchange issues in relation to fraud and the Law Enforcement Access Network (LEAN). A Government response to the report has not yet been received. The Committee believes it raised some important issues in that report and reiterates the importance of the Government responding to it. Given major recent developments with LEAN the Committee has decided to make some additional comments on the system in this report.

8.2 It is proposed that the LEAN system will provide a computer facility to give government departments and agencies with law enforcement and revenue protection responsibilities access to several data bases containing publicly available Australia-wide company records and land ownership data for law enforcement and protection of revenue purposes. The project is being developed and implemented by the Federal Justice Office of the Attorney-General's Department to assist in preventing and detecting fraud.

8.3 In October 1991 the Attorney-General announced the Commonwealth would be proceeding with the LEAN project at a cost of some $30 million over three years to the Attorney-General's Department plus about $90,000 to each agency linking into the system.

8.4 While the Committee acknowledged the objectives of the project, particularly in the current economic climate, and recognised the complexities of the task of implementing the LEAN facility, the results of the Committee's work revealed major shortcomings in the way the project was being developed. Fifteen recommendations were made to redress the deficiencies identified.

8.5 In the 1993-94 budget the Government announced it had deferred implementing the project until the next budget cycle (1994-95) to allow further development to take place including decisions with the States and Territories on the supply of land data. The revised budget estimates are at Table 8.1.

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1 House of Representatives Standing Committee on Banking, Finance and Public Administration. November 1992. *Matching and catching: Report on the Law Enforcement Access Network.* Canberra, AGPS, 73p.

TABLE 8.1: EXPENDITURE ON LEAN

Year	LEAN Expenditure $ million
1991-92	0.727 (actual
1992-93	1.761 (actual)
1993-94	2.057 (projected)
1994-95	24.0 (projected)
1995-96	3.1 (projected
Total	$31.6 million

Note: Projections for 1994-96 dependant on cost benefit analysis and review of project by Cabinet. Total figure allows for reduction in overall funding due to salary on costs estimated at $1.9 million.

Source: Evidence, p. S1983.

8.6 In response to this situation the Attorney-General's Department advised that for 1993-94 it has reduced the staff working on LEAN from fifteen to seven (five permanent and two on temporary transfer) and the project has a budget of no more than $2 million. Further drafts of the MoU have been prepared and discussions on both policy and technical issues are taking place with the States and Territories. To resolve the issue of State and Territory participation the Attorney-General has written to his State and Territory counterparts proposing that LEAN be placed on the agenda for the next meeting of SCAG on 4 November 1993 with a view to a final position being taken by SCAG in February 1994. The issue will also be placed on the agenda for the next meeting of the Australasian Police Ministers' Council on 26 November 1993.[2]

8.7 As well as the material from the Attorney-General's Department the Committee also received further submissions on LEAN from the Privacy Commissioner, the Premier of Queensland and the CJC.

2 Evidence, p. S1927.

Financial viability

8.8 The Attorney-General's Department provided the Committee with a further statement on the financial viability of the project based on the 1991 Cabinet decision. The cost of LEAN from now is expected to be some $26.4 million to establish and run over the next five years with a return of $123 million over that period. The initial savings estimates by other agencies were confirmed and the Attorney-General's Department noted that additional agencies have agreed to participate.[3] The benefits and costs together with the gain and loss of the project as supplied by the Attorney-General's Department are at Tables 8.2 and 8.3 respectively. These tables demonstrate the analysis is limited.

8.9 The annual savings of $1.4 million previously attributed to Defence using LEAN to check temporary residential allowances are now not included.[4] Defence has taken other action to tighten checking of those allowances and the savings are already being achieved. Since the Committee's initial report a further two studies by the DSS and the ANAO have seriously brought into question the accuracy of the expected savings from data-matching activities.[5]

8.10 The pilot project for LEAN ran from February to August 1991, the request for tender for the system was issued in December 1991, the preferred tenderer selected in December 1992 with commencement of the system slipping from June 1992 to mid 1993 and again to 1994-95.[6]

8.11 In its first report the Committee recommended that if there were any further delays in the implementation of the facility the cost-benefit analysis for the system be reviewed and the needs for the project re-examined as with time users were likely to have developed other strategies to achieve the projected savings expected from using LEAN and advances in technology were likely to have overtaken the technology proposed for the system. At that time commencement of the system was scheduled for mid 1993. Given the substantial delays in implementation and Defence achieving its savings in other ways, LEAN's position at the cutting edge of technology must be in question.

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3 Evidence, pp. S1928-S1929.

4 Evidence, pp. S1928-S1929.

5 Department of Social Security and the Data-Matching Agency. October 1993. *Data-matching program: Report on progress October 1993.* Canberra, AGPS, 143p. and The Auditor-General. *Department of Social Security: Data-matching.* Audit Report No. 7 1993-94. Canberra, AGPS, 50p.

6 Attorney-General's Department. January 1992. *Request for tender for supply of hardware, software and services to implement a Law Enforcement Access Network (LEAN) for the Attorney-General's Department.* Canberra, Attorney-General's Department, p. 4; House of Representatives Standing Committee on Banking, Finance and Public Administration. November 1992, op. cit., p. 51 and Evidence, p. S1927.

TABLE 8.2: BENEFITS AND COSTS OF LEAN

Benefits	Cost
revenue gains of $100m over 5 years	$26.4m over five years
reduced program costs of $29.5m over 5 years	
a replacement for current inefficient search methods to check on company and land ownership	
capacity to identify criminal assets and company relationships	
a cost effective mechanism for obtaining data which is currently unrealistically priced	

Source: Evidence, p. S1929.

TABLE 8.3: THE GAIN/LOSS IN THE ABSENCE OF LEAN

Gain	Loss
non-expenditure of $24.3m	revenue of $100m
	reduced program costs of $22.5m (Defence's contribution not included)
	the message that agencies need not worry about fraud control strategies because the Government will not support LEAN
	cost effective investigation tools that will enhance ability to deal with complex financial crimes
	cutting edge technology for use in the campaign against crime

Source: Evidence, p. S1929.

8.12 Based on the information presented to the Committee the review of proposed expenditure on LEAN (including the financial implications of all the options for the future of the project) undertaken in the context of preparations for the 1993-94 budget should not be taken as a substitute for the review of the need and cost-benefits of the system the Committee recommended because the pre-budget review has used the existing 1991 Cabinet data and merely confirmed the savings.[7]

Conclusion

8.13 Based on the information presented, while there may be substantial benefits to the Commonwealth in increased use of advanced technology in the campaign against crime etc, the Committee has not been presented with any evidence to dissuade it from its initial view, outlined in its first report on LEAN, that the cost-benefit ratio of the LEAN project in monetary terms is not substantial.

8.14 **The Committee recommends:**

- **as a matter of priority, the need for the LEAN facility be reviewed and a new cost-benefit analysis using up-to-date data be prepared, by an independent consultant, with the results made public immediately.**

Administration and accountability

8.15 In December 1992 the Committee recommended that legislation be put in place within the next two years to govern the operation of the LEAN system. The need for this legislation has been supported by both the Privacy Commissioner and the Premier of Queensland, with the Privacy Commissioner recommending that it be in place before the system commences.[8] The CJC believes separate legislation is not warranted.[9] The Queensland Government is particularly concerned that there be legislation which protects data, data subjects, data custodians and owners and provides adequate processing security. It further suggests such legislation should either be Commonwealth legislation or all participating jurisdictions should have in place uniform or mirror legislation. The delay in the implementation of LEAN until 1994-95 facilitates the implementation of legislation. Given that the Commonwealth is developing the system, albeit in cooperation with the States and Territories, Commonwealth legislation should be developed.

8.16 Some progress has been made by the Attorney-General's Department in developing the MoU covering data providers, user agencies and the Federal Justice Office as project and facility manager. The current proposal is for a MoU to be signed by each State and Territory rather than one for each participating agency.

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7 Evidence, pp. S1928-S1929.
8 Evidence, pp. S1849, S1899 and S1910.
9 Evidence, p. S1969.

The third draft of the *Conditions for Participation* document (the precursor to the MoU) was given to the Committee in January 1993 and the first draft of the MoU was provided in September 1993. The Privacy Commissioner has stressed that both the user and data provider aspects of the MoU should be furnished before any contracts are entered into for the supply of data.[10]

8.17 **The Committee recommends:**

- **as a matter of priority, legislation be introduced to govern the operation of LEAN; and**
- **all aspects of the Memorandum of Understanding be finalised and publicly available before any contracts are entered into for the supply of data for LEAN.**

Management of the system

8.18 The latest proposals for the management of the system are set out in the draft MoU of September 1993. There would be a board of management for LEAN consisting of permanent representation by the Federal Justice Office, Attorney-General's Department as chair; a representative of the largest single user agency of the facility; a representative of privacy interests; two representatives from Commonwealth, State or Territory data supplying agencies; and two representatives from Commonwealth, State or Territory user agencies. The Privacy Commission would have observer status at the meetings. Representatives would be appointed for a period of 12 months.

8.19 The board would have wide ranging powers from the right to (in consultation with participating agencies) recommend the dismantling of the facility, to approve new users, to suspend or expel a user agency for misuse of the system and to vary the conditions of the MoU (in agreement with the signatories of the MoU). The responsibilities of the board would also be wide, including determining operational policies and procedures, resource and development priorities, consulting participants on any issue which affects the use of the facility and considering new purposes for LEAN.

Conclusion

8.20 The proposed arrangements for the management of the LEAN facility seem appropriate.

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10 Evidence, p. S1849.

Data on LEAN

8.21 At this stage the Attorney-General's Department has said that although business names data is included in the scope statement for LEAN it is not pursuing the inclusion of this data until the land data issue is resolved. Ongoing concerns about the scope of the definition of land data should be alleviated by the introduction of legislation to cover LEAN. One Queensland department raised concerns about requests to upgrade the quality of data on LEAN.[11] As with any information system the data on LEAN must be of a reasonable quality or future users of the system may quickly become disillusioned and stop using the system.

Conclusion

8.22 An appropriate level of quality and timeliness of data on LEAN is essential to the success of the data base. Any State and Territory concerns about the quality of data on LEAN, and their need to take responsibility for this, must be resolved by the Attorney-General's Department before contracts are entered into for the supply of data.

Public access and amendment rights

8.23 A Queensland department has requested that the public access and amendment right be extended to corporate entities and another Queensland agency recommends that there should be no restrictions on an individual's access to data on LEAN about themselves, except where access to that data may be prejudicial to an ongoing investigation.[12] The Committee supports the first request and notes in relation to the second that if the system generally follows the Commonwealth Information Privacy Principles then there is an exemption for law enforcement purposes. The Privacy Commissioner has recommended that where individuals identify errors in data on LEAN, the LEAN administrator should consult the data-supplier rather than sending the individual back to the data-supplier.[13] The Attorney-General's Department reported that one of the conditions of purchasing data for the LEAN system is that user agencies not amend it.

8.24 **The Committee recommends:**

- **the Attorney-General's Department ensure the final Memorandum of Understanding includes a requirement for individuals and corporate entities to have access to data about themselves which is contained on the LEAN facility and that such information be provided promptly and at no cost to the individual or corporate entity concerned; and**

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11 Evidence, p. S1906.
12 Evidence, p. S1907.
13 Evidence, p. S1851.

- **the Attorney-General's Department ensure the final Memorandum of Understanding includes a requirement that individuals and corporate entities be given the right to comment on the LEAN data used by an agency in making a decision about them, such as termination of a benefit, within a reasonable time period before any adverse decision becomes final.**

Privacy issues

8.25 Some progress has been made on data-matching with the Attorney-General's Department reporting that the Privacy Commissioner's data-matching guidelines basically have been used, though with a number of variations negotiated. Resolution of this issue is important since at least one Queensland agency has expressed interest in downloading bulk data for matching purposes.[14] It appears that downloading data for data-matching by State and Territory agencies will be more significant than the Attorney-General's Department initially envisaged.[15] This reinforces the need for a sound legislative base to the system.

8.26 The Privacy Commissioner has requested that, as well as all agencies using LEAN for data-matching purposes including details of compliance with the Privacy Commissioner's data-matching guidelines for LEAN for data-matching activities in their annual reports, a copy of that statement also be provided to him.[16] The Committee supports the request.

8.27 The Queensland Government has given in principle support to participation in LEAN subject to a number of stringent privacy conditions which impact on the MoU. These relate to the MoU containing: a minimum standard of practice equivalent to the Data Matching Guidelines; a uniform system of penalties for offenders to the security of the system; and a system to provide compensation to persons, whether natural or corporate, aggrieved by breaches of confidentiality.[17]

8.28 In its first report, the Committee recommended the MoU include administrative procedures regarding the Commonwealth privacy principles that will apply to LEAN participants from the States and Territories as well as recommending SCAG urge all State and Territory Governments to develop and adopt a common set of principles for privacy legislation. The Committee appreciates the Privacy Commissioner's concern that the second initiative not be seen as a substitute for the first as this was not the Committee's intention.[18]

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14 Evidence, p. S1904.
15 Evidence, pp. S1156-S1157 and S1706-S1707.
16 Evidence, p. S1852.
17 Evidence, pp. S1899 and S1908.
18 Evidence, p. S1853.

Conclusion

8.29 The Committee reiterates that the MoU should include administrative procedures which reflect the principles of the Commonwealth's Privacy Act that will apply to State and Territory participants in LEAN.

8.30 **The Committee recommends:**

- **the Attorney-General's Department ensure the final Memorandum of Understanding for LEAN includes a uniform system of penalties for misuse of the facility and a system to compensate persons or corporations having proven grievances involving breaches of confidentiality; and**

- **all agencies using data from LEAN for data-matching include in their annual report details of compliance with the Privacy Commissioner's data-matching guidelines for LEAN data-matching, and provide a copy of that statement to the Privacy Commissioner.**

State Government participation

8.31 The strategy the Attorney-General's Department has adopted to finalising this issue has been outlined above.

Conclusion

8.32 The strategy the Attorney-General's Department has adopted to complete negotiations with the State and Territory Governments on the provision of land data seems appropriate. However, the Committee is concerned that the Attorney-General's Department had allowed this situation to develop to the stage where it has been mentioned by the Privacy Commissioner that financial incentives have been offered to finalise this aspect of the scheme.[19]

General conclusion

8.33 The Committee notes that in the 1993-94 budget the Government announced it had deferred implementing the LEAN project until the 1994-95 budget cycle. This was to allow further development of the system, including agreements with the States and Territories on the supply of the basic land data.

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19 Evidence, p. S1854.

8.34 There has been limited progress with the development of LEAN since the Committee initially reported on it in November 1992. The Attorney-General's Department has been more open and public in its approach to the project, and the administrative arrangements have progressed to a stage where a draft MoU is being considered by the State and Territory Governments. However, while a strategy is in place to finalise negotiations with the State and Territory Governments on the provision of land data, no agreements have been signed and some basic privacy concerns still have to be resolved. The Committee remains unconvinced that the cost-benefit ratio of the project in monetary terms for the Commonwealth is substantial.

8.35 The Committee has reiterated the need to put this project on a sound legislative footing and has recommended legislation be introduced as a matter of priority.

8.36 The Committee's concerns with the particular way in which the LEAN project has been implemented should in no way be seen as it not being supportive of the critical role which advanced information technology can and does play in combating fraud.

Chapter Nine

Coordination

Future coordination arrangements

9.1 The clear focus of the Government's policy on fraud control has been to place the onus of responsibility on the management of agencies and to make fraud control a much wider issue than just law enforcement. This means that there are a large number of agencies involved in the fraud control process. Coordination is essential in this dispersed system to ensure the full range of fraud control strategies are effectively implemented, to ensure any lessons learnt in one area are passed on to other agencies and to maintain a Commonwealth-wide perspective as well as develop a comprehensive picture of overall performance in fraud control at the Commonwealth level.

9.2 Responsibility for coordination has been assumed by the Fraud Policy and Prevention Branch of the Attorney-General's Department. Its focus is policy, setting standards, quality control of fraud control documents and exchange of information as outlined at paragraphs 3.26 - 3.31.

9.3 It is currently not responsible for evaluating the effectiveness of strategies introduced; monitoring the effectiveness of investigation, prosecution and recovery; acting as a central point for complaints; exchange of case information; or acting as a central point for collecting statistics. The first responsibility is undertaken by internal audit and the ANAO; the second, to the extent to which it occurs, is done by the AFP, the DPP and the AGS; the third largely rests with the Ombudsman; the fourth does not occur to any great extent because of legislative provisions in some acts and the Privacy Act; and the fifth is not done. DOF with its policy and standards setting roles as a result of its carriage of the new audit legislation also has some coordination responsibilities in relation to fraud. Earlier in this report the Committee has recommended the AFP play a greater role in coordinating all fraud investigation work.

9.4 The Fraud Policy and Prevention Branch has a staff of ten of whom one officer is responsible for the fraud control work with shared clerical support and input by the Branch Head. The remaining officers work on the LEAN project. The Attorney-General's Department reported that, in the past, there was a staff of four on fraud control. However, in keeping with the Government's direction of fraud

control as an agency responsibility, as the activities of the Branch evolved from quasi-regulatory to being service oriented the staffing of the function has reflected this approach. The Department was not seeking to increase this staffing level.[1]

9.5 Agencies were generally supportive of the coordination role the Attorney-General's Department has played and several expressed the need for more assistance with precedents of cases, 'best practice' guides, risk assessments and developing performance measures and standards. The Committee is concerned that the fraud policy and monitoring work of the Fraud Policy and Prevention Branch has been largely overshadowed by the priority given to the LEAN project which the Attorney-General's Department regards as providing an information technology infrastructure for fraud control. With only one member of staff working on fraud policy and monitoring for the past couple of years it is perhaps not surprising that the *Guidelines for officers dealing with fraud on the Commonwealth* were only issued early this year and a draft *Best practice guide* circulated in September 1993. This situation is unsatisfactory since it is documents such as those that assist agencies to clarify roles and improve performance.

9.6 For the reasons already outlined, the Committee does not support the view that with the focus on management's responsibility for fraud control and the inclusion of standards and procedures for fraud control plans in the new audit legislation that there will be no further need for central coordination. A more 'let the managers manage' approach may be appropriate in other areas of management reform in the APS, such as the devolution of financial management responsibilities, where agencies already had some skills and expertise in the area and there were extensive directions and regulations available to guide performance. This is not the case in fraud control where, in many instances, new expectations were placed on agencies and there were no existing guidelines and directions.

9.7 The options for undertaking the ongoing coordination task are to establish a new agency to undertake the task, task an existing agency with fraud control coordination or continue with the current arrangements. If a new agency were established it could be along the lines of a Serious Fraud Office type of body or a United States of America style Inspector-General, with the former purely a law enforcement organisation and the latter a quality control mechanism more akin to the ANAO, or a combination of both.

9.8 While a new agency would enable a range of skills and expertise to be developed in one agency, it would be difficult to justify the costs solely for fraud control purposes. For each of the possible existing agencies such as DOF, the ANAO or the AFP the new role would appear to be of a significantly different nature to their present role. Given that the Attorney-General's Department has some authority, expertise and credibility in the field and is part of the Commonwealth's law enforcement coordination mechanism, a formalisation and continuation of the present arrangements seems appropriate at his time.

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1 Evidence, pp. 17-18 and S219.

9.9 However, the Committee believes that the Attorney-General's Department must give a higher priority to its fraud coordination work. Details of the particular functions that need to be undertaken have been outlined in earlier sections of this report.

9.10 **The Committee recommends:**

- **the Attorney-General's Department be responsible for the coordination of fraud control arrangements.**

9.11 In July 1993 the Minister for Justice established an internal Steering Committee to review the Commonwealth's total law enforcement arrangements, whereas this inquiry has only looked at fraud control. Following its broader review, the Steering Committee may recommend the establishment of a new agency with a multi-disciplinary approach to law enforcement and with responsibilities which include coordination of fraud control. Should that happen, this Committee would support the transfer of the coordination function to the new body. Such a body could give this responsibility the focus and variety of expertise it needs, and may be cost effective when viewed in the broader context.

Liaison and cooperation

9.12 The importance of liaison and cooperation between agencies is self evident. Rarely do those who commit fraud restrict their activities to one agency or program. Bilateral liaison arrangements between agencies and the AFP, DPP, etc. have been outlined in earlier sections of the report. Fraud liaison forums are held on a regular basis in Canberra and the regions in response to recommendation 6 of the Review of Fraud. They are arranged by the Attorney-General's Department. These involve both upstream and downstream agencies exchanging information at a strategic level on trends in handling cases, resource issues, priorities, strategies etc. The success of these forums was reported to be variable and it is not apparent whether they achieve anything in relation to resource planning. There is scope for greater involvement of a wider variety of agencies such as DOF, the ANAO and the PSC in the process. The Attorney-General's Department considers the current arrangements adequate and would have reservations about the benefits of imposing any more formalised arrangements than exist at present.[2]

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2 Evidence, p. S220.

Conclusion

9.13 Rather than putting in place a new liaison structure the Committee believes the current arrangements regarding fraud liaison forums should be revised.

9.14 **The Committee recommends:**

- **the Attorney-General's Department revise the arrangements for fraud liaison forums to achieve a more targeted agenda with agencies such as the Department of Finance, the Australian National Audit Office and the Public Service Commission invited to participate in sessions to discuss their roles in the fraud control process.**

PAUL ELLIOTT, MP
Chairman
18 November 1993

Appendix One

Conduct of the inquiry

As is its practice, the Committee appointed a Sub-committee to undertake the inquiry.

In conducting this inquiry it was particularly important to the Committee that it heard the views of as many Commonwealth departments and agencies, public officials and members of the community as possible. Accordingly, the inquiry was advertised in major newspapers on 27 and 28 March 1992. In April 1992 the Committee also wrote to all Ministers, heads of statutory authorities involved in fraud control, State Premiers and privacy groups seeking submissions. To ensure all public servants were aware of the inquiry the cooperation of the Secretaries of Commonwealth departments was sought in bringing the inquiry to the attention of their staff. Accordingly, a number of Secretaries advertised the inquiry in their departmental newsletters. In June 1993 following the re-referral of the inquiry the Committee wrote to the heads of all major Commonwealth agencies involved in fraud control and the State Premiers inviting them to make a further submission, update their previous submission or bring any additional matters to the Committee's attention.

The Committee received 93 submissions from a wide cross-section of the target audience; a list of these submissions and their authors is at Appendix 2 and exhibits received are listed at Appendix 3. A small number of individual submissions and complaints of specific cases of fraud by individuals and in particular departments were received. Where appropriate these cases were referred to specific agencies for comment as well as the issues raised being considered in a general way in the Committee's investigation.

In developing its public hearing program the Committee did not seek to take evidence from all government departments and agencies affected by fraud and with fraud control programs. Rather, the Committee focussed its attention on those organisations which had been identified by the Review of Fraud as being in the high risk fraud category with special attention to departments which were the subject of the ANAO audits as well as the law enforcement agencies. At the departmental hearings the Committee met mainly with central office representatives but there were also two hearings with regional offices of selected departments in Sydney and Melbourne to obtain a regional perspective. Some hearings were also held with agencies in the medium to low risk fraud category. There was also a day of hearings specifically addressing the issues of ethics, codes of conduct and whistleblowing and a day to address information exchange, privacy issues and the LEAN system.

In total the Committee took evidence from 70 witnesses (see Appendix 5) representing 21 organisations at nine public hearings between 5 June and 19 August 1993. Details of the hearing program are provided at Appendix 4.

The submissions and public hearing transcripts have been incorporated into several volumes which are available for inspection at the National Library of Australia, Commonwealth Parliamentary Library and the Committee Secretariat. References to the evidence in the text of this report refer to the page numbers in the submissions volumes and public hearing transcripts.

In addition, informal discussions were held on eight occasions between 30 April 1992 and 3 August 1993 (see Appendix 4). Two of the discussions were with representatives of fraud control and related agencies from New South Wales, Victoria, Queensland and South Australia to follow-up on state fraud prevention and control activities, one each with representatives from the HIC and DOF, two with the Attorney-General's Department and the other two discussions focussed on the LEAN system.

To assist the Committee in its comparative work a background paper on the way in which fraud against government is handled by several overseas jurisdictions - the United States of America, the United Kingdom, New Zealand and Canada - and by the Australian states was prepared by the Department of the Parliamentary Library[1] for the Committee.

The Committee's work on the dimensions of fraud also benefited from the results of a small survey undertaken in March 1993 by the AFP of fraud cases reported in departmental annual reports. [2]

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1 Department of the Parliamentary Library. Parliamentary Research Service. Law and Government Group. June 1992. *Unpublished paper prepared for the House of Representatives Standing Committee on Banking, Finance and Public Administration: Inquiry into fraud on the Commonwealth on the regulation and control of fraud against government in several overseas jurisdictions and the Australian States.* 31p appendices. Prepared by Margaret Harrision-Smith.

2 Evidence, pp. S1874-S1875.

Appendix Two

List of submissions

No.	Name of person/organisation
Submissions 1-3 authorised for publication on 30 April 1992	
1	Department of Treasury
2	Australian Federal Police
3	Mr Geoff Cadogan-Cowper
Submissions 4-6 authorised for publication on 28 May 1992	
4	Department of Defence
5	Mr Roger Brown
6	Australian Taxation Office
Submission 7 authorised for publication on 2 June 1992	
7	Criminal Justice Commission
Submissions 8-11 authorised for publication on 28 May 1992	
8	Privacy Commissioner
9	Australian Federal Police
10	Australian National Audit Office
11	Australian National Audit Office
Submissions 12-18 authorised for publication on 2 June 1992	
12	Department of Primary Industries and Energy
13	Office of the Auditor General - Western Australia
14	Attorney-General's Department
15	Minister for Finance
16	Department of Industry, Technology and Commerce
17	Attorney General - South Australian Government
18	Commonwealth Director of Public Prosecutions
Submissions 19-33 authorised for publication on 25 June 1993	
19	Department of Veterans' Affairs
20	Department of Foreign Affairs and Trade
21	Mr Geoff Bown
22	Ms Carolyn Currie
23	Department of Social Security
24	Australian Customs Service
25	Department of Immigration, Local Government and Ethnic Affairs
26	Department of Defence

27 Department of the Arts, Sport, the Environment and Territories
28 Department of Employment, Education and Training
29 Public Sector Union
30 Department of Health, Housing and Community Services
31 Australian National Audit Office
32 CSIRO
33 Mr Geoffrey Manners

Submissions 34-35 authorised for publication on 16 July 1992
34 Australian National Audit Office
35 Public Service Commission

Submission 36 authorised for publication on 26 June 1992
36 Australian Federal Police Association

Submissions 37-41 authorised for publication on 16 July 1992
37 Department of Transport and Communications
38 National Crime Authority
39 Mr Bob Filipovich
40 Australian Privacy Foundation
41 Department of Social Security

Submission 42 authorised for publication on 17 July 1992
42 Attorney-General's Department

Submissions 43-47 authorised for publication on 20 August 1992
43 Premier of Queensland
44 Department of Social Security
45 Welfare Rights Centre
46 Department of Administrative Services
47 Whistleblowers Anonymous

Submissions 48-55 authorised for publication on 18 September 1992
48 NSW Privacy Committee
49 Attorney-General's Department
50 Mr F O Eliason
51 Department of Social Security
52 Department of Social Security
53 Department of Health, Housing and Community Services
54 Department of Social Security
55 Privacy Commissioner

Submissions 56-59 authorised for publication on 26 September 1992
56 Department of Defence
57 Mr Tony McRae
58 Commonwealth and Defence Force Ombudsman
59 Administrative Appeals Tribunal

Submission 60 authorised for publication on 7 October 1992

60 Attorney-General's Department

Submissions 61-62 authorised for publication on 26 October 1992

61 Management Advisory Board
62 Attorney-General's Department

Submissions 63-66 authorised for publication on 11 November 1992

63 Attorney-General's Department
64 Merit Protection and Review Agency
65 Mr W F Toomer
66 Privacy Commissioner

Submissions 67-69 authorised for publication on 26 November 1992

67 Detective Superintendent Clifford J Crawford
68 Department of Social Security
69 National Crime Authority

Submissions 70-71 authorised for publication on 27 May 1993

70 Mr Keith Potter
71 Department of Employment, Education and Training

Submissions 72-77 authorised for publication on 19 August 1993

72 Whistleblowers Australia
73 Privacy Commissioner
74 Department of Industrial Relations
75 Department of Transport and Communications
76 Department of Employment, Education and Training
77 Australian Federal Police

Submissions 78 authorised for publication on 30 August 1993

78 Department of the Environment, Sport and Territories

Submissions 79-85 authorised for publication on 30 September 1993

79 Privacy Commissioner
80 Premier of Queensland
81 Department of the Arts and Administrative Services
82 Commonwealth and Defence Force Ombudsman
83 Australian National Audit Office
84 Attorney-General's Department
85 Attorney-General's Department

Submissions 86-87 authorised for publication on 21 October 1993

86 Public Sector Union
87 Department of Primary Industries and Energy

Submissions 88-90 authorised for publication on 28 October 1993

88 Director of Public Prosecutions
89 Merit Protection and Review Agency
90 Australian National Audit Office

Submissions 91-93 authorised for publication on 15 November 1993

91 Criminal Justice Commission
92 Attorney-General's Department
93 Director of Public Prosecutions

Appendix Three

List of exhibits

No.	Name of person/organisation
Incorporated in the Committee Records 25 June 1992	
1	Letter and paper entitled 'Current Trends in Public Sector Fraud and Corruption' by Bruce Swanton received from: Mr Duncan Campbell Director, Australian Institute of Criminology
2	Papers entitled 'Citizen co-production and corruption control' and 'Controlling Fraud, Waste and Abuse in the Public Sector' by and received from: Mr P N Grabosky, Director of Research, Australian Institute of Criminology
3	Paper entitled 'The Privacy Act: Relevance for Fraud Control and Investigation' (IIR Fraud Management Series, Combating Fraud and Corruption in Government conference) received from: Privacy Commissioner
4	Paper entitled 'A Report on the Evaluation of the LEAN Pilot' received from: Fraud Policy & Prevention Branch, Federal Justice Office, Attorney-General's Department
5	Paper entitled 'Law Enforcement Access Network (LEAN) Briefing Paper' received from: Fraud Policy & Prevention Branch, Federal Justice Office, Attorney-General's Department
6	Paper entitled 'Request for Tender for Supply of Hardware, Software and Services to implement a Law Enforcement Access Network (LEAN) for the Attorney-General's Department' received from: Fraud Policy & Prevention Branch, Federal Justice Office, Attorney-General's Department
7	Paper entitled 'Corruption Prevention and Fraud Risk Assessment in the Public Sector Conference' received from: Fraud Policy & Prevention Branch, Federal Justice Office, Attorney-General's Department

8 Report on 'Review of Public Sector Auditing in Queensland' received from: Electoral and Administrative Review Commission, Queensland

9 'Report on Protection of Whistleblowers' received from: Electoral and Administrative Review Commission, Queensland

Incorporated in Committee Records 5 June 1992

10 Pamphlet: 'What is Fraud' received from: Department of Finance

11 Paper entitled 'Fraud Control Statement' received from: Department of Finance

Incorporated in Committee Records 20 August 1992

12 Booklet entitled 'Operational Modelling' received from: Australian Customs Service

Incorporated in Committee Records 25 June 1992

13 Documents received: from Mr G Manners, Isle of Man

Incorporated in Committee Records 16 July 1992

14 Report entitled 'Fraud Risk - No Surprises: How to Assess the Risk of Fraud in Your Program Then Deciding What You Can Do About It' received from: Department of Employment, Education and Training

Incorporated in Committee Records 20 August 1992

15 Pamphlet: 'Why Should You Contact the Defense Hotline?' received from: Department of Defence

16 Report entitled 'Semiannual Report to the Congress' received from: Department of Defence

17 Report entitled 'Data-Matching in Commonwealth Administration: Report to the Attorney-General' received from: Privacy Commissioner

18 Report entitled 'White-Collar Crime - *A Report to the Public*' received from: Department of Defence

19 Letter and attachments received from: Australian Federal Police

Incorporated in Committee Records 14 August 1992

20 Graphs JSA/NSA Random Sample Graphs received from: Department of Social Security

Incorporated in Committee Records 18 September 1992

21 Privacy Committee of New South Wales - Annual Report 1990

22 Paper A Two-year Debt Management Plan for Student Assistance Programs received from: Department of Employment, Education and Training

23 Paper How Fraud Matters are Handled in DEET received from: Department of Employment, Education and Training

Incorporated in Committee Records 26 September 1992

24 Annex B: High Court Judgements on the Subject of Jurisdiction received from: Department of Defence

25 Document 'Sanctions Applicable to Public Servants and Canadian Forces Members' from Mr G Ryle, National Defence, Canada received from: Department of Defence

Incorporated in Committee Records 6 October 1992

26 'Standard of Conduct' received from: Public Service Commission

27 Extract from 'Public Service Regulations' received from: Public Service Commission

28 Document entitled 'Personnel Management Manual Volume 3' received from: Public Service Commission

29 Report entitled 'A Framework for Human Resource Management in the Australian Public Service' received from: Public Service Commission

Incorporated in Committee Records 26 November 1992

30 'The issues paper prepared by the Standing Committee of Attorney-General ('SCAG') after the SCAG meeting in Melbourne on 7 August 1992 entitled "Complex Fraud Trials"' received from: Commonwealth Director of Public Prosecutions

31 'Three papers prepared by the US President's Council on Integrity and Efficiency ("PCIE") entitled respectively "A Progress Report to the President"; "Model Prevention Plan" and "Report on Model Prevention Plan Follow-up Project"' received from: Commonwealth Director of Public Prosecutions

32	'The reference to the PCIE contained in the 7th Edition (1990-1991) of the US Encyclopedia of Governmental Advisory Organisations' received from: Commonwealth Director of Public Prosecutions
33	Document 'Code of Conduct for Public Employees' received from: South Australian Public Sector Fraud Coordinating Committee
34	'Guidelines for Ethical Conduct for Public Employees in South Australia' received from: South Australian Public Sector Fraud Coordinating Committee
35	'Whistleblowers Protection Bill 1992' received from: South Australian Public Sector Fraud Coordinating Committee
36	'A Guide to Internal Controls in the Victorian Public Sector' received from: Victorian Department of Finance
37	'LEAN Press Cuttings & Media Coverage' received from: Attorney-General's Department
38	'Treasury Regulations 1992 S.R. No. 123/1992' received from: Victorian Department of Finance
39	'Fraud Control Plan Guide-lines' received from: Victorian Department of Finance
40	'Four Questions Put to Would-be Whistleblowers' received from: Mr John McNicol, Whistleblowers Anonymous
41	'Additional documentation relating to the Toomer case' received from: Mr John McNicol, Whistleblowers Anonymous
42	'In Whose Interest? - Corruption 18 Issues to Consider' received from: Independent Commission Against Corruption
43	'The First Two Years - 19 Key Issues' received from: Independent Commission Against Corruption
44	'Financial Transaction Reporting in Australia: International Telegraphic Transfers' received from AUSTRAC
45	'Extracts from 1991/92 Annual Report' received from AUSTRAC
46	'Whistleblowing: some observations concerning the public and private sector experiences' received from: Dr Simon Longstaff, The St James Ethics Centre

47 'Fraud Investigation in Queensland' written by C J Crawford (LLB) Detective Superintendent

48 'Corruption Prevention and Fraud Risk Assessment in the Public Sector Conference Papers', Brisbane, 26 May 1992 received from: Criminal Justice Commission

Incorporated in Committee Records 27 May 1993

49 AUSTRAC: Cost/Benefit analysis relating to the introduction of reporting international funds transfer instructions to AUSTRAC

50 'Fraud on the State - An inquiry' received from: WA Office of the Auditor-General

51 'Trends and Issues in crime and criminal justice' No. 39 Estimates of the Costs of Crime in Australia received from: Australian Institute of Criminology

52 Estimates of fraud against the Commonwealth: comments by the Attorney-General's Department on a paper by the Australian Institute of Criminology Estimates of the cost of crime in Australia received from: Federal Justice Office, Attorney-General's Department

53 Insurance Matters and Litigation Received from: Public Service Commission

54 Report entitled 'Compliance Policies in Social Security' (2 Vols) by Author Richard A Weatherley, received from: Department of Social Security

55 Copy of Letter from Public Service Commissioner to Secretary of the Department of Foreign Affairs and Trade, received from: DFAT

Incorporated in Committee Records 30 August 1993

56 Video 'The Fraud Factor' and 'The Rimmington Case' received from: Department of Employment, Education and Training

Appendix Four

Program of activities undertaken by the Sub-committee

Public hearings

Canberra	5 June 1992
Canberra	26 June 1992
Canberra	16 July 1992
Canberra	17 July 1992
Sydney	27 July 1992
Canberra	14 August 1992
Canberra	28 September 1992
Melbourne	26 October 1992
Canberra	19 August 1993

Informal discussions

Canberra	30 April 1992
Canberra	26 May 1992
Melbourne	26 October 1992
Canberra	9 November 1992
Canberra	10 November 1992
Sydney	16 November 1992
Canberra	27 May 1993
Canberra	3 August 1993

Appendix Five

List of witnesses appearing at public hearings

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

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

Mr Graham Koehne Senior Director, Audit Operations	14 August 1992
Mr Lindsay Roe Senior Director, Audit Operations	14 August 1992
Australian Privacy Foundation	
Mr Simon G Davies Spokesman	17 July 1992
Mr Timothy E Dixon Director	17 July 1992
Austalian Taxation Office	
Mr Harold Hepburn Taxpayer Audit Group	17 July 1992
Mr John A Wharton Director, Privacy	17 July 1992
Department of the Arts and Administrative Servies	
Mr Peter J Grills Assistant General Manager	19 August 1993
Department of Defence	
Major-General Arthur J Fittock Deputy Chief of General Staff	16 July 1992
Commodore Murray B Forrest Chief of Staff, Naval Support Command Headquarters	27 July 1992
Mr Francis R Harvey Inspector-General	16 July 1992 27 July 1992
Mr Peter W Hider Regional Secretary - New South Wales	27 July 1992
Dr Vernon Kronenberg Assistant Secretary, General Investigations and Review	17 July 1992

Brigadier Iain G A MacInnis Chief of Staff, Land Headquarters - Army	27 July 1992
Mr Ronald N McLeod Deputy Secretary, Budget and Management	16 July 1992
Air Vice-Marshall Thomas W O'Brien Deputy Chief of Air Staff	16 July 1992
Brigadier William Rolfe Director-General, Defence Force Legal Services	16 July 1992
Rear-Admiral Rodney G Taylor Deputy Chief of Naval Staff	16 July 1992
Department of Employment, Education and Training	
Ms Helen Connor Direct, Fraud Control and Privacy Section Risk Management and Communications Branch	16 July 1992 17 July 1992
Mr Paul W Hickey Deputy Secretary	16 July 1992
Ms Jennifer Ledgar Assistant Secretary, Risk Management and Communications Branch	16 July 1992
Mr Keith Thomas Director, Benefits Control	16 July 1992 17 July 1992
Department of Finance	
Mr John V Galloway Assistant Secretary, Resource Policies and Management Branch	5 June 1992
Mr Maurice J Kennedy Assistant Secretary, Accounting Policy Branch	5 June 1992
Mr Gary J Smith Director, Management Review, Evaluation and Securities Section	5 June 1992

Department of Foreign Affairs and Trade

Mr William J Farmer First Assistant Secretary, Corporate Services Division	14 August 1992
Mr Geoffrey J Forrester Deputy Secretary	14 August 1992
Ms Glenda Gauci Member, Fraud Prevention and Discipline Section	14 August 1992

Department of Health, Housing and Community Services

Mr Lance Parsons Acting Director, Payments Control Section Audit and Review Branch	16 July 1992
Ms Fiona Tito Assistant Secretary, Audit and Review Branch	16 July 1992

Department of Social Security

Ms Karen Barfoot Assistant Secretary, Resources	14 August 1992
Mr Graham F Campbell Area Manager West, Victoria	26 October 1992
Mr Ian G Carnell First Assistant Secretary, Security, Fraud and Control	17 July 1992 14 August 1992
Mr Des Kelly Area Manager East, Victoria	26 October 1992
Mr Geoffrey Main Director, Fraud Control	14 August 1992
Mrs Frances Marshall Regional Manager, Victoria	26 October 1992
Mr Derek Volker Secretary	14 August 1992

Human Rights and Equal Opportunity Commission

Mr Kevin P O'Connor Privacy Commissioner	17 July 1992

National Crime Authority

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

Office of the Commonwealth and Defence Force Ombudsman

Mr Alan Cameron Ombudsman	28 September 1992
Mr John R Taylor Senior Assistant Ombudsman	28 September 1992

Office of the Director of Public Prosecutions

Mr Ian R Bermingham First Assistant Director	28 September 1992
Mr Edwin J Lorkin Associate Director and Acting Director	28 September 1992
Mr Tom McKnight Senior Assistant Director	28 September 1992
Mr Bruce D Taggart Legal 2, Policy Section	28 September 1992

Public Sector Union

Ms Wendy Caird Acting Assistant National Secretary	14 August 1992

Public Service Commission

Mr Edmund J Attridge First Assistant Commissioner Management Selection and Development Division	28 September 1992
Mr Brian J Gleeson Assistant Commissioner, SES Career Management Branch	28 September 1992

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

Whistleblowers Anonymous

Mr John McNicol — 28 September 1992
President and National Director

Appendix Six

Preparation of departmental annual reports: Sections 47-49 fraud control requirements

FRAUD CONTROL

In March 1987, the Government released the *Review of Systems for Dealing with Fraud on the Commonwealth*. The following requirements relate to recommendations of the review accepted by the Government. Note that these requirements relate only to information which is to be disclosed; they do not affect the scope of recommendation 9 of the Review, which has been accepted by the Government. Recommendation 9 requires all agencies to maintain appropriate records of activities and resource allocations in relation to fraud sufficient to show the nature and outcome of activities to prevent and detect fraud, the allocation of resources to deal with fraud and the extent of reliance on services provided by other agencies in dealing with fraud. For advice regarding the type and extent of such records, departments may contact the Fraud Policy and Prevention Branch in the Attorney-General's Department (270 2231).

47. The annual report is to contain a summary of any action taken by the department during the year:
(a) to assess the risk of fraud; to develop and implement plans or other arrangements for fraud control; and to review those arrangements regularly;
(b) to develop arrangements for referring fraud cases to the Australian Federal Police (AFP) and/or the Director of Public Prosecutions; and
(c) to increase staff awareness of fraud and provide training for staff in the prevention, identification and detection of fraud.
48. The annual report is to contain a statement of the department's policy in relation to dealing with instances of loss to the Commonwealth to determine whether fraudulent action has occurred.

The nature of this statement is to be determined by the Secretary, giving due consideration to the interests of those subject to investigations (which may not proceed) and to the need to avoid prejudicing investigations or subsequent proceedings. The Secretary may wish to include explanation on the following points:

- the nature of the possible offences - for example, against the *Health Insurance Act 1973*, *Crimes Act 1914* etc.;
- whether the department is investigating the cases itself, referring them to the AFP or some mix of those processes;
- the factors considered in determining which cases should proceed.

49. The annual report is also to show:	
(a)	the number of cases referred to the AFP for investigation;
(b)	the results (in summary, not in detail) of any completed prosecution action;
(c)	the level of staffing and associated resources used in the investigation of fraud cases and the use of services provided by other departments and agencies;
(d)	the number of cases handled using administrative remedies, for example disciplinary procedures under the *Public Service Act 1922*; and
(e)	the amount of monies recovered, both by administrative action and use of the judicial process.

Source: *The preparation of departmental annual reports: Draft consolidation incorporating future proposed amendments.* April 1992. Canberra, Department of the Prime Minister and Cabinet, pp. 24-25.