



COMMONWEALTH OF AUSTRALIA

## Official Committee Hansard

# HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ECONOMICS, FINANCE AND  
PUBLIC ADMINISTRATION

**Reference: Tax file number inquiry**

THURSDAY, 10 FEBRUARY 2000

SYDNEY

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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**HOUSE OF REPRESENTATIVES**  
**STANDING COMMITTEE ON ECONOMICS, FINANCE AND PUBLIC ADMINISTRATION**  
**Thursday, 10 February 2000**

**Members:** Mr Hawker (*Chair*), Mr Albanese, Ms Burke, Ms Gambaro, Mrs Hull, Mr Latham, Mr Pyne, Mr Somlyay, Dr Southcott and Mr Wilton

**Members in attendance:** Ms Burke, Mr Hawker, Mrs Hull, Mr Pyne, Dr Southcott and Mr Wilton

**Terms of reference for the inquiry:**

The House of Representatives Standing Committee on Economics, Finance and Public Administration will investigate administrative, policy and client service issues of TFN management, as recently reported by the Australian National Audit Office in audit report no. 37 1998/99. The committee will also inquire into other aspects of the TFN system in Australia.

The committee will pursue its investigation under House Standing Order (324b), which states that the reports of the Auditor-General stand referred to the relevant committee for any inquiry the committee may wish to make.

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**Committee met at 9.47 a.m.****JOHNSTON, Mr Ian Arthur, (Private capacity)**

**CHAIR**—I welcome you to today's public hearing and remind you that the evidence you give at this public hearing is part of the proceedings of the parliament. Therefore I also remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. The committee has received your submission. We are going to make it a public document subject to the qualifications that any reference to other names will be deleted, and I will have the agreement of the commitment to do that after I have given you the option of any amendments or corrections you would like to make.

**Mr Johnston**—I am happy with it as presented.

**CHAIR**—Is it the wish of the committee that the document be published in a separate volume? There being no objection, it is so ordered.

**Mr Johnston**—Sorry, the only possible amendment is that I did not make reference in the submission to a document which is not included in it, which was authored by another person within the ATO. That was on a risk assessment study that was done by somebody else. I am the author of everything else. I mentioned that in the introduction to my submission, so it is not included in the papers.

**CHAIR**—But the reference still is.

**Mr Johnston**—Yes.

**CHAIR**—Mr Johnston, we might now come back to some of the points you raise in the document. The first one I would like to ask you about is: would you like to just elaborate on the extent to which you think the abuses are going on in terms of numbers of people and dollars of tax?

**Mr Johnston**—I was not in a full position to do the type of study that I would like to do, which would be to do proper sampling and then extrapolate that up to total numbers. In the document titled *Residency*, for pro rata I mentioned the number of people. I took an estimate of how I would estimate the number of people who should be pro rata-ing returns, and compared that with the number of returns. For school leavers, for example, I just assumed that virtually everyone leaves school between 15 and 25, so I took the ABS figures for that age group and just divided them by a 10th and said, 'Yes, that's the number I would expect to be leaving.' I took, I thought, a fairly generous figure of 40 per cent for people who were not going to be employed in the first year and said, 'That's the number of school leavers I expect to see.' I assumed for simplicity that they all left in October-November and based the pro rata on that.

I took settler arrivals and settler departures, which I got again from the Bureau of Statistics, and I am reading this here. I assumed that they arrived evenly throughout the year, and I took the ABS figures and for arrivals I took 50 per cent because I think there was another ABS figure that said that half the people did not find work in the first year. For settler departures I was more optimistic there. I assumed most people worked up until the time of departure. I think I took 80 per cent of those. With overseas work contracts, we do occasionally get dependants but very rarely. Most husbands and wives tend to both be seeking employment, so I took a high figure there. With overseas students, I have got no idea. I took a shot in the dark and took 10 per cent. I think that is probably underrepresented.

So taking those figures and taking the income from that I said that I would expect to see a revenue of \$90 million and I was getting less than half of that on ATO – there were no figures on revenue which the ATO would presumably have but I took the figures on the number of pro ratas. That is a hazy figure but it is still talking in terms of large numbers. When I was trying to work out things such as residency, the amount of potential abuse there, what I did was, instead of measuring in absolute figures, I said, say for example the average part-time working backpacker has a \$1,000 difference if they are treated as resident or non-resident, for every 1,000 of those not complying there is \$1 million. In the case of a full-time worker it is just slightly under 3,000. So I took that for every 350 of those not complying, there is \$1 million in revenue. I did not actually estimate figures there, but just that there was a considerable extent.

**CHAIR**—So you are saying that there is something in the order of \$90 million in tax not being collected.

**Mr Johnston**—That \$90 million I would expect to be collected if my numbers actually complied. That is just purely in pro rata. I do not know the profile of pro rata but that is something that would be easy to do.

**CHAIR**—Can I just get it clear, you are saying that that is not being collected now or part of it is being collected?

**Mr Johnston**—I am saying that that is the total amount I estimated should have been collected if everyone was pro rata-ing based on the number of pro rata returns received. My estimates, fuzzy though I admit they are, we were getting slightly less than half of those who were actually recorded as lodging pro rata returns.

**Mr PYNE**—These are backpackers?

**Mr Johnston**—No, sorry, the pro ratas are the people who are residents. So what I am suggesting is that there are two areas. Among residents there is not enough pro rata-ing going on because a lot of people just do not know about it. I have spoken to lots of people in an informal capacity and said, 'Did you pro rata when you left school?' and people were saying, 'What's that?' It is not widely publicised. When we do a schools program we do not tell them about pro rata-ing.

**Mr PYNE**—So what was your estimate of how much the revenue was not receiving from backpackers, not pro ratas?

**Mr Johnston**—In that summary I did not give a figure because I do not know the profile of that. If the bulk of the people who are pro rata-ing are students, then it is about \$300 to \$400 per individual. If the bulk of them are single resident adult taxpayers, then it is about \$550 assuming that they arrive evenly throughout the year. If the bulk of those are people who come with families, then you can add your family tax thresholds and you can add your residencies which are not being pro rata-ed. It would be very easy to do those profiles and get some hard figures but what I am saying is, in the absence of those, I just said, 'There' lots of it.' So to that extent I cannot give you a figure in a private project.

**Mr PYNE**—But for about every thousand backpackers there is about \$1 million, you think.

**Mr Johnston**—There is about \$1,000 for backpackers who work part time and who travel part time. That is just an anecdotal thing that I have noticed – they generally come in between \$800 to \$1,200 difference by the time that they are correctly assessed for residency. Theoretically for the person who comes and works full time who is a non-resident – say a very good secretary from London might come here – anyone who earns over \$20,700 there is just under \$3,000 difference. That goes up under GST. So without knowing exactly how many of them work full-time, who earn over \$20,700 in their tax year in Australia, the difference there is just under \$3,000 if they are not claiming any rebates or if they are not claiming family thresholds. I am sorry if these figures are vague.

**Mr PYNE**—It is not so much that they are vague, it is that they are complicated.

**Dr SOUTHCOTT**—You are saying there is a \$3,000 difference between looking at their income over the whole financial year and looking at their income during the period which they are resident in Australia?

**Mr Johnston**—No, that is the difference in resident rates and non-resident rates. That is assuming again that they arrive at the beginning of the tax year and go all the way through. If somebody is a backpacker and they arrive halfway through the tax year and leave halfway through the following tax year and they rate themselves as resident and they do not 'pro rate', then their income is effectively split. They may get virtually all their money back.

**Dr SOUTHCOTT**—For resident the definition is someone who is in Australia 183 days of that year. That is the definition of the tax law.

**Mr Johnston**—That is one of the tests. It is qualified by saying, 'unless the commissioner is satisfied otherwise on their residency.'

**Dr SOUTHCOTT**—Is that checked by the tax office?

**Mr Johnston**—No. I think I mentioned if you do not want to do it, I will do it. It is something which is very easy money because for certainly a class of those people we have their date of arrival. There will be the odd case - I have seen students who have been here two or three years, who have only decided to work in their last year and who have put their last visit after visiting mum during their vacation time as the date of arrival, so there will be the odd person who is incorrectly caught by that. But just generally speaking, if you just ran the ATO database and took date of arrival and say, 'Did this person pro rate?' 'No.' Then you write them a letter saying, 'Why not?'

Like with bank interest, what we do – I suggested this with the pro rata-ing – is you just write them a letter. You could go back four years on this too, so there is lots of revenue to be collected. You just turn around and say, 'According to our records you should have pro rata-ed. Please reply within 28 days with an explanation. If you choose not to reply, your return will be amended and then just the normal debt collection processes work.' It is something which is very easy to do. It is not a significantly complicated thing.

The exceptions would be extremely rare like the one I quoted you. That would occur, because I have seen it occur, but if you train your tax officers to look at not just the visa but a series of visas, you should be able to find out that they are a student who has got five years worth of student visas in their passport, and you do not take their last visa. I at least would take date of arrival in Australia at the beginning of that series of visas which means you get a 100 per cent hit rate.

**Mrs HULL**—Mr Johnston, within your submission you have discussed in some depth issues surrounding harvest labour, including fruit-picking, et cetera, and there is a tax of 15 per cent on this industry. You have

given some possible solutions to offset that problem. Would you like to expand upon those solutions so that we have a much clearer understanding of the intensity of the problem.

**Mr Johnston**—Generally speaking, for an Australian resident who works in the harvest industry they can just have 15 per cent tax withheld, because these people tend to move around, they do not work every week. They are on low incomes anyhow, and it was just determined that 15 per cent was around about the correct rate of tax for that class of person. A lot of backpackers – even I when I did my *Easy Rider* trips when I was younger – went around Australia and did fruit-picking. It is an industry that attracts a group of people who live in caravans who do it full time and it also attracts a lot of part time workers, and a lot of those, I understand, are backpackers.

In theory, the farmer should withhold 29 per cent of a backpacker's salary because they are a non-resident. In practice, that clearly does not happen and I can understand the problems that would happen in trying to do that where you are paying people different tax for different rates. So backpackers quite often end up having the 15 per cent withheld. Because their flat rate of tax from the first dollar is 29 cents in the dollar, that means they are getting into a tax debt which means that at the end of the year, when they may not have a lot of money, they suddenly are going to be facing a tax bill to make up that difference.

**Mrs HULL**—And that is because some of them may be quite unaware and uneducated in the area of tax and, if they are told that it is a 15 per cent rate, then they just assume that that is correct and that is all the tax that they are going to be paying.

**Mr Johnston**—I have had people, who I believe totally, tell me that the farmer said that that is what it was for everyone who was fruit-picking.

**Mrs HULL**—I believe you.

**Mr Johnston**—I have seen some of the PAYE material. I can find the information in that material which gives the correct information but I can see some farmer or some farmer's wife going through that. It does not leap out at you. I would find it. Some farmers must know and just do not do it, but a lot of farmers just do not know. And I have also found – and I again believe them – with a lot of backpackers working in the city for example that they are not being taxed correctly because the employers just do not mention it and, again, the information is not properly supplied, plus people withholding it, plus backpackers choosing to believe the best rumour they hear. So most young people who come here I believe do not set out to deliberately defraud tax, but what usually happens is, by the time they find out what the true tax position is, they are suddenly sort of a thousand dollars behind or \$500 behind in their tax and it is easier for them to just not lodge.

**Mrs HULL**—Does this spread across to the shearing industry? They get a 15 per cent tax, but we do have overseas countries' shearers coming into Australia to shear in the season here when it is out of season in their country. Does the same thing apply?

**Mr Johnston**—That would apply slightly differently in that most of those would be New Zealanders, I presume, and a New Zealander has rights of residency in Australia, but there is what I call Tasman-hopping of people who might work six months in Australia and six months in New Zealand and just fill in a tax return in both – I do not know if there is a pro rata situation in New Zealand – but who presumably also in New Zealand do not tell them that they are out of the country for half the year, so they are splitting their income between the two countries. So I would assume that would happen. I would not think there would be many backpackers who would be shearing. Shearing is a different rate. It is a concessional rate because we assume that the work is seasonal.

**Mrs HULL**—That has clearly defined that for me. Thank you.

**Mr Johnston**—But can I say that, if the government is saying or if farmers are saying, 'We need backpackers to pick our fruit,' that is when I am suggesting that maybe the government might want to look at applying some sort of rebate or some sort of threshold concession. If you really need those people to get the harvest in, then it is better to give them a concession and keep them in the system legally rather than just have them drop out because the tax rate is not the correct rate.

**Mrs HULL**—Absolutely. Thank you.

**Mr WILTON**—We are fast approaching the conclusion of your evidence. Is there anything you might like to add that you think we really need to know before we go away and digest more fully your submission. If there is something that you think we need to know about, speak now.

**Mr Johnston**—The only things, looking at the ANAO report, are that I do not really understand the withholding tax areas but, just going through it this morning, they are suggesting that we can directly register the school leavers. I think that is basically a good idea but you should be aware that duplications will occur there because if someone comes from Russia, the Russian passport will translate their name according to French conventions from Cyrillic. They usually want to have them translated from English conventions.

A lot of kids have names that change – surprisingly large numbers. They might be using their father's name, they might be using their mother's maiden name. If they are separated they might be using the de facto name of their mother's present partner. So, yes, there are problems there. I would strongly suggest that when they do that they should also be giving them pro rata information because that would be an ideal time to give it. I have spoken to people in the schools project and they said, 'We're not funded for that.' But there are lots of pamphlets. I think that has essentially covered most of it.

The ANAO explains, and I tend to agree with it, the large number of excess TFNs. You will note in the papers in my submissions I am suggesting we should be linking with them to talk about the visa date and visa expiry date so that people who have come here and who no longer have a valid reasons to be in Australia should have those TFNs archived. That could be done very simply, then you would not start having millions of extra people. I do not think there are a large number of fraudulent cases. There certainly would be some but I do not think those excess numbers should be seen as largely fraudulent. They are just the fact that we do not effectively archive people who are temporarily in Australia, or they are accidental duplications which occur – again name conventions – which should not happen.

We get Asian names and put the surname last. You get to know these things. I would be worried about having Social Security or Centrelink take TFN applications because I think we would get a few more of those unnecessary name duplications, but most of it I hope is in there.

**Mrs HULL**—Can I just say to you, Mr Johnston, as a member of this committee and trying to come to terms with this tax file number inquiry, I found that your submission was very informative and extremely simple for me to clearly understand. I would just to like to say on record that I found it was a very good submission.

**Mr Johnston**—I just wish the ATO thought the same.

**CHAIR**—Mr Johnston, thank you. We may wish to talk to you again but certainly we appreciate the effort you put in today and also into your submission.



[10.11 a.m.]

**ADDISON, Mr Garry John, Senior Taxation Consultant, Australian Society of Certified Practising Accountants**

**COOPER, Mr Gordon Stewart, President, Taxation Institute of Australia**

**DIRKIS, Mr Michael James, Tax Director, Taxation Institute of Australia**

**EARLE, Mr Neil, Chartered Accountant, Taxation Institute of Australia**

**WALPOLE, Mr Michael, Member, Taxation Institute of Australia**

**LANGFORD-BROWN, Mr Ian, Director Taxation, Institute of Chartered Accountants in Australia**

**SHEPPARD, Mr Brian Kenneth, Taxation Manager, Institute of Chartered Accountants in Australia**

**CHAIR**—I would like to welcome the round table participants to today's public hearing and I would also like to take this opportunity to thank the Taxation Institute of Australia for their assistance in organising this round table. I remind you that the evidence you give at the public hearing is considered to be part of the proceedings of the parliament and therefore any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament.

I would also like to emphasise that this hearing has been structured as a round table in order to facilitate the interchange of views amongst witnesses as well as committee members and, as such, members and witnesses should feel equally free to comment. I hope that you will be able to fully participate in the discussion. It is my intention as chairman to allow free flowing discussion and comments, within reason, do not need to be directed through the chair, so we will try and keep it flowing.

In addition, while this is a public hearing, if you would like to make any confidential statements the committee will entertain requests for hearing material in camera.

**Mr Earle**—My name is Neil Earle; I am a chartered accountant from Melbourne. I run a small practice, specialising in tax and accounting matters in Melbourne. I am here probably in two capacities today – one as a sole practitioner in Melbourne and also as a national councillor for the Taxation Institute of Australia.

**CHAIR**—Thank you. The committee has received submission No. 14 from the Taxation Institute of Australia, which has been authorised for publication. Are there any corrections or amendments you would like to make to that submission? No. What I would suggest is that maybe each one of you would like to make a brief opening statement before we go on to discussions. Are you are happy to do that?

**Mr Cooper**—We have actually arranged that I will make a statement on behalf of the Tax Institute.

**CHAIR**—Go head, Mr Cooper.

**Mr Cooper**—Thank you. The Taxation Institute of Australia welcomes this opportunity to make comment on the Australian National Office's report, *The Management of tax file numbers and aspects of the tax file number system*. We thank the committee for inviting us to appear before them. We have assembled, as requested, members with different backgrounds and they have already introduced themselves. I should perhaps say as an aside, though not necessarily for *Hansard*, that we have brought Mr Earle along specially to give unequivocal opinions because he can only say on the one hand.

**Mr Earle**—He never misses an opportunity, generally at my expense.

**Mr Cooper**—As we noted in our submission, the Tax Institute is an opinion leader on taxation matters and is the only professional body in Australia which has taxation as its sole focus. It is a national body of about 11,000 members constituted by professionals and practitioners with an interest in taxation in all forms. Members are drawn from tax agents, lawyers, accountants, academics, members of the judiciary and from within the ranks of the public services of the Commonwealth, states and territories.

As noted in our submission, the report does expose a number of problems with the TFN system but, in our view, it fails to investigate fully many issues associated with the ATO's management of the TFN system. Further, the report recommendations for expansion of the system are not necessarily justified on the basis of the potential revenue to be raised, so long as there continue to be significant concerns regarding the integrity of the TFN system. We are concerned that the recommendations are not balanced and display a bias towards enhanced bureaucratic powers over the rights to privacy and freedom of choice.

Our concerns are diverse but the more important are as follows and we will be happy to elaborate on these later. First, the Australian business number: although the ABN system was not part of the audit, given the concerns expressed in the report on the ATO's management of the TFN system, it is surprising that the report did not warn the parliament about the potential problems with the ABN system. Instead, the report merely

recognises the development of the ABN system and does not evaluate the ATO's proposed method for handling the ABN system, its interrelationship with the TFN system and issues such as duplication.

Second, expanding the school registration program: in advocating an extension of school registrations, the report does not recognise the duplication risks that can and do occur when individuals registered at school join the work force years later. An example is set out in our submission. Whilst we consider that teaching young people about the tax system and their obligations is beneficial, the TIA would not support this recommendation without full community consultation and an independent report on the strengths and weaknesses of the scheme.

Legislative changes: the TIA would support legislative changes aimed at removing the anomalies in the TFN law. However, in respect of the suggestions to seek amendments to the law to further expand the system, the TIA has some concerns. For example, the suggestion that a TFN should be required to open a safety deposit box has little to do with the tax system. The inference is that those who open safety deposit boxes – which mostly in fact are to safeguard documents and small valuables – are likely to be tax avoiders and should be scrutinised by the ATO. We consider that such an extension would not be justified, and the compulsion to have a TFN in such circumstances is contrary to the underlying policy that providing a TFN is voluntary.

Failure to fully investigate: it appears that there was not a full investigation of the apparent shortcomings of the TFN system. Of particular concern must be that the report identifies that there are 3.2 million more individual TFN registrations than there are people in Australia. When account is taken of the large number of Australians who do not have a TFN, the number of TFNs requiring explanation is likely to be much higher than 3.2 million. Three possible reasons are given in 4.21 of the report. One is duplicate records which elsewhere, the report estimates, amount to 185,000. That is not a large number in the context of 3.2 million. It appears that the process for removal of duplicate TFNs does not tie in with other systems such as HECS, and that elimination of duplications takes considerable time. Again, there is an example of that in our submission.

Given that ABN management is to be added, there can only be further concerns about the efficiency and integrity of the related system. The failure to remove otiose TFNs such as those of deceased persons is hard to justify when tax returns have a specific requirement that final returns be marked as such. Of particular concern is the cost of such inefficiency. In most cases, it is the tax agent who bears the cost of the letters and telephone calls required to try to eliminate a TFN. These costs appear not to have been taken into account in the report. It may be that a significant number of TFNs could be eliminated if there was a system for deleting TFNs when temporary residents leave Australia. Similarly, a system may be able to be developed for determining whether permanent residents departing from Australia wish to relinquish or retain their TFN.

Ultimate beneficiary statements: the report notes that the principal sanction for not quoting a TFN is that tax is withheld at the top marginal rate with a credit allowed to the individual taxpayer when they include the income in the tax return. No such credit is available when a TFN is not included in an ultimate beneficiary statement. Moreover, the new UBS requirements represent a de facto extension of the TFN system. This is because a TFN is required for all ultimate beneficiaries, even charities, and individuals below the taxable threshold, who often do not need a TFN.

The failure of such beneficiaries to provide a TFN will result in UB tax which, as I have already indicated, is not creditable to the individual. In many instances, it may be difficult for the ultimate beneficiary to obtain a TFN before the trustee is required to lodge the UBS. The ATO needs to fast-track such TFN applications or allow the lodgment of a TFN application late or with the application sufficient to satisfy the UBS obligations. Thank you.

**CHAIR**—Thank you, Mr Cooper. You have raised quite a range of issues there, all of which hopefully the committee will be very interested in following up if we have time. Maybe we could start with the 3.2 million additional tax file numbers you mentioned in the report. The tax office did say in committee hearings last year, the actual numbers are somewhere between five and six million more tax file numbers on issue than there are taxpayers. What scope is there for fraud with this additional number? Do you have anecdotal or other evidence on that?

**Mr Cooper**—Our perception is that fraud is probably not a significant factor, although with such a large number it is difficult to account for that large number. Certainly the three categories that were given in the report do not really appear to be sufficient unless it is the fact that there have been a huge number of former residents – whether they are former permanent residents or temporary residents – who have retained a tax file number. One of my colleagues may have more anecdotal evidence.

**CHAIR**—Is there any evidence that these additional numbers still on issue are linked to significant tax evasion?

**Mr Cooper**—The answer is we do not know. The problem is that so long as a TFN is quoted and it is found to be a valid TFN there is not necessarily any check – or way of checking – whether the TFN really does identify the person who is quoting it. In other words, if the TFN has the necessary algorithm – and frankly I do

not understand what that means, but I understand it is an important way of checking whether it is a valid TFN – that is sufficient for a financial institution.

**Mr Langford-Brown**—Chairman, if by any means you are thinking of whether there is trafficking or some other means of trading or moving around with TFNs, that is something we have not come across. I can only support Mr Cooper in that fraud does not seem to be prevalent, but one can only assume that it is possible.

**Mr WILTON**—What about the issue of identity fraud in particular? The TIA has stressed privacy considerations. Do you consider that identity fraud is significant enough to warrant changes to privacy legislation?

**Mr Langford-Brown**—The Institute of Chartered Accountants, which is where I come from, is fundamentally supportive of the TFN system. Inherent in that of course is ensuring that there is both privacy and commitment to the process. There is certainly newspaper comment on the possibility that there are fraudulent identification processes available. That being so, there must be a degree of concern in the community, and it is a matter that particularly the issuing parties and those – let us use a collective descriptor – such as ‘the financial institutions’ need to be very vigilant. But one cannot deny there is anecdotal evidence that that does happen.

**Mr Cooper**—Yes. That really goes to the nub of one of our concerns, that there are apparently a large number of excess TFNs, and there does not appear to have been any investigation as to whether those TFNs do represent fraudulent TFNs or just redundant TFNs. Equally, there does not appear to have been any investigation as to whether, when TFNs are quoted, they are valid TFNs. I think before we look at extending the TFN system there needs to be more analysis of the existing system, and a tightening up of how that existing system is used.

**CHAIR**—The tax office has already mentioned that they have flagged 2.7 million non-active TFNs, so they do have that record. We were hoping you might be able to answer some of these questions you are posing to us.

**Mr Cooper**—When the report came out it really drew our attention to the potential for this difficulty. It is like anything else: the more rocks you lift, the more likely you are to find something nasty underneath. I suppose we have been working on the basis that the TFN system was one with integrity and one where there were no problems. When we come to examine it, there do appear to be the possibilities of problems with it. It is hard, of course, to find anecdotal evidence that it is used in this way.

We do suspect that one way TFNs may be used to avoid tax is with respect to non-residents. If a non-resident has a TFN and they quote a TFN to a financial institution, then the financial institution will take it at face value. Providing the non-resident gives a local address, the interest, or in the case of companies paying unfranked dividends, the dividend, will be paid without any withholding of tax. That seems to be one area where the TFN system does not mesh well with the withholding tax system, and we perhaps ought to be looking at the extent to which non-residents ought to have TFNs or, if they need some identifier to be part of the tax system, whether those TFNs ought to be allowed to be used to avoid TFN withholding tax being deducted from interest payments to them.

**Mr Sheppard**—Mr Chairman, it seems the ATO has already quantified an exposure there in paragraph 26 of some 250 million. We can offer anecdotal evidence but they seem to have more hard evidence as to the sort of exposure that is there.

**CHAIR**—That figure is, in your estimates, a reasonable one?

**Mr Sheppard**—I do not think we have any way of knowing that.

**CHAIR**—No. Mr Pyne.

**Mr PYNE**—The tax office has identified a whole lot of deceased estates and deregistered companies that still have their TFNs, so we all understand there is a problem. But in your opinion why hasn't the ATO eliminated those numbers?

**Mr Cooper**—I suppose to be fair to the ATO, they probably do not regard that as being the highest priority of all the tasks that they have to undertake. But, as I indicated in my opening comments, it does seem to me that with something like a deceased person, where the return you lodge specifically has you identifying, ‘This is a final return,’ that ought to be an automatic process, particularly these days where you have a lot of electronic lodgments. It ought to be an automatic process that the TFN for that deceased person ends. There is a new TFN required for the deceased's estate. Obviously there is a transitional moment where the deceased person still has an outstanding tax liability for the period up to the date of their death where you still perhaps need a TFN number, but once that final liability has been paid it ought to be possible to have a system that automatically gets rid of that. As it is – and my colleague Mr Earle might comment on that – in practice, it is extremely difficult to get the tax office to remove a taxpayer and a TFN from a tax agent's lodgment list.

**Mr Earle**—Mr Chairman, we used to have a system where there was a taxation liaison person attached to the local office where we lodge returns. In my case, I would always get Joe to come out once a year and we would go through the list. There are standard forms you fill out, but filling those forms out and sending them to the tax office was not a terribly efficient process, because you might get the number and the name off your list, but it might just miraculously appear again sometime later. That was particularly the case in the lodgment of deceased estates. There were certainly duplicates of individual file numbers where people had had a file number, they could not remember it, they went to a different agent and they then applied and got another file number. That system does not exist any more.

I agree with Gordon that we do not really know why the tax office has all these numbers in there. My own personal opinion is that they do not have an ability within their own database to delete something – it is just in there and it floats around in cyberspace. Two weeks ago we got another file number for a client company out of the blue, just a notification from the tax office, ‘This is the file number for your company.’ Now, that company has been going for at least 10 years to my knowledge, and they have just issued another file number. One of the girls rang the tax office and asked, ‘Why have you issued another file number?’ and they simply did not know.

So if you ask the question about trafficking in file numbers, I have never come across it in my Tax Institute capacity. I share a breakfast in Melbourne every month – or have done so for the last five years – with something like 200 accountants, and they often come up to me and we talk about problems and what have you and I have never heard of that. In the old days there was trafficking in trust losses and that sort of thing. There is always the inevitable question about tax avoidance schemes – which in my view do not exist any more, but the tax office and a lot of politicians seem to think they do – but I do not see any evidence of trafficking. I think the reason is that it is too easy to get a tax file number. If you look at the list of things, it is relatively easy to get a tax file number.

**CHAIR**—We might come back to that.

**Mr Walpole**—Those points are well made but just going back to Mr Pyne's question, to some extent the answer to that is actually in the report. The ATO has been, to its credit, quite candid about some of the shortcomings of the databases that it administers. The answer is that removing those excess tax file numbers is resource intensive. There is a clear need for either the provision or reallocation of resources to do that. It is quite apparent from the report and from what Mr Earle has said that there are multiple databases which do not talk to each other.

**Ms BURKE**—The computer network system the tax office is currently using is another damning part of his report. But if the resources went into upgrading and fixing that system, as you say, you could have a match: deceased estate comes in, match the tax file number, delete tax file number, all the rest of it. Anecdotally we can go to Snowtown and say if you do not delete someone from a record you can still get their Centrelink payment.

**Mr PYNE**—Nobody knew they were dead.

**Ms BURKE**—Yes, so they kept getting their Centrelink payments.

**CHAIR**—I thought, though, the accusations were about migrants.

**Ms BURKE**—Also the migrants.

**CHAIR**—They go home and never die.

**Ms BURKE**—That case brought up some interesting things. I suppose the other thing is about illegal workers who are producing tax file numbers to get jobs. Whether it is or is not happening, it is anecdotally out there.

**Mr Dirkis**—I think part of the perception is what is a tax file number. Given our diverse multicultural society, if you get someone walking in with a backpack with a Canadian flag on it and that person is speaking with a North American accent, are you going to say, ‘Look, prove to me that you're an Australian resident for tax purposes?’ The test for determining Australian residency for tax purposes has such complicated methodology that most people in business will look at the person and say, ‘Okay, have you got a tax file number?’ If they say they have and they say they are a resident, it is taken on face value. To get a tax file number a valid entry visa to Australia and a foreign driver's licence is sufficient. That is the simplicity of the system of getting one.

The whole area of how you treat non-residents in an identification system is one that probably needs to be visited. As much as you will have a situation, as Mr Cooper talked about, of people quoting a tax file number to avoid withholding, the mere provision of a foreign address to a bank in relation to a tax file number will result in it being treated only as a 10 per cent final tax withholder. Under the current system, for example, most diplomatic and consular staff are considered, for Australian tax law purposes, to be residents of Australia, yet their banks encourage them to give foreign addresses in order to withhold 10 per cent. It is a bit

unfortunate for them because, in fact, they are entitled to the tax-free threshold. It might seem a bit strange but that is the way the system works.

**Mr Cooper**—One of the problems is that the TFN system is actually trying to do two quite diverse things, although to an extent they are connected. First of all, obviously because of the large number of taxpayers, you have to have some means of identifying them that is better than simply a name and an address. To that extent you have to make numbers fairly readily available so that they can be identified. Then, grafted onto that, the TFN system has been used as a way of effectively granting concessions to people so that if they have an account with a financial institution, they do not have tax withheld. Obviously, when there is that concession, there is going to be the incentive for people to utilise TFNs to obtain benefits. I know this is outside the scope of this particular inquiry but that type of problem could have been avoided if, instead of going down the TFN withholding tax route, we had actually had a domestic withholding tax for financial institutions. There are so many people who do have bank accounts bearing interest who need a TFN for that purpose.

**Mrs HULL**—Just to ask in a little more depth in relation to Mr Dirkis, all the way through this we have recognised that it pops up. I come from an electorate which is very strong on using harvest labour and has an enormous amount of problems with illegal immigrants. With the farmer trying to determine whether his worker is legal, this tax file number problem raises its ugly head consistently. We are almost in a position where the farmer is now about to be the penalised person because he is taking all of the responsibility for ensuring that his worker is legal to work. In fact he does not have the resources to enable him to determine that adequately. You speak about business basically not recognising that, but when you are looking at a farmer who is looking for labour and a guy comes in with a TFN that looks legitimate, because of the Privacy Act the farmer has no real way of processing that to determine if it is legitimate or not. He is in a position now of being the person who is at jeopardy.

**Mr Cooper**—Even if it is a valid TFN, if I happen to know Mr Earle's TFN I can go in and say I am Neil Earle.

**Mrs HULL**—Exactly, so that is the position they are in. Do you have any thoughts on how this can be remedied? It is a major problem.

**Mr Dirkis**—You have a big problem anyway because Australian residency does not depend upon immigration status. Being a resident for tax purposes has nothing to do with your immigration status. Having a TFN does not prove that you are a legal or illegal worker.

**Mrs HULL**—That is the point I am making. And now the person who will be penalised – and there are quite substantial fines mooted for that – is the farmer.

**Mr Earle**—Yes, who has the prime liability under the law.

**Mrs HULL**—Exactly.

**Mr Langford-Brown**—That is where the tax file number system is being extended to provide a basis on which a person will be employed, which is certainly not what was intended in the first place.

**Mrs HULL**—That is right.

**Mr Langford-Brown**—Gordon has mentioned the extension of the UB statements where, if you quote an incorrect tax file number on a UBS statement, under the law technically you can finish up in jail.

**Mrs HULL**—That is right.

**Mr Langford-Brown**—That is a major concern of tax practitioners, that we have a jail sentence for transcribing a tax file number incorrectly. Okay, the Treasurer has made some concessions recently but, in my capacity as a tax practitioner, I do not think they are anywhere near enough. In your situation the TFN is entirely irrelevant. It should be a green card or a yellow card or something like that which proves that person has been given a permit to work. It is just the same if you go to the UK or the US: you have to have a valid entry permit and visa for a certain period of time to be able to work there. I agree that our tax file system is being used in that way.

**Mrs HULL**—There is no other basis.

**Mr Langford-Brown**—And of course your farmer wants that person.

**Mrs HULL**—He does. That is the point I am making. So you would agree that the TFN needs to be removed from that area and another program implemented in order to start to remedy this very large problem with TFNs?

**Mr Langford-Brown**—With respect, there is probably a dual function there. I think the TFN can still fulfil a useful role. In addition, to solve the problem you are referring to, there has to be another mechanism because the TFN still gives the approach for ensuring that person gets the due benefits available to them under the law without undue penalty. At the same time you must put a green card or some other similar process into the work force.

**Mrs HULL**—That is where a lot of the revenue is being lost. What we are finding is that is where a lot of the revenue is not being collected.

**Mr Walpole**—Of course there is another check. It is not the tax file number; it is the visa stamp in the passport. Demanding to see a passport and a visa at the farm gate is problematic but there is that other check. The tax file number should not be used to do what that should do.

**Mr PYNE**—The tax file number is not being used for the purpose of identification in that case. It is being used for the purpose of collecting revenue for the government.

**Mr Cooper**—In that case it is actually being used for the purpose of not collecting revenue.

**Mrs HULL**—Exactly.

**Mr Cooper**—That is exactly the point I made earlier on. The TFN system has two quite disparate and almost conflicting roles. On the one hand it is a way simply of identifying people just for record purposes within the ATO so the ATO can know they have the person. Then the quoting of the TFN does provide concessions. If you do not have a TFN your farmer has to deduct tax at a rate that is higher than the rate if you do quote a TFN and fill in an employee declaration. That is the problem. It is difficult, of course, because someone who has a TFN and is going to honour their obligations cannot afford, particularly in the type of category you are talking about where wages are relatively low, to have tax withheld at a higher rate and wait till the end of the year before they get repaid. On that specific point, there are moves the tax office has taken to have just standard rates of tax withheld, such as a blanket 20 per cent. Those types of measures in specific industries are probably worth pursuing further.

**Mr PYNE**—Just before we get off the subject of the proliferation of TFNs, given that it may or may not be important whether there are so many TFNs that are not being used – because if the tax office has decided it is not important, perhaps it is not – does it concern you that the Australian business number is now going to be a new means of identification which might also lead to a proliferation of ABNs that are not also in use?

**Mr Cooper**—Yes, it does. The concern with the ABN is that it has perhaps more scope for being used for fraud because the ABN is a crucial part of the GST system.

**CHAIR**—Before we go on to that, the one thing we did not clear up was this ultimate beneficiary withholding tax business. Did I hear rightly in the opening remarks that if you did not have a tax file number you would have the tax withheld at the marginal rate and never get it back?

**Mr Cooper**—Correct.

**CHAIR**—So in fact there is a situation where, as you point out, the tax file number is a voluntary thing but for some taxpayers there is a financial penalty there if you do not have it.

**Mr Dirkis**—You are talking about a piece of legislation that passed within five weeks through the parliament from introduction to royal assent during the GST food debate.

**Mr Cooper**—The legislation certainly has merit and was a crucial anti-avoidance measure but the way it can impact on particular sectors of the community is a very real concern. As I said in my opening remarks, it does mean, for example, that if there are trust distributions that go to a charity, for the charity to get the full dollar of the distribution, the charity has to go and get a tax file number. For a major charity like the Red Cross, that may not be a problem. It is quite common for trust distributions to go to religious bodies where the donation to them does not qualify for a tax deduction. Those religious bodies are going to have to get tax file numbers, otherwise 48.5 per cent will be taken out of the payment to them. Again, with trusts it is not uncommon for trusts income to go to low income members of the family. It may be an elderly parent who is below the tax threshold. In that case probably, if they have been in the workforce, they will have a TFN. But if they do not quote the TFN to the trustee, then tax is taken out at 48.5 per cent and it is a very real concern. Our concern is that it is a way in which effectively the tax file number system is being made compulsory. You can still say there is a choice but the choice in not quoting is that you lose 48.5 per cent.

**Dr SOUTHCOTT**—Mr Walpole touched on it earlier, and people are saying, ‘We should have another system which actually identifies whether people can work in Australia or not work in Australia.’ I thought we already had one in terms of visas which allow you to work. I do not see that it is all that difficult for employers to actually ascertain whether someone is able to work or not able to work. What you are saying is the tax file number is being used to determine if people are entitled to work but they do not need to have a work visa to have a tax file number.

**Mr Cooper**—But you are asking employers to make a subjective decision. If someone comes in with an Australian accent, then you will make the assumption that they are an Australian resident. If they come in with any sort of accent, even though they may have been a resident in the country for 20 years, they would probably be mortally offended if an employer said, ‘Before I can employ you I want proof that you are a permanent resident.’ As Michael Dirkis said, perhaps if a backpacker came in with a Canadian flag tacked onto their

backpack, anyone sensible ought to ask, 'Do you have a work permit?' But it is extremely difficult for an employer to know in a multicultural society like ours whether someone is a resident or is here on a visa. I do not think we should underestimate that.

**Mr PYNE**—How is that going to be solved by having a green card or something? Exactly the same question would pertain: 'Do you want to show me your green card?' They would not ask that question.

**Mr Cooper**—No, I agree, I was not advocating a green card. No, I take your point.

**Mr PYNE**—It is out of the question.

**Mr Cooper**—It is the same problem.

**Dr SOUTHCOTT**—Perhaps that is something we have to get over. We have to say, 'Are you an Australian citizen?' 'Are you an Australian permanent resident?' or 'Are you visiting Australia? If so, what type of visa are you on?' We are saying, 'It's just too hard, people are going to be offended.' I mean, come on!

**Mr Cooper**—Maybe. The alternative, as I said, perhaps is to have effectively two types of TFN: one that is simply a blanket one that everyone has, but for there to be a category of TFNs that are readily identifiable as such that are only are given to people who are permanent residents of Australia. Then you do not have the problem because as long as it is clear from the TFN –

**Mrs HULL**—Absolutely.

**Mr Cooper**—If a TFN, to relate to a permanent resident, had to have two extra digits or something like that at the front, then you would overcome the problem because the TFN would still be used as an identifier for the tax office, but a TFN without those extra markers could not be used by a worker to have reduced rates of tax deducted; it could not be used by a non-resident to avoid TFN withholding tax on bank accounts; could not be used by a non-resident to avoid withholding tax on unfranked dividends and so on. When you look at the size of the TFN and the number of TFNs in issue, it would not necessarily be impossible to do that. Effectively that sort of change is being done with the ABN system because every company will have an ABN which is based on its ACN but with two extra digits. The transitional phase might be difficult but it certainly would be a way of tidying up the existing system.

**CHAIR**—There is certainly an incentive there though to get yourself into the cheaper category, so to speak.

**Mr Langford-Brown**—Chairman, I was just going to pick up on the issue of green cards which is something I put on the table as a possibility. I guess we are all very familiar with the issues that were raised when the Australia Card was first mooted. I think the reality of life is that we have probably got so close to it in a number of cycles that it is not going to be the same problem. But it all comes down to an attitudinal issue, that if we use the extra digits that Mr Cooper is suggesting, you get into the same way but I happen to believe that given tax reforms are a very promising issue right now, that we need to ensure that the attitudinal issues are addressed at the same time because if we do not do that, we will never have the nexus between the need and the reality.

**CHAIR**—Mr Pyne wants to get on to the ABN.

**Mr PYNE**—I asked about the ABN and we were just talking about the ABN. Did you want to expand on anything?

**CHAIR**—Yes, there was quite a lot there, I think.

**Mr Cooper**—The ABN is crucial to the GST system, as I have said. If a supplier wishes to be able to give the recipient of their supply a GST credit for their supply, then they have to quote an ABN number. There is going to be a temptation for people who are operating in the existing cash economy to try and get hold of an ABN so that when they do a job and get paid for it, they not only get the payment but they get the 10 per cent GST which never gets remitted to the government. Then the recipient of the supply, having been quoted an ABN, having a tax invoice that has the ABN on it, will quite legitimately claim an input credit for the GST, so you will have the potential for a leakage. I do not know to what extent that is reality because I do not know how the integrity of the ABN system is going to be maintained. That is why in my opening remarks I said it is perhaps unfortunate that there was no comment or investigation of that during the course of the audit of the TFN system because if in a short space of time there are a very large number of ABNs that are redundant ABNs, it will not perhaps be difficult for unscrupulous cash economy people to get hold of that ABN and use it. Without having an ABN system that has real integrity to it, there is a real risk of significant leakage of revenue.

**Dr SOUTHCOTT**—I think that is a point about the integrity of the ABN but in the example you mentioned there is instantly an audit trail, which means that the person who bought the goods from the supplier realised, when they all put in their business activity statement after three months, that there is a missing link in the trail. Effectively the supplier has not remitted the GST that he collected. Do you follow? He has to give his ABN

and there will be ways of tracking it. That is how I understand it will work; you have got a trail all the way along of ABNs.

**Mr Cooper**—Maybe I did not make the point clearly enough. If I were an unscrupulous member of society – which I hasten to add I am not – operating in the cash economy, I might come and do a job for your business. Say you engaged me for a few weeks to do a job. I provide you with a tax invoice that has an ABN on it which turns out to be not mine. If I am prepared to quote a false ABN, I am going to have no qualms whatsoever about quoting a false address. You will pay me, including the GST component. You will have what you believe to be a bona fide tax invoice for GST purposes. In your BAS you do not have to lodge any of that material, you will simply claim the one-eleventh of the payment you paid to me, and that one-eleventh leaked out of the system. The tax office, if they come in and look at you, may track through it and they come across this invoice and they come looking for me. If they then find out it is a bogus ABN and it is a bogus address, what happens at that point? It is pretty tough on you if you then get penalised for it.

**Mr Addison**—Still, as the point was mentioned, that contractor would have to impose GST on supplies that he or she makes. There is another built-in safeguard, I do not know how well it will operate, but if someone quotes a bogus ABN there is in fact some responsibility on the payer to check the public register. There is a public register available, it will be the Australian business register.

**Mr Cooper**—But, Garry, the problem is if you have got five million or six million unexplained TFNs, if you end up with a number of unexplained ABNs, someone may well use that. You can check the record and you will find it is a bona fide ABN. I am not saying that this will happen. We do not know, but given that there appear to be some problems with the TFN, until you can really be certain that those problems are due to nothing more than the tax office failing to delete redundant TFNs, the integrity of the ABN system has to be in question. I just perceive it as being a real potential avenue.

We know that the tax office is particularly concerned about GST fraud on the introduction of the GST system because the empirical evidence from other countries that have introduced it is that in the early stages when people are coming to grips with the system, there is a scope for fraud. The commissioner has said quite properly that when it comes to the tax office looking at the GST system in the first nine months up to 1 April they are not going to be going in boots and all, they are going to be educative. They are going to be reasonable unless they think that fraud is involved. In the example I have quoted where I have done a job for you, you have acted in good faith. The tax office in the first instance is not going to penalise you for that. They may well tell you, 'Look, you had better check up on the bona fides of people in the future,' but in the introductory phase at least, and I think on an ongoing basis, if you cannot be satisfied about the integrity of the ABN system, it is a potential for a real leakage of revenue.

**Dr SOUTHCOTT**—I am surprised to hear you say that. For example, a couple of months ago there was an article in the *Financial Review* saying this was the most modern indirect tax system which also combines the Australian business number and the business activity statement in a way that, for example, was not done in European VATs in the seventies and so on. So in terms of companies, they can look at like companies and see whether they are remitting the right amount of GST. In terms of the audit trail that gives them another way. And the example you mentioned, that would really have to be a fly-by-night operation where you do not know what their address is. I do not know how you would get hold of them.

**Mr Cooper**—It is fraud, and I hope that you are correct, that the ABN system will have absolute integrity and will not have these problems. Our concern stems from the fact that the TFN system was thought to be one that did have a high degree of integrity. It may be that it does, we cannot be certain, but significant doubts about the integrity of the TFN system have been raised as a result of the audit, and for no better reason than that, we are just concerned as to whether really the ABN system will have the integrity that it is alleged to have.

**CHAIR**—Mr Cooper, isn't it correct that one of the primary ways of identifying yourself for an issue of an ABN is your TFN?

**Mr Cooper**—Yes. As I said, one of the other ways is if you are a company with an ACN you are automatically going to get an ABN. It just does worry us. The point you are making is a good one though. If the TFN system has got doubts about its integrity, and that is the springboard for you getting an ABN, then the ABN may not be as valid or as useful a tool as it is purported to be. We just think it is an area that needs to be looked at. We would love to be proved wrong.

**Mr Walpole**—If there are insufficient resources to maintain the integrity of the TFN, will there not be insufficient resources to maintain the integrity of both? This is the difficulty. There are going to be more stresses and strains.

**Dr SOUTHCOTT**—Do you think the recommendations in the audit office report, which cover the tax file number, would go some way to alleviating your concerns about the integrity of the ABN?



**Mr Cooper**—I have already indicated that we have reservations about specific recommendations. Our major concern, I suppose, is that there just does not appear to have been sufficient work done to establish whether this vast number of five million to six million – I think that was a figure that you said the tax office quoted – excess tax file numbers really is due simply to not deleting otiose numbers or whether there is some systemic fraud in there and without some work done in that area, it is extremely difficult to say with confidence that the ABN system will work.

**Mr Langford-Brown**—Chairman, in support of what Mr Cooper is saying, the TFN system is fundamentally a confidential system. You should not be aware of other people's TFN numbers. Under the ABN and the GST systems those numbers are going to be plastered across every tax invoice. All I am saying is the opportunity is far greater under the ABN system than exists potentially under the TFN system. We have to be very conscious that any weaknesses that flow through need to be really emphasised going into the ABN system.

**CHAIR**—If I were supplying workshop materials or something and I got the ABNs off a few of my competitors, by whatever means, I could use their ABNs and the chances of being identified as a fraud would be fairly low, or not?

**Mr Langford-Brown**—The reality is the opportunity would be there for you to see any person's ABN and if you then had a propensity to gain that way, it would be very easy because to check back through and home in on whether a particular ABN is valid or not is a rather mind-boggling task. So without being critical of what steps have been put in place, all I can say is potentially there will be a greater opportunity unless there is far more stringency in the process than we currently have.

**Mr Cooper**—It is certainly true that the risk is higher, though, with what might be described as fly-by-night people. If you are a supplier of a particular product and you have premises and you are readily located, then you have a physical base and that is it. One of the main reasons for introducing the GST was to broaden the tax base. The reason for broadening it was to pick up services. Services are largely supplied by individuals and, particularly with the growth in e-commerce, it is going to be a lot easier for individuals to be supplying services, not necessarily on an ongoing basis but as a one-off or for limited periods of time, and it is that area in particular where the potential for misuse of ABNs has to be a concern.

**Mr Earle**—The claiming of those input tax credits under the GST is a self-assessment process tied up with the business activity statement that is lodged at the end of every quarter in most cases. As far as I know, there is no requirement to put in there the ABNs related to every input tax credit you are claiming, nor is there going to be a process with the tax office to process those business activity statements to ensure that every ABN that has been quoted is a legitimate one, and there is not some inconsistency.

I always remember when the prescribed payments system was introduced, particularly in relation to the building and construction industry. It was going to be the panacea whereby the cash economy in the building and construction industry was going to be wiped out overnight. In my personal experience I was just amazed at the number of people who immediately turned up with either rate variation certificates or a complete exemption from the system. I was staggered that the PPS system's integrity was compromised so quickly. I do not see any reason that the ABN system, coming on top of it as it is, with the tax file number system, is really going to preserve the integrity of the system any more than it did with the prescribed payments system.

It is going to be a better system whereby above the line – as, Andrew you were talking about – it is a world's first in terms of the processes and technology and that sort of thing, ultimately having everybody's cash register hooked into the tax office and they will all be able to trace through the transactions and that sort of thing, but below the line people are fraudulently quoting ABNs, TFNs. If we go back to the tax file number system in relation to non-residents and itinerant workers, they can get a tax file number. That is relatively easy. I know a Malaysian student who applied for a tax file number seven years ago. She has now left Australia. She still has the tax file number. She can still use it. She is not coming back here.

**Mr Cooper**—Or one of her friends could.

**Mr Earle**—Or one of her friends could. But what she could do with that tax file number is that she could fill out an employment declaration and hand a piece of paper to the employer and the employer would say, 'Oh, an employment declaration. That's an official document.' He will not ask for a passport or a visa. He will say, 'Oh, that's excellent,' if indeed he passed the first threshold where the worker will not even work for him unless he agrees to pay cash in the first place.

That is not part of this inquiry, but that is more of a problem for your people as it is for my people because they ring me up and say, 'Should I pay in cash?' I say, 'That's a question I can't answer. You know the answer to that question as well as I.' But it is simple enough to get a tax file number, to fill out an employment declaration, and claim the tax-free threshold as an employee. The amount of dollars that would be avoided in that situation – and that is referred to in the report – is quite staggering. But if you want to preserve the

integrity of the system of quoting numbers, I do not think it will ever be a possibility that the tax office is going to pick up on that. They will pick it up during the course of audits, but I am sure 99 per cent of those numbers are related to those people who are conforming with the law and making the system work.

**Ms BURKE**—Two of the government's claims about the introduction of the GST are, firstly, that we will actually see a greater number of businesses register because they will want to get an ABN number so that they can claim back their tax. They are expecting that previously unregistered businesses will come forward to register. The second claim is that they will be able to catch up on the cash economy.

**Mr Cooper**—The first part is undoubtedly true, to a point: there will be a number of businesses that will register which may not be in the system at the moment. It is never going to pick up everyone who wants to behave fraudulently. I think statements made about the probable impact on the cash economy have perhaps been misunderstood. It is not so much that the type of fly-by-night person that I was talking about is going to come clean. It is simply the fact that with their ill-gotten gains they are going to spend money which will have a 10 per cent GST component. In fact, the GST system encourages people who want to be outside the system in the cash economy, because it gives them another 10 per cent to play with, to knock off, in taking cash rather than being part of the system. But the way the GST will collect some of that cash economy money is when the recipient of it spends it and bears GST.

**Mr Langford-Brown**—The experience in New Zealand was that approximately 20 per cent more than they anticipated did in fact register.

**Mr Dirkis**—Just to touch on one of the issues about the recommendations in the report, Mr Cooper talked about GST and rent evasion by foreign owners and the suggestion is a TFN. Well, the TFN only identifies that they are a foreign resident. It does not do anything about declaring the cash or anything. That is when you think of things like a withholding tax on real estate agents where there is a foreign resident. That solves the problem. You do not need a TFN for that sort of system. Currently there is the suggestion that a TFN, by identifying the people, solves the problem. That does not solve the problem. The money still goes offshore. So there are problems within the integrity of some of those recommendations in the report. The solution seems to be, 'Expand the tax file number' without starting to think laterally about where the problem actually is. The problem may in fact be with withholding or collection mechanisms, and not with the number itself.

**Mr Sheppard**—Doesn't that pass the responsibility back to the real estate agent in that situation to verify the bona fides or the status of the person?

**Mr Dirkis**—In most cases they will have a foreign address and an indication that this person is not a resident of Australia.

**Mr Sheppard**—We would have reservations about pushing too much of the compliance onus back on to the taxpaying community.

**Ms BURKE**—That is right.

**Mr Dirkis**—I am just giving you an indication that the solution is not necessarily a tax file number.

**Mr Sheppard**—We would not and we are not advocating that, but I take your point that extending TFN usage does not necessarily solve the problem.

**Mr Dirkis**—All you have is a TFN and the tax still being avoided.

**Ms BURKE**—To go back to the ABN, when you fill in the form to register for the ABN you must provide your banking details. At question 34 it asks you to actually state what your banking details are. I have been approached by a couple of companies who are saying, 'I won't give my banking details. It's a privacy issue. And also as a cash flow issue, I don't want direct debiting' – God only knows why – 'because my company operates with cheque-in, cheque-out facilities.' Have you as practitioners come across that concern from people registering at the moment?

**Mr Langford-Brown**—We have not heard of any problems in that area from our membership. I think there is a growing recognition that the government, in terms of being able to cope with the sheer volume of transactions, has only one option, and that is through the electronic system. That is coming from the GST Start-up Assistance Office, direct assistance programs and all those, that it is a very neat way. But, no, we have not as yet had any findings to the contrary.

**Mr Cooper**—That may be a growing problem. At the moment, the registrations are running way behind expectations. There is going to be a late surge and at that point it may –

**Ms BURKE**—It may crop up, yes.

**Mrs HULL**—Did you say you have to give your bank account?

**Mr Cooper**—Yes, when you fill in your GST forms.

**Mrs HULL**—When you are filling in your GST or for your ABN?

**Ms BURKE**—No, to register for your ABN number.

**Mrs HULL**—No, you don't.

**Ms BURKE**—Yes, you do.

**Mrs HULL**—I have an ABN number and I did not have to give them –

**Mr Earle**—You said it was 35, didn't you?

**Ms BURKE**—Question 34. You do?

**Mr Earle**—‘Do you provide goods or services to businesses?’ That is 35.

**Ms BURKE**—For an ABN number.

**Mr Earle**—There is an application to register for the new tax system. This is an ABN form. There is nothing in there about –

**Mrs HULL**—No, I do not believe you have to provide your bank account number.

**Ms BURKE**—You are asked for it.

**Mrs HULL**—But you do not have to provide it.

**Ms BURKE**—But if you do not provide it, you will not get your refund.

**Mr Earle**—You will, but it will be late.

**Ms BURKE**—No, you are told you will not get your refund.

**Mrs HULL**—No.

**Ms BURKE**—I rang the tax office. I rang them this week.

**Mrs HULL**—They gave it to you? They are giving it to you?

**Ms BURKE**—They will give you the ABN number, yes.

**Mrs HULL**—Yes.

**Ms BURKE**—But they will not give you the refund. When the refunds come around you will get a note saying, ‘Why haven't you given me your bank account details?’

**Mrs HULL**—Okay. But you can get an ABN number?

**Ms BURKE**—Sorry, yes, you can get an ABN number.

**Mrs HULL**—Okay. That is what I wanted to clarify.

**Proceedings suspended from 11.13 a.m. to 11.24 a.m.**

**CHAIR**—Can I say, before we get back to the issues, I think this is proving to be a very valuable session.

**Ms BURKE**—Absolutely.

**CHAIR**—I appreciate the frankness with which you are offering views, and I hope you will be able to continue that. We were talking about the integrity of ABNs. Did you have anything more you wanted to say on that area?

**Mr Cooper**—No, I do not think so. Hopefully we have explained our views on the ABNs.

**CHAIR**—You were critical of the audit office recommendations on school registrations. You felt they were rather intrusive.

**Mr Cooper**—One of the concerns we have about that – and we certainly do have some anecdotal evidence about this, and if you think about it, it is probably not surprising – is that if you are talking about 15-year-olds signing up for a tax file number while they are in school, that is part of a pretty quick process of them getting a bit of an insight into the tax system. It is hardly surprising, having got a tax file number at the age of 15, when they go out into the work force some years later the last thing some of them are going to remember is that several years ago they had a tax file number, and they are probably just going to trot down to the tax office or whatever to get another tax file number. So you immediately have the scope for duplication there.

I did try to make the point that we actually very much support the education process that is going on. In fact, the tax institute was involved – as indeed the chartered institute was – when this program was piloted, and it is a great initiative for education. Our concern stems from linking it with supplying a tax file number at the time. Few 15-year-olds probably need a tax file number, although a number of them do have jobs that perhaps require it. It is that aspect of providing the tax file number at that time that is our concern. Extending the process, giving the tax office more access to schoolchildren specifically for the purpose of signing them up for tax file numbers, is just something that at this stage we cannot support because of issues of privacy, and whether it does lead to a lot of duplication.

**Mr PYNE**—Since you have mentioned privacy, in your submission you emphasise the concern for the public's right to privacy. Do you consider the current issues with respect to fraud and so on that we have been discussing this morning might diminish the public's right to privacy in some of these areas? Or do you believe that the privacy aspects should be uppermost in the government's mind?

**Mr Cooper**—I think the privacy aspect does have to be a very important factor. It perhaps becomes less important in the context of ABNs where you are talking about businesses rather than individuals. Of necessity, businesses face a whole host of regulations. When you are talking about individuals, I think the privacy aspect is more important. The other part of that is the concern we have about an erosion of the underlying principle of the TFN system, that its use be a voluntary one. Some fairly important sticks or carrots are there to encourage people to quote TFNs. There was a comment in the report that there are a significant number of bank accounts where a TFN has not been quoted and the suggestion is that that is an area that warrants further investigation by the tax office.

It may well be that the people who are not quoting a TFN perhaps are outside the tax system. I suspect though in a number of cases it is no more than the fact that a person knows that they are on the top marginal rate and they might just as well have the tax taken out from the bank account rather than lodge a TFN. They may just have not lodged a TFN. You regularly see on dividend statements, the statement from the registrar that the TFN has not been recorded. Quite often an investor does not provide a TFN for no better reason than the fact that that company has been in the habit of paying fully-franked dividends and it is not an issue. People just do not want to spray their TFN around and have it recorded at a vast array of places.

**Mr PYNE**—The other side of the coin, of course, from the government's perspective, is that the cry of privacy should not be used as a catch-all defence to actually owning up to their responsibilities and obligations.

**Mr Cooper**—We certainly would not want the cry of privacy to be a shield for fraud and evasion – far from it – but the privacy aspect in the context of the schools program is one of concern. You have got young people that you are trying to explain how the system works and putting the pressure on them to become part of a big brother society with telling them that, 'You are not going to be an individual. You have got to have this number and if you have not got this number you cannot do anything.' I do not think it is a particularly good message to be sending out. Other people may disagree with me on that. It is those types of issues that we would like to see examined. At the end of the day the conclusion may well be reached that there is a long-term benefit to signing up every 15-year-old or signing up everyone when they started kindergarten, giving them a TFN. If you are going to do that you might just as well issue a TFN with a birth certificate. I do not think, at this stage, the Australian community as a whole is quite ready for that approach.

**Mr PYNE**—Do you think the tax office through its current use of TFNs is bordering on the breaching of privacy of individuals?

**Mr Cooper**—I do not think that the tax office use of TFNs necessarily does that. It is when TFNs have to be provided to other parties that the concern arises because, with respect to the TFN – it is the old story – a secret shared is no secret. It is not a problem as long as the relationship is just between you and the tax office, and the tax file number is used for no more than being the way of the tax office identifying that you are a specific taxpayer; it is probably acceptable as an essential part of efficient administration of the tax system. It is a problem when that gets extended and it becomes widely available and other people can have access to your TFN. Ian was saying, with respect to the ABN, where it is going to be quoted on all GST invoices, then anyone who gets an invoice gets access to an ABN which, if they are unscrupulous, they can use and dummy up on their own invoice. That is a problem and it goes to the integrity of the system.

**Mr Langford-Brown**—The question of privacy is becoming a moving feast in a way, though. While the institute is very conscious of privacy issues, and I can only more or less support what Mr Cooper was saying in relation to the school children, it is a double-edged sword. The most important thing is that you have got to distinguish between the rights of the individual and the community need. I think that we are getting a greater willingness on the part of the community to accept certain controls which we may not have accepted some years ago. The more that people talk about tax evasion and tax schemes and other things one has to wonder, without necessarily answering the question, whether it is a greater community acceptance appearing, whether they would take it further than they do. I would also like to support something Mr Cooper said. I do not believe the ATO itself is invasive in its use of TFNs; it is the potential for an external spread of that information which is of more concern than the other.

**Mr PYNE**—Which also would concern you with the ABNs as well.

**Mr Langford-Brown**—I said that earlier. The ABN, I think, is something that has greater potential and is something that needs greater scrutiny.

**CHAIR**—On that general point, you are all practitioners or all have some experience here. Do you actually feel that the level of fraud has increased in the last 10 or 20 years or is it the same or what? You must have a

feel for it. I know it is a subjective sort of question but you talked about the acceptance of the community. I would take it from your comment that you think there is actually a higher degree of fraud. Is that right?

**Mr Cooper**—This is where we should use Mr Earle, because he can only express one opinion! Whenever you ask any tax person a question like this, you ask two people for an opinion, you will get three answers. Hopefully my colleagues would agree with me. I think my perception would be that over the last 20 years the level of fraud has probably decreased rather than increased.

**Mr Earle**—No. The figures do not support you, Gordon, unfortunately. If I could just jump in there, we had a presentation from the forensic investigation division of KPMG to our financial management discussion group only last week. The statistics on the increase in fraud were just staggering.

**Mr Cooper**—That is fraud generally. I think we are talking about tax fraud.

**Mr Earle**—Yes. You would think that with the increase in fraud generally there would necessarily be an increase in tax fraud associated with it but certainly at my level I have not seen a big increase in dubious practices; that cash has always been – or the ‘c-ash’, as they call it – a big incentive for people to avoid tax but probably not to any greater extent than what it always has been. Looking at those statistics last week, I am surprised that my perception is what it is; that there is not more going on. It depends on what you mean by tax fraud because if you take tax fraud to mean tax avoidance –

**CHAIR**—No, it is evasion.

**Mr Earle**—or just straight evasion, I would not think that is the case. If it is straight avoidance I think the catch-cry of politicians that there is avoidance all around the place, except in certain isolated instances that might involve big amounts of money across the community, my view would be that it is quite markedly reduced because of all the changes in the legislation that have been made over the years, most of which have had that result but they have also burdened people with a lot of responsibility in terms of trying to understand the stuff.

**Mr PYNE**—And potentially perhaps things like Austrac being able to trace financial transactions in a way that –

**Mr Langford-Brown**—Let us not forget we have got the potential of e-commerce looming over our heads which is something that needs to be recognised as a potential source of additional minimisation of tax if not avoidance. To answer your question, Chairman – while there is still undoubtedly a strong element of the cash economy which equals tax evasion – I do not believe it has grown. I believe it has, if anything, been constrained with some very intensive changes to the law which are a damn sight awkward to work your way through if you are a practitioner but at least it puts the damper on it.

**CHAIR**—Does anyone else want to comment?

**Mr Dirkis**—Not directly on your comment. I think certainly that the perception is that fraud is probably a little bit more difficult to achieve now, but it was more to go back to Mr Pyne's comments earlier: the assumption that increasing the tax file number system is going to reduce fraud. It means that, as we have indicated, a lot of the misuse is in fact through people actually having tax file numbers. It is not through increasing the number of people that should have them. It is that they are currently misusing them.

The other point is that the ATO gets a lot of information through the current system but it seems to be that they do not utilise successfully the information they have got by using separate databases for HECS compared to – you have then got a question – personal tax returns; you have got a differential there. I can use a current example. They have introduced for trust losses, a questionnaire that will go out to certain firms. Something like two-thirds of that questionnaire is information that is prepared on the tax return. Every agent who prepares a return prepares that particular information. The problem is that they have not captured it for the years involved.

That is where we have the flow-through of these systems that, yes, you do need to comply. In order to fill out all these forms it adds a cost; the cost is borne by small business. Then you get questioned on the same information you prepared because the tax office has not held onto the information or utilised it. So to simply say, ‘Look, we have got all these problems. We should just expand the tax file system,’ there are issues of privacy there and I think there is a legitimate expectation of the Australian public that, yes, if we have got to give up a little bit of our privacy for the better good, then that is fine. But you have got to convince us that what we are giving up – what we have already given up is giving full value for what we have given up – and what else we are going to give up is going to increase that.

It is that issue which is probably the most important. Just to say, ‘We will expand and expand and expand’ – if you are not going to use it properly and if the fraud is occurring through people using them, then what is the point of expanding?

**Mr Cooper**—Another point on that is that the comment in the Audit Office report is that the information supplied by financial institutions to the tax office has not been able to be reconciled for something like the last

seven or eight years. So the information is there. Undoubtedly, a lot of the matching has identified people who were not paying tax and there has been some accretion to the revenue as a result of that but it must be disturbing, the fact that on something as relatively simple – albeit that the numbers involved and the number of taxpayers would be very substantial – it has not been possible to reconcile the information supplied with the tax or the interest income being reported by the taxpayers.

Until you can be more certain that the tax office is going to be able to use the information, we cannot really support an extension of the information going into the tax office.

**Ms BURKE**—How do you think the tax office needs to better administer? What systems things need to be done by the ATO to ensure that the TFN is being used appropriately – the whole administration of the thing?

**Mr Cooper**—Far be it from me to be an apologist for the tax office but the reality is of course that they do have limited resources and an approach that the tax office has adopted over recent years has been one of risk identification and risk management. It may well be that they feel the fact they cannot reconcile the information supplied by financial institutions with the tax collected from or reported as having been deducted in tax returns, is something they see as a high risk and they simply have not the resources there. Given unlimited resources then undoubtedly they could do that. In isolation it does appear to be unfortunate – if I can use that term – that that reconciliation has not been done. But we are not looking at the whole picture here.

**CHAIR**—Just on that point, taking the Audit Office estimates of the tax that has not been collected, in your opinion is that a conservative figure? Would you feel it is a realistic figure? If they were to follow up the points you have been talking about, in fact there might be a lot more taxes not being collected.

**Mr Cooper**—I think I would say there may well be a lot more tax that is not being collected; there may well be a lot less tax.

**Mr Earle**—Let us be definite about it!

**Ms BURKE**—How long is a piece of string?

**Mr Cooper**—I, in the past, have been involved with the tax office in looking at the issue of the cash economy. Because it is something that is hidden, it is extremely difficult to find any means of identifying and quantifying it. The problem is the more sophisticated you become in looking for it, you may actually be narrowing the leakage because you are better identifying rather than simply speculating. When I read the figure of \$250 million I just say that my initial reaction was one of surprise because I thought, if anything, it erred on the high side. I am surprised –

**CHAIR**—450.

**Mr Cooper**—Sorry, was it 450? I thought the figure was 250. It just struck me as being a high figure, but without access to the data forming the basis for it I do not know.

**Mr Earle**—Just following up Anna's question there in relation to this issue generally, the tax office's approach generally to a problem they perceive they have is to do two things: one is to start amassing huge questionnaires and sending them out to accountants and tax agents and asking them to fill them in, for which we are expected to charge our clients. That is negative advice. Clients are not too happy about paying for negative advice. Then they get all this information and, from all indications, they do very little with it. The UBS statement is a classic example of that, where they had some information in relation to circular trusts, which was occurring in Melbourne.

The second part of it is to ask for more information – which we cannot deal with – and then pass unintelligible legislation that basically crucifies the majority at the expense of the minority. The answer to Anna's question 'What does the tax office do about it in relation to tax file numbers?' is: look at the issue. What exactly is the issue of the tax file numbers? Find out why you have so many excess file numbers. They must be able to do it. Devote some resources to find out exactly what it is. If it is fraud, fine; if it is just duplication. I suspect it is more to do with the capabilities of their database, to get rid of tax file numbers, than anything else. At my level I have never been asked a question about tax file numbers yet, other than just frustrations at trying to get them. It is not as if there is trafficking out there in tax file numbers.

The answer, in my view, is just look at the issues and determine exactly what needs to be done in relation to those issues and trust losses; issue another questionnaire – what the hell are they going to do with all that information? 25A, what do they do with all that information? The high net worth individual project – what have they done with all that information?

**Dr SOUTHCOTT**—It is four years old now.

**Mr Earle**—They do not have the resources. I am no apologist either, for the tax office, but I do believe they have very limited resources and they need to be very specific about what they are doing and they need to be very clear about where they get their intelligence from. Too often they have a knee-jerk reaction about a particular issue. I agree they got some very damning information about circular trusts from the high net worth

individual project, but I do not believe that what they have done is the answer. It has not solved anything. It has created probably more problems than it is worth. I think in relation to tax file numbers, if you want to resolve that particular problem and the ABN issue then you have to identify exactly what the problem issues are and the way of going around them.

**Mr Addison**—Mr Chairman, I think if there is a problem with the integrity of the TFN system and the integrity of the underlying documentation that supports it, there seemed to be some problem with birth certificates, et cetera – that is one part of the problems with the integrity issue. I guess the other part is the way the ATO administers the issue of TFNs – and there have been different views put on that around the table. My understanding – and I do not know whether this is a matter of law or not, I have not checked it – is I thought you had to go through some sort of 100-point system, like you do with opening a bank account, before you are issued with a TFN. I do not know that always happens in practice. For instance, my son – when he was 14 or 15 – obtained a TFN and only gave his name, address and date of birth, I think. So there seems to be some uncertainty as to the way in which the ATO is administering the TFNs, if they are giving them out in that way.

**Mr Cooper**—But, Garry, that is part of the schools program.

**Mr Addison**—No, it was not.

**Mr Cooper**—It was not?

**Mr Addison**—No. I in fact had never heard of the schools program until I read it in a report. No, he made separate application. Putting that aside, the other issue is that if there is a lack of integrity in the TFN system and that cannot be resolved either through enhancing the underlying documentation or the way the ATO administers it, assuming there is a problem with the administration – and I cannot say with certainty on that – where do we go from here? The logical recourse, I suppose, from the government's standpoint would be to say, 'Then we are going to have a much more enhanced system,' and they will be looking for some sort of Australia Card. I think we need to be careful when we are saying, 'There is a lack of integrity in the system as it stands now. We have to look at ways it might be enhanced.' Otherwise we might move in a direction which most people may not like.

**Mr Cooper**—It is certainly true that there is something akin to the 100-point system you need to open a bank account, but the categories of documents that you can produce are much wider than they are for the 100-point system, which is quite acceptable if you are looking simply at a way of trying to confirm that the person is who they are so the tax office has a way of identifying them. But it is perhaps less acceptable where the tax file number system can result in concessions being available through reduced PAYE and so on.

I must say that I am a little reluctant to push for tightening up on the way in which TFNs are produced because it can, at the moment, take quite some time to get a TFN. I am not sure that the problem is so much with the issuing of the TFN, it is the subsequent use of the TFN and the way that it is difficult, if not impossible, for someone to determine whether the TFN quoted actually relates to the person who is quoting it. To come up with a system which would enable you to do that may be far too intrusive and far too expensive. But I foresee that to be the bigger problem area; not so much in the issuing of it – of course, there may be circumstances where false documents are utilised – but it is afterwards that the problem arises.

**Mr Langford-Brown**—Chairman, just to come into a rounding off on that, it is to some extent a question of balance. There is no doubt that the TFN system has had significant revenue benefits and it is really something to determine, I guess in the outcome, whether it is worth while putting in huge resources in a particular area in terms of what you gain. There have been pluses – there will always be pluses – but we also have to acknowledge there are always deficiencies in a very broadly applying system.

**Mrs HULL**—Can I just make an observation. Some months ago there was a person who was having some difficulty in reaching the 100-point system through a variety of areas including because a birth certificate has to be five years or older et cetera. You cannot take a birth certificate that is not five years old because it is not acceptable. This person was going through a lot of issues and gave a whole lot of documentation that was finally approved. He then came back to me and said he had used his technology of scanning to produce all of those documents himself and not one of them was valid.

The question I ask you is: is it to the point with technology that it does not matter what we do in order to secure, I guess, the most responsible approach possible, there is always going to be the ability, because of our technological advancement, that somebody can always be in the position where they can reproduce something and fail the system?

**Mr Cooper**—I am not sure whether it is technological advantage or change as incentive.

**Mrs HULL**—The ability to use it, I suppose.

**Mr Cooper**—Having a teenage child, it is amazing how under-18-year-olds appear to have ready access to fake identity for the purposes of getting a drink. I hasten to add, of course, my son was not a party to this. But,

quite seriously, the proof of identity for under-age drinking is actually quite rigorous, but it is amazing how widely available fake ID – and fake ID that stands up to pretty close scrutiny – is there.

**Mrs HULL**—Absolutely.

**Mr Cooper**—I think if people have the incentive they will find ways.

**Mr Langford-Brown**—The recent issue of these \$200 certificates from the GST start-up office have some fascinating supposedly foolproof bits in them. I am prepared to bet, in answer to your question, that two or three months down the track someone will find a way of getting through that. It is just inevitable.

**Ms BURKE**—I just wanted to go back to privacy for a minute, if I could. We had the Privacy Commissioner actually come and speak to us about this issue as well and about his role. I think, if my memory serves me right – and I might look for some help here – that his current legislation does not give him the ability to look into business issues. The privacy legislation is for the individual only. That is the premise, is it not? Yes. Therefore in providing the information to get the ABN the Privacy Commissioner has no responsibility if you have a complaint to actually come and say, 'Look, I think it is a bit intrusive – what they are doing with the ABN numbers.' So do you think there is a need to extend the provisions of the Privacy Commissioner so that he can look into some of these issues?

**Mr Langford-Brown**—In the corporate arena?

**Ms BURKE**—Yes, in the corporate arena. Sorry, I am putting this in a convoluted way. I am just trying to remember it. Before Christmas there was that issue about data matching and the big companies coming along and buying information and data matching and looking at how we actually protect people and also how we protect business. At the moment the Privacy Commissioner has no responsibility over business. As an issue, is there need for more legislation? I guess I am going against what Chris has been saying about less information. Is there more requirement for privacy at the moment with businesses?

**Mr Langford-Brown**—I think as we have more or less collectively said, we anticipate the potential for greater problems with the ABN and if we are looking for a solution, a possible part of that solution would obviously be – whether it is the Privacy Commissioner or some other appropriate party – there needs to be the capacity for that to have some rigorous support.

**Ms BURKE**—Somewhere for individuals to go if they have a complaint.

**Mr Langford-Brown**—Yes.

**Ms BURKE**—Or an issue that their privacy has been breached.

**CHAIR**—In another area in your submission you talked about the Phantom trying to get rid of his tax.

**Mr Dirkis**—It is a pun on the individual's name as all devotees of the comic will realise.

**CHAIR**—Yes. We can always find some anecdotal experience, but is it a common experience that when you do try and remove a tax file number it is fairly painful?

**Mr Dirkis**—It certainly is anecdotal from the members I talk to. It is a common occurrence that there are problems. It may not be the 17 months, but I think Neil is the one that –

**Mr Earle**—Deceased estates seem to be incredibly hard to get rid of. Obviously there is no evidence to support the fact that just by dying you can get rid of the tax man; not so much in recent times, but certainly a general experience over the years has been that it has been pretty difficult. This case I have at the moment where they issued that tax file number two weeks ago will be interesting to follow through and see how long it takes to get rid of that file number. The fact of the matter remains that you will never get rid of that file number because I think it always stays in the tax office database. It is almost a bit devious because it sits in there and then it will turn around at some stage and bite you because you will have lodged a return for three years on the old file number and suddenly you will get a final notice to lodge a return for that client on the old file number. You will say, 'Oh, no, we've been trying for three years to get rid of that file number.'

Of course, with the change of staff and all the rest of it in the tax office, it just does not go anywhere. This is what I was saying before – if you are looking at the specific issue to improve the perceived problems of excess of file numbers, then look at a way in which the tax office can in fact better manage their database and facilitate the exit of file numbers, particularly through agents. If they embarked on a course with agents directly to say, 'Okay, of your tax agent list how many of these file numbers are duplicated, they are for dead people, or if the companies have been wound up – send the list in and we will just get rid of them. We guarantee you they will never appear again.' You might find that the number of excess file numbers would disappear although they are certainly not going to disappear by millions overnight. But at least it would be a step in the right direction and it would make agents' lives a hell of a lot easier when you are faced with a client like the Phantom trying to get rid of his file number, because he is beating down your door and the fees you could charge him for it are –



**Mr Addison**—In fact either in the audit report or in the ATO's response to it I think they have said that the ATO is now acquiring information from the births, deaths and marriages registries around Australia on people who have died so that is where they want to get their information from. Presumably up until now they have not had that, which seems quite surprising.

**Mr Sheppard**—Appendix 6 gives a category or break-up of three categories – deceased, further return not necessary, and over 60 and no lodgment required – so apparently they are a fair way down the track and at least broadly categorised.

**Mr Earle**—There have always been forms that you could fill out to send into the tax office and that in some cases will work very successfully and in other cases it will not. I do not know that looking at the Registry of Births, Deaths and Marriages is going to help them terribly much because –

**Mr PYNE**—No, they will get the information on who is deceased and that will link into the database and they can cross out the TFN.

**Mr Earle**—I do not know, addresses and similarity of names – I guess dates of birth has to be the issue but I would not put it past it to delete your tax file number, believing you are dead, and then get somebody else with the same name and the same birthday.

**Dr SOUTHCOTT**—Would it not be the executor of the estate who would put in a tax form and it would be the final tax form?

**Mr Earle**—Yes. That does not necessarily work.

**Mrs HULL**—It does not get it deleted.

**Dr SOUTHCOTT**—I understand it does not get it deleted but wouldn't going to births, deaths and marriages be superfluous then if –

**Mr Earle**—Not necessarily, not if that return is not lodged. In many cases they may not be lodged by the executor of the estate. They may not be aware of the requirement to lodge a final return.

**Mr Dirkis**—They may not collect the data. That is the other thing. It may not bear the label which say captures the data.

**Mr Langford-Brown**—But if you do lodge a return, yes, you write 'Final' and that should correctly identify it.

**CHAIR**—We are just about out of time but if there are any other particular issues or how you want to summarise what you really want to see come out of this inquiry –

**Mr Earle**—It is sort of loosely connected with tax file numbers and I guess the recommendations you are going to make that may result in additional legislation but one does not often get the opportunity to sit in front of a number of parliamentarians and plead – and plead. This tax legislation that has been passed over the last couple of years – unintelligible is probably the nicest word you could use in the company of ladies for that legislation, and you are not doing your constituents or any of us any favours by just blindly passing this legislation without saying to the Treasury and the tax office, 'Come on a minute, guys. Do you really understand this stuff?' because if Gordon Cooper, president of our TIA, cannot understand, then nobody else is going to understand it.

The time has got to come, and the politicians are the ones who have responsibility here to just say, 'Look, enough is enough. We can't burden the business community with this legislation.' Well, if you cannot understand it then you cannot administer it; you cannot implement it. You cannot comply with the law. And in a lot of cases of the UB statements we cannot comply with the law and there is no point passing legislation if we cannot comply with the law. I think it also comes back to what I said before, too, that the intelligence the tax office picks up needs to be better looked at so that they are actually recommending legislation based on a true situation and not one that may be obtained from very severe – in terms of dollar situations – but necessarily is not fair to burden the rest of the community with.

**Dr SOUTHCOTT**—A lot of this is presented in order to address issues of tax evasion. Is there any reason why some of this legislation could not have been dealt with under part IVA of the income tax act or –

**Mr Cooper**—If you have another hour I would be happy to go into it. Yes, I think the professional bodies frequently criticise the tax office for not using the powers that they have already and I think frequently the legislation that is introduced to combat a specific perceived evil is insufficiently targeted and, trite though it may be, it is very much often a sledgehammer to crack a nut. However, if I can return to the specific point, what you had was what we believe is about 20 identified cases. As a result of that, that legislation imposes on every trust on trust distribution across Australia and the measures announced – and I know again it is outside of this committee – the recent measures announced to weaken that still does not carve out that compliance burden on all the rest of the innocent people.

**Mr Dirkis**— But in the sense of – to get people out of a system so you have 20 evil people and –

**CHAIR**—I think this committee quite a few parliaments ago had a similar experience with the bottom-of-the-harbour stuff.

**Mr Cooper**—Coming back to the issue today, if I could summarise, I think the message we would like to convey is that the audit report does identify some serious concerns and before a number of those recommendations that are contained in the report are implemented, we are strongly of the view that there does need to be further investigation of the concerns that were raised to try and determine whether there are in fact serious problems with the integrity of the TFN system and specifically to look at whether the fact that the TFN system does have those two roles of identifying a taxpayer for the purposes of record keeping effectively within the tax office and the TFN system giving concessions through not having to have TFN withholding tax deducted through the ability to lodge an employee declaration. I think until that is done then we will have concerns about whether the ABN system will have the integrity, and I hope that the somewhat anecdotal evidence that we have tried to share with you today has been useful for your deliberations.

**CHAIR**—Does anyone else want to add anything?

**Mr Sheppard**—The institute would support that view and we would also like to see the ATO further their housekeeping exercise to clear up those inactive file numbers. Out of that exercise we feel they may get a better feel for exactly where the problem is and how they can go forward with a better system.

**Mr Addison**—We support the TFN system and we would support moves to enhance its effectiveness. What is necessary to do that is not entirely clear. I think some of the audit report and recommendations we would generally support, but obviously there may be other measures that have to be taken to enhance it.

**CHAIR**—Gentlemen, thank you very much for giving us your time and the benefit of your knowledge and experience. It has certainly been very valuable for the committee and certainly will be very important in our deliberations when we come to producing a report. Thank you.

**Proceedings suspended from 12.07 p.m. to 1.03 p.m.**

**AUSTIN, Mr Graham**, Projects Manager, New South Wales Registry of Births, Deaths and Marriages  
**STACEY, Mr Trevor John, Registrar, New South Wales Registry of Births, Deaths and Marriages**

**CHAIR**—By way of introduction the basis of the house economic committee's investigation is its examination of the Audit Office report on the management of tax file numbers as part of the committee's examination of audit reports within its area of portfolio responsibility. In their audit the Australian Audit Office found significant weaknesses in the tax file number system and made recommendations to address these. The economics committee is interested in investigating the Audit Office findings and broader issues in relation to the tax file number system.

In recommending changes to the current TFN system the committee is conscious of the need to achieve a balance between efficient public administration, the protection of individual privacy and the compliance costs. This requires careful consideration of the impact that changes will have across the community. These public hearings today provide an important opportunity for the committee to hear from a range of stakeholders on the key issues that need to be considered in achieving this balance. They provide the committee with a chance to hear directly from those who will be affected by changes and to draw on the experience and expertise of those who work in this area.

The committee looks forward to hearing, in the second part of today, from the witnesses about their views. I welcome representatives from the New South Wales Registry of Births, Deaths and Marriages to the hearing. I remind you that the evidence you give at this public hearing is considered to be part of the proceedings of the parliament, therefore I remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament.

**Mr Stacey**—I appear in the capacity also as the chair of the Subcommittee of the Australasian Registrars Conference.

**CHAIR**—Thank you. The committee has received your submission No. 15 which has been authorised for publication. Are there any corrections or amendments you would like to make to that submission?

**Mr Stacey**—No, as it stands.

**CHAIR**—Mr Stacey, would you like to make an opening statement before members proceed with questions?

**Mr Stacey**—Just a very short statement, Mr Chairman. Since becoming registrar of New South Wales in November of 1996, it came very quickly to my attention that fraudulent use of birth certificates was a fairly wide occurrence in Australia and particularly in New South Wales. As a result of that I had arranged a number of meetings with various state, Commonwealth and private organisations to better understand the issues. As a result of those meetings the New South Wales registry developed a number of strategies to minimise fraud where the use of the birth certificate is involved. Part of that is also looking at the proof of identification documentation associated with obtaining a birth certificate and other matters.

As a result of a lot of that strategy work we developed – as we will be demonstrating today – the certificate validation service which is on a secure extranet system and we can actually show that to you later. That has been piloted successfully with the Roads and Traffic Authority here in New South Wales now for some months and we are just about to sign a memorandum of understanding related to a phased roll out of that system. It will be in place in 10 of the RTA offices before the end of March – five in the city and five in the country. It will be rolled out completely to the 127 offices of RTA by the end of June this year.

The strategies we developed in New South Wales were part of a keynote address at the Australasian Registrars Conference held in Hobart in November 1999. I notice Chris is here from the tax office. He also addressed that conference. A number of recommendations were made to that conference to help reduce or minimise fraud involving the use of birth certificates in Australia. I will talk about some of those in open session but there are some I would like to talk about in closed session later.

We have all agreed to pass model legislation in our jurisdictions. But for one jurisdiction all of us either have passed or have before the parliament that legislation currently. Section 11 of that act in New South Wales entitles me to enter into ministerial agreements with my registrar colleagues in other states to share information. So our major aim, as registrars, is to offer transparent service across Australia so that anyone coming into a registry office does not know that they are dealing with separate jurisdictions, but it seems that they are dealing with one Australian jurisdiction; that we will adopt universal certificate access policy so that only people who are entitled to the certificates are actually getting the certificates and that universal system should be standardised and that we also adopt universal identification policy. New South Wales has led the field in that regard and has an ID policy that people must satisfy before they can obtain a certificate from us but they also have to satisfy the certificate access policy prior to ID. Some of the Australian jurisdictions do not yet have that ID policy.

We have also agreed to adopt universal change of name policies, that is an area that is a considerable fraud issue related round at the moment. We are about to improve our common stock security certificate paper by embedding a watermark in it by the use of a Dandy roller. It will make it a lot easier for many agencies to quickly ascertain whether they are looking at a genuine certificate and adopting the universal secure extranet certificate validation system which, as I said, we are happy to demonstrate. The other three recommendations I would like to talk to you in private session about. I think that is all I wish to say at this point.

**CHAIR**—Thanks very much, Mr Stacey. I wonder if we could start by you just outlining to the committee where you talk about the wide occurrence of fraud. Can you put some numbers on this? Is it growing or are you containing it or what? What are the sort of trends?

**Mr Stacey**—What we have endeavoured to do over the past few years is to at least get people to report it to us. That was a major difficulty for all Australian registries in the past, that although fraud was happening and birth certificates were being used, the incidents were not being reported to us. In about 1992 we started discussing and eventually put in place a security reporting network. Graham Austin actually heads that network and receives from all Australian jurisdictions notification of any fraudulent activity involving a birth certificate that is brought to his attention.

For New South Wales last year, there were in excess of a hundred incidents reported to us where individuals – and it may have been that there is more than one occurrence related to those individuals – fraudulently used birth certificates to obtain services or used them for other activity.

**Mr Austin**—On top of that there were over 200 certificates referred by the Roads and Traffic Authority where attempts have been made to obtain drivers licences with false names.

**Mr Stacey**—Perhaps I can add to that that the reports have come in to us from various agencies. As Graham said, there is the RTA on the one hand, but also private and public sector, government agencies as well as banks, other financial institutions, et cetera, and the police forces, both federal and state.

**CHAIR**—You mentioned RTA. How much of this would be associated with say the issue of tax file numbers?

**Mr Austin**—I have not got any direct inquiries from the Taxation Office where they specify that the reason they are making the inquiry is for tax file numbers, but we do respond to a number of inquiries for the Taxation Office every year.

**CHAIR**—Can you elaborate on those inquiries?

**Mr Austin**—They may wish a search to be done against a certain name and particulars. They may want copies of certificates of a person; they may wish to confirm the death of a person.

**CHAIR**—What sort of numbers are we talking about?

**Mr Austin**—We would be talking in excess of 100 a year.

**Mr WILTON**—What evidence do you have that tax file numbers are being fraudulently used to obtain birth certificates? Is there any way that you can monitor that at all?

**Mr Stacey**—Normally we would be using a tax file number to obtain a birth certificate but, the other way round, if you are trying to prove who you are, you would be getting a birth certificate from one of the Australian registries.

**Dr SOUTHCOTT**—What do you think is the extent of that sort of fraud in Australia – fraudulent birth certificates, fraudulent tax file numbers and so on?

**Mr Stacey**—There is very little hard evidence that we have been able to put our hands on. The report of the Institute of Chartered Accountants in Australia's Fraud Advisory Council was taken very seriously. They tried to put some figure on it, but I guess the most recent evidence we have of the power of fraud in Australia is the certificate validation service file that we run with Westpac. That was reported in the *Daily Telegraph* in New South Wales and I think it also might have got into the *Australian*. But they reported 13 per cent of the transactions that they were undertaking in financial areas were fraudulent, as proven by the production of certificates and validated against our system.

**CHAIR**—So 13 per cent of what?

**Mr Austin**—It was 13 per cent of certificates presented to open accounts or for applications for loans were found to be fraudulent.

**CHAIR**—So that was 13 per cent of all applications.

**Mr Austin**—In this pilot that they ran.

**CHAIR**—But the pilot was just a random one, it was not a select –

**Mr Austin**—That is right. They were in a pilot with 35 branches in the Sydney area over a period of about four weeks, and in instances where birth certificates were produced as evidence towards the hundred points, 13 per cent of those birth certificates were found to be fraudulent.

**Ms BURKE**—That seems extraordinarily high.

**Mr Stacey**—We thought so too.

**Ms BURKE**—Good. I am glad that you thought so.

**Mr Stacey**—The discussions that we have had with various state and Commonwealth bodies particularly have indicated that it is probably lower than one per cent, but this was an astonishing figure to be reported back to us. It was not reported back to us, it happened as a result of the certificate validation service.

**Mr Austin**—I think the branches that were selected were targeted branches with a history of maybe fraudulent applications for loans and opening bank accounts in false names.

**Mrs HULL**—I guess that supports just what I said this morning, Mr Chairman. But can I just ask something. There is a stipulation in some areas, when you are trying to get your hundred points or whatever, that a birth certificate must be over five years old. Could you explain why?

**Mr Austin**—It is not so much for the opening of bank accounts but I have heard it in other areas. It is because a lot of people consider them to be more valid than the more recent ones.

**Mrs HULL**—So there is no real science to it.

**Mr Stacey**—I would be arguing just the opposite.

**Mrs HULL**—Yes. I just found that it is particularly so – I am sorry, this is for Immigration but I just wondered why that would be the case?

**Mr Austin**—They use both recent ones and certificates dated more than five years ago when they are presented for fraudulent purposes.

**CHAIR**—So the birth certificate is the most likely thing to be forged, are you saying, in terms of the identification?

**Mr Stacey**—No, we are not saying that, in relation, to the exercise with the banks, it was the one thing they were able to validate. We do not know what other documentation was produced to the bank or in fact for any other service application or entitlement application that occurs around Australia.

**Ms BURKE**—But you use a birth certificate because it gives you a high percentage of points, doesn't it?

**Mr Stacey**—Yes.

**Ms BURKE**—So people would produce it because it is one that they actually consider to be more valid when you are actually going for your points. Mind you, having just registered someone that has been born, I was actually surprised how easy it was to do it.

**Mr Stacey**—Where did you do that?

**Ms BURKE**—In Victoria. This is easy, fill in a form, send off 17 bucks and back came the birth certificate.

**Mr Stacey**—Victoria is currently investigating the identification policy that we have in New South Wales. We saw some years ago the need to minimise fraud. We required that ID policy and we believe that Victoria will be, based on the agreement we have got in Hobart, adopting that same system fairly soon. So it will not be as easy.

**Mr Austin**—The Victorian registry also checks that form you sent in from the hospital.

**Ms BURKE**—Yes.

**Mr Austin**—So it is confirmed.

**Ms BURKE**—The only correlation that I could see that it requested for the midwife who was attending to be there. But that was the only thing that you could have matched. I just found that interesting.

**CHAIR**—In these cases of identifying, what was the follow-up then? Was there any police action? Were these false certificates drawn to your attention so you could actually try and see if there was any follow-up from your perspective?

**Mr Stacey**—We understand from information provided to us by the RTA who piloted this system that people were arrested and charged as a result of presenting fraudulent certificates, and I also believe the same has happened with Westpac –people were arrested and charged on the presentation of the bogus certificate.

**Dr SOUTHCOTT**—Do you have any view on what sort of proof of identity should be required before tax file numbers are issued?

**Mr Stacey**—We support the current round of discussions that are occurring in Australia that Chris heads up. Graham actually is the New South Wales registry representative that travels around Australia to each of those

meetings. We support the way that those discussions are proceeding, that there be one set of PI documentation for all transactions in Australia. The view is being formed progressively.

**CHAIR**—You would like to make a short presentation, I think.

**Mr Stacey**—Sure, yes.

**CHAIR**—Then we will look at this in camera part.

**Mr Stacey**—The description of the process that we are about to demonstrate is contained in the last paragraph on the first page of our submission and over onto the second page. If you would like that read into the record I am happy to do that, or just incorporate it.

**CHAIR**—No, it is on the submission there.

**Mr Austin**—All right?

**CHAIR**—Yes, go ahead, please.

**Mr Austin**—A bit of a description of the simplicity of it: it is just a template over a secure Internet site, fully encrypted, to a supplementary database. It is just a matter of entering the data in pre-determined fields. In this case this was a prototype that was organised for the Roads and Traffic Authority and they wanted the year of registration, registration number, family name, given names, and the date of the event. We ask it to be verified, it comes back, it says 'Verified'.

**Mr Stacey**—It is a very simple system. We will now show you what happens when it is not verified.

**Mr Austin**—If you put the wrong year in, it comes back not verified. Every space, every character must match exactly with what is on the certificate which is off the database.

**Mr Stacey**—I point out, Mr Chairman, that we could not verify Mrs Hull's particulars as we do not have a birth certificate and that is part of the privacy implications of this whole process. You must have that certificate before you to verify it.

**Dr SOUTHCOTT**—You need the registration number.

**Mr Stacey**—You cannot go trawling on this system. That is why Privacy New South Wales supports the process.

**CHAIR**—Just a question. I see you have got registration number one to six digits. That means that you could have a duplicate number for another year. Is that right?

**Mr Austin**—Yes, the series starts every year, so that registration number must match the year. The registration number must match the year. The registration number is unique to that name to that year.

**Ms BURKE**—So if there was another Amanda Louise Austin who was born in another year –

**Mr Austin**—It would not match.

**Ms BURKE**—It would not match.

**Mr Austin**—No.

**Dr SOUTHCOTT**—How have other organisations found this?

**Mr Stacey**—The Roads and Traffic Authority have been very impressed. As I say, Westpac Bank have been more than impressed, and they have also requested that they have access to the service that is being arranged now.

**Dr SOUTHCOTT**—Do you expect that you are going to have a user pays type fee?

**Mr Austin**—Yes, the Registry of Births, Deaths and Marriage in New South Wales is a government trading enterprise, so yes, it is a fee for service arrangement. The Commercial Crime Agency of the New South Wales Police Force have also expressed an interest in seeing this spread throughout the financial industry.

**Dr SOUTHCOTT**—When do you expect it will be ready for other financial institutions and so on to use?

**Mr Austin**—Approaches have been made by some of the financial institutions and accordingly they are also organising requests to be forwarded to me.

**Mr Stacey**—Effectively it has been piloted and it is a robust technology.

**Mr Austin**—It is being developed now for the acceptance of the deaths, marriages and change of name databases to be added to the system.

**Mr Stacey**—Graham mentioned we are a government trading enterprise. We take very seriously the protection of the privacy of the individuals whose records we hold. We wish always to maintain the trust and confidence of our population in the way we use any data we hold on their behalf. This can only be used when prior permission has been given by the party whose certificate has been used. Normally on a road and transport licence application it is stated clearly that the information might be checked at source. The same would happen with any other agency that took up this system. You cannot trawl the system; you must have the certificate in

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front of you and you must be licensed by us and be issued with the appropriate authority to do so. It is not something generally available to the public.

**CHAIR**—The tax office stated in its submission that they had been using fact of death data since April 1999 to update their records. Is there any reason they would not have used it prior to 1999?

**Mr Stacey**—It was not available universally across Australia. Queensland came into the fact of death process in 1999. It was the first time it was therefore a complete fact of death file.

**CHAIR**—But they will now be able to go back into it further?

**Mr Stacey**—Yes, provided Queensland loads in back data.

**Dr SOUTHCOTT**—If a member of the public wants to come to the New South Wales registry and look up someone's birth certificate or whatever, what do they have to do? What process do they go through?

**Mr Stacey**—They have to prove, first of all, that they have a right of access to that certificate. Birth certificates in New South Wales after 1905 are only available to those people with a right to access them. You could not come in and look at someone else's if you were not authorised to do so.

**Dr SOUTHCOTT**—So in terms of genealogists and so on, they look at things earlier than that.

**Mr Stacey**—That is correct.

**Mr Austin**—Our registers are not public records after 1905 in the case of births, 1945 in the case of marriages and 1960 in the case of deaths.

**Mr Stacey**—And in getting access to that certificate you would have to satisfy us who you were, too.

**Ms BURKE**—So this system can be now duplicated for all the rest of the states?

**Mr Stacey**—The general agreement to proceed with this across Australia was discussed in Hobart and we are happy to make it available to all other Australian jurisdictions.

**CHAIR**—Again on that registration number, that presumably could be duplicated in other states even if it was a different person?

**Mr Stacey**—It could but it would be under the New South Wales system. There is no way there would be a duplication in its entirety.

**Mr Austin**—If it did it would not match the name. If it was a duplication in another state it would have to be the same name. All those particulars have to match.

**Mrs HULL**—That is amazing.

**Mr Stacey**—It is simple, isn't it?

**Mrs HULL**—It is so good.

**CHAIR**—I know you say you cannot trawl through it but, as you allow more and more people to register for access, it is going to be easier for those who have other motives who want to try and use it. What is the security against that?

**Mr Stacey**—What purpose would they be using it for?

**CHAIR**—If they were trying to create a fraudulent –

**Mr Stacey**—All they are able to do in those circumstances is verify that the certificate is a genuine certificate.

**CHAIR**—All right. Mr Stacey, you have asked to be able to give part of the evidence in camera, as I understand.

**Mr Stacey**—That is correct.

*Evidence was then taken in camera, but later resumed in public –*

[2.00 p.m.]

**MONTANO, Ms Elizabeth Maria, Director, Australian Transaction Reports and Analysis Centre**  
**RYAN, Mr Paul, Senior Manager, Australian Transaction Reports and Analysis Centre**

**CHAIR**—I welcome the representatives from the Australian Transaction Reports and Analysis Centre to today's public hearing. I remind you that the evidence you give at the public hearing is considered to be part of the proceedings of the parliament and therefore any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. The committee has received your submission No. 9 and it has been authorised for publication. Are there any corrections or amendments you would like to make to the submission?

**Ms Montano**—No, thank you.

**CHAIR**—Would you like to make an opening statement before we proceed to questions?

**Ms Montano**—Thank you, Mr Chairman. The first thing I have to say is that the addition of tax file numbers to the reports which AUSTRAC received raised a number of issues, some matters of policy and some matters of history in terms of how this legislation came to be and some of the thoughts around it and, finally, very practical issues as to how you can actually ensure compliance in a cost-effective and reasonable way. All those things have to be considered in the context of balancing the benefits of adding TFNs to the information we receive against the costs of adding those TFNs – costs to government and, of course, costs to those who we ask to report to us.

The idea of using TFNs to match and use data other than tax data is not a new one. In some ways, our legislation arises out of some of the discussions about national identity numbers and, of course, it always raises serious concerns regarding privacy and the extent to which they will be used. Having said that, we are always looking at ways to improve how we can assist the ATO and the law enforcement and revenue agencies we provide information to. We, of course, develop matching and analytical tools to do that so that we get the best out of the information we do collect. There is still a lot of work to be done in relation to that.

We have a very close working relationship with the ATO. Mr Ryan is our senior manager who spends a vast proportion of his time working in direct liaison with the tax office. He is also, on invitation from the tax office, a member of the Cash Economy Task Force. The Cash Economy Task Force and the ANAO report that you are looking at both refer to the possibility of adding TFNs to the information we collect, which the legislation calls FTR information. Of course, neither of them were, at that time, in a position to specify exactly how or on what reports, because we do have quite a range of things that we obtain reports about.

As is often the case with quite significant and complex initiatives, the decision in principle to explore an option is easier in some ways than the detailed analysis that has to be done when you come to think about how in practice you will do it. As this is one of those initiatives, we have to think really carefully about what we should put TFNs on and what benefits will come to the tax office from doing it and exactly what this means for the financial institutions that report to us. We are in that stage now. We have been working with the ATO for some time to deal with the real, underlying driver about TFNs from our perspective, which is better matching. That is why we need TFNs, to make sure that the matching of transactions can be done in yet another way, in addition to all the other ways we try to match transactions according to names and addresses and account numbers and those sorts of things.

Of course, in that context, we have to think about TFNs themselves. I know that is part of the wider inquiry, as to exactly what they are and what they mean and how they can be relied upon. We are working on a number of groups with the tax office and also with other groups – the Bankers' Association, Centrelink, and other Commonwealth, state and territory governments – to look at the underlying identity documents which lead to a whole range of things being built up about the identity of a person. We have also been dealing with the Privacy Commissioner in relation to this because we are very keen to ensure that whatever proposal is put up eventually is not one that will be vulnerable to legitimate and reasonable criticism. We take the view that it is better to actually do the homework early than to come up with a proposal which has inherent flaws.

That is probably all I need to say for the moment. I am sure you have lots of questions.

**CHAIR**—Thank you. Could you first of all outline for the committee what sorts of frauds you are actually uncovering in your work? What type of fraud do you come across most?

**Ms Montano**—The information we collect, analyse and then pass on gets used in a whole range of things. Fraud is one of them. A lot of the work the tax office and the National Crime Authority is currently working on – Operation Swordfish – arose out of AUSTRAC analysis of particularly international currency flows and telegraphic transfer flows that we see going out of the country all the time, much of which is believed to be tax money. As such, that is a fraud on the Commonwealth. I am sure the tax office can elaborate on that.



Obviously we also look at a lot of other kinds of fraud and pass that on, but for these purposes it is fraud on the Commonwealth.

**CHAIR**—And more specifically I think you mentioned \$46 million, but what is that made up of?

**Ms Montano**—That is a very small measure of the contribution we make to the ATO's outcomes. In looking at the analysis the tax office does using our information, that is a range of cases – and the assessments they make – where, if there had not been inquiries initiated by our information, they would not have been found at all. In addition there are a lot of indirect benefits. For example, our information is used in international tax work, looking at tax havens, assessing profiles, vulnerabilities, priorities for the tax office. It is used in debt collection. When a taxpayer says, 'I have no funds,' a little search can find that perhaps they do. It is used in a range of things to work out what they do.

**CHAIR**—How many investigations would you do in a year?

**Ms Montano**—We do not investigate.

**CHAIR**—Sorry, how many cases would you unearth, do you think?

**Ms Montano**—We are a very small organisation with less than a hundred people and that includes a regulatory role, an analytical role and a liaison role with all the agencies. All the agencies with access have online access, so they do their own work. The tax office will go in and use our tools that we have developed for them. For example, we have a data mart where they can actually look at particular kinds of transactions, particular postcodes, the particular criteria they are looking at for analysis. They would look at thousands of reports in a week, over time. They do a lot of macroanalysis. 'Cases' is probably not quite the right way to express that.

**Dr SOUTHCOTT**—There was a case recently of insider trading which was really picked up through AUSTRAC's work. One of the things in that case which I recall is that you looked at transactions over \$10,000. It appears the perpetrator actually had made a lot of transactions that were just below the \$10,000 mark. Is that \$10,000 figure arbitrary? Do you just investigate transactions above that, or do you have a much wider discretion?

**Ms Montano**—We get four different kinds of reports. We get all cash transaction reports over \$10,000. We get all the international transfers in and out of the country. When our banks receive funds we also get reports from institutions we have nothing to do with, which we do not regulate, which is an issue for TFNs in due course. We also get suspect transaction reports. Our legislation quite clearly recognises that there is a widespread practice of 'smurfing', which is structuring your transactions under \$10,000 to avoid the reporting obligation being triggered. The way we get those is that the institutions report them because they are just as aware as we are of the ways in which people try to avoid objective reporting limits.

I do not have a discretion under the legislation to say, for example, 'Why don't we just collect reports on everything \$8,000 and over from bank account in Cabramatta for the week?' That technique is used in the United States quite extensively and very successfully but we do not do that here. We do not have that sort of discretion. But the reality is that it is the combination of those reports which is quite useful. In that particular case, the offender – because he has been convicted, so I can call him that – was not aware of the reporting obligations, became aware of them in the course of a transaction with the bank and thereafter has been found to have deliberately tried to transact under, which meant that there were some reports about that, but also it meant that he was quite well aware that what he was doing was avoiding the reporting limit. That was initially how he was identified.

**CHAIR**—Thank you.

**Mr PYNE**—Ms Montano, would you please take me through the process by which you work with the ATO in terms of some of these fraud cases.

**Ms Montano**—First of all, as I said, the tax office has online access to our almost 50 million transactions on our database. Depending upon what project they are working, they will regularly do certain things. For example, they might do a list of all the international transfers that have gone to country X, because country X is of interest to the international tax people. They will have particular interests, depending on the project they are working on. To help them do that, we have developed some specific tools which are very good for macroanalysis because it allows them to see a picture, take some criteria and then to drill down to individual transactions on the database.

So a lot of the work they do, some of it we do. For example, all the suspect transaction reports we get – and we get about 7,000 a year – are all automatically referred to the tax office. To be reasonable, they cannot go and look at every one of them because they do not all necessarily indicate on their face tax evasion, but a lot of them probably have tax evasion along the way with whatever other criminal activity might be reflected in the report. So we will refer those.

The tax office also participates in a joint intelligence task force, which is actually under the auspices of the National Crime Authority, where the intelligence of a whole lot of agencies is pooled together to evaluate the material we have produced in our automated processing systems where we look for unusual patterns. If we find something we think is really odd we refer it to this task force, which is just an intelligence and not an operational task force. They will work it up and refer it off to particular agencies. The tax office is a member of that and they actually take quite a few things out of that. That was actually the source of Operation Swordfish. There were many of these interesting streams of funds going overseas, which we were pretty sure was revenue evasion, and that was the source of that.

**Mr PYNE**—So the tax office can access your information?

**Ms Montano**—Online.

**Mr PYNE**—Independently?

**Ms Montano**—Subject to a memorandum of understanding in terms of the terms. Again, history is very relevant here. When this legislation was enacted it was quite clear that the primary hook for the Commonwealth was taxation powers, and the Commissioner of Taxation was given right of access, and the legislation says that. In 1993 there was a Senate Standing Committee on Legal and Constitutional Affairs reporting on the effectiveness of the legislation and how it was working. Out of that came some recommendations that the tax office should access in the same way as all the other agencies, so my predecessor and the then commissioner determined exactly how we would work out access. We have done some variations since then but it is all by MOU covering, for example, number of officers, where they come from, feedback requirements, and how they tell us what they are doing with information so that we can not only account for our own existence, as it were, but also how we can do it better for them. There are a whole range of provisions in that, but it is by MOU.

**Mr PYNE**—So if the tax office accesses your information do they have to ask you before they do it?

**Ms Montano**—No.

**Mr PYNE**—They can just go straight online and do it?

**Ms Montano**—They have a standing sort of permission.

**Mr PYNE**—As long as they are within the terms of the MOU.

**Ms Montano**—Yes. We have registered users, audit trails, all that sort of thing, so it is not just anyone in the tax office. Out of the thousands of people in the tax office, I think the access is about 600 and something at the moment.

**Mr PYNE**—Right. And the tax office can then refer information to an operational agency if it determines to do so?

**Ms Montano**—Yes, they can refer things on. For example, if they think there is something criminal about what is going on, they could give it to the NCA for use in Operation Swordfish.

**Mr PYNE**—Or give it to the Federal Police or something like that?

**Ms Montano**—Or to the police if it is going to be dealt with as a fraud on the Commonwealth.

**Mr PYNE**—And you can determine to send something to an operational agency as well?

**Ms Montano**—Yes.

**Mr PYNE**—Quite independently?

**Ms Montano**—We do, yes.

**Mr PYNE**—And you do not have access to tax file number information?

**Ms Montano**—No.

**Mr PYNE**—Do you think it would be useful to AUSTRAC if it had access to tax file number information?

**Ms Montano**—First of all, the only reason anything is of use to us is if it is of use to the agencies that use the intelligence, because we are only an intelligence agency. We provide our product to the agencies that then use it to get real outputs, as in more revenue or arrests and those sorts of things. The tax file number has a lot of potential for use because we do have - like all agencies trying to deal with large databases - to match who is doing what, and to find patterns. The more ways you have to match, the better the likelihood that you will get a match. At the moment we use matching techniques - addresses, names and so forth - and there are of course a lot of names which are not Anglo Saxon, particularly a lot of the international transfers, where some of the matching software we have used in the past - although recently much better - did not deal very well with foreign names. We also have issues of variations in names - same person, but described in three different ways in different documents, different reports. So there are always matching issues.

The attractiveness of a number per se is that you just click and you have matched. That is really good. The question is, like with any other document that you want to use to check whether two things are about the same, the underlying integrity. There obviously are some issues about the tax file number and whether it will give us some false positives - if you know what I mean - as well as lots of really good help. We are certainly drawn to it. Having said that, historically we have always had - and I think it is the right way to go - to weigh up the costs and the benefits. We want to make sure that that is actually going to achieve outcomes, because we are asking the financial institutions and the casinos and all those sorts of people who report to us to do extra work to report that. It is not that easy for them to add this.

We get 99 per cent of our reports electronically, and the way we have done that is to actually leverage off their business practices and we try to minimise what we ask them to do. We try to say, 'What is it you do in your business practice that has this information that we need so we can just extract out?' It saves them money, it saves us time and it saves us money, and it gets a better quality result. You do not have people keying in things over and over again where you have problems with data quality and so forth. So we are going to ask them to alter their IT systems so that they can actually take the information they get from us, which is off their daily transaction runs, and then add their TFN store of information, which by law they have to keep separate. They are doing the right thing by having it totally separate. To actually link those in is not as easy as it may sound.

**Mr PYNE**—Shouldn't it be possible for you to access that directly, though?

**Ms Montano**—No. We do not go into their systems.

**Mr PYNE**—But wouldn't it be a possibility? Wouldn't that be a positive idea for you, so that they didn't actually have to do it? I am talking about the tax office and its TFNs, not the casinos or banks.

**Ms Montano**—Oh, sorry, I thought you meant going into Westpac's records. The Westpac man has just fainted!

**Mr PYNE**—No, I meant the ATO specifically.

**Ms Montano**—That we would go into the ATO?

**Mr PYNE**—In the MOU, when that was done, was it ever thought that it would be a good idea for AUSTRAC to be able to directly access their database?

**Ms Montano**—No.

**Mr PYNE**—Because of privacy?

**Ms Montano**—Yes. The first idea of there being reports of transactions given to government was in the middle of the Australia Card debate. It was in the middle of a lot of concerns about privacy.

**Mr PYNE**—There was a fair bit of discussion about that, yes.

**Ms Montano**—There were a whole lot of quite reasonable sensitivities. That is why we are a stand-alone database. Even though we might have a stream of transactions which look really interesting, and to work out if they are really good we need intelligence from, for example, the National Crime Authority or the Federal Police, I cannot go and get that intelligence. The legislation does not allow me to do that. I have to look after just this thing. I am not saying that is not something to explore, but I am explaining historically why these things have never been considered.

**Mr PYNE**—Sure.

**Ms Montano**—The way that is dealt with is that we give it to an agency that can in fact pool all that intelligence.

**Mr PYNE**—That is the group with the NCA and the tax office?

**Ms Montano**—Yes. It is called the Ago Task Force.

**Mr PYNE**—The Ago Task Force?

**Ms Montano**—Yes.

**Mr PYNE**—What, the Australian Government -

**Ms Montano**—No, it does not stand for a whole lot of words.

**Mr PYNE**—Doesn't it?

**Ms Montano**—No. It is interesting, it is not one of those. It means the conversion of money from one thing into another and increasing wealth. It is Latin.

**Mr PYNE**—Right, okay. With respect to this TFN and AUSTRAC, the relationship - which I think would be enhanced if you were able to access their database, but Ms Burke, as the privacy advocate on the committee, might have some views on that question - in terms of your overseas cooperation with similar financial transaction trackers in other countries, particularly countries we deal with on a regular basis that

sometimes have been known to protect people who launder their money, would it be of assistance to you in that respect if you were able to access the TFN? Or wouldn't it make much difference?

**Ms Montano**—There are two things about that. One is that it would only be of use if somehow there was a way of knowing that the transactions overseas were the same person, and it is unlikely that they are using an Australian tax file number over there.

**Mr PYNE**—So it would be irrelevant.

**Ms Montano**—The other issue is, even if it was, the way in which we have those exchanges of information are in relation to criminal matters, because it falls under the umbrella of mutual assistance in criminal matters. Having said that, I think there is an international move in some of the forums we are dealing in to extend international assistance to tax evasion as well as more traditional criminal areas. The tax office can deal with non-compliance, if you would like to call it that, in a number of ways. They can deal with it administratively, but then it can sometimes get to a point where it is a crime and it is dealt with as a criminal matter. If it gets to the point where it is dealt with as a criminal matter, then we might well be able to use the mutual assistance in criminal matters route.

But, you are right, there are a lot of countries around the world that we would like to deal with that have a real bias against assistance in tax matters. Some of the international work we are doing at the moment is really quite interesting in that the trend is moving towards more international assistance. The fact that we can say in relation to our domestic experience that we do not find it odd to use this sort of information for tax – it has been thus from day one – is quite unusual in the world, and quite advanced, I have to say.

**Mr PYNE**—Yes. Thanks.

**Ms BURKE**—Just on the privacy issue, I was surprised when reading your submission that there was this sense that you did not want the tax file numbers because you were breaching privacy. I thought your organisation was there to actually uncover what people are doing to avoid being found out. Aren't you there to find the people who are breaking the rules?

**Ms Montano**—First of all, it is not that we do not want to collect TFNs. What we were trying to say in our submission was this is really quite complex, there are a whole lot of issues – not being bureaucratic – and if a decision is made, then yes, but we have to work out the least painful way to do it and we have to make sure that we will benefit from doing it. Yes, we are there to try and uncover things – that is our whole purpose – and our annual report is full of cases that have either come into existence or have been assisted enormously by us collecting this information. But we are part of government's risk management strategy. We all encourage and want free and open markets and we want privacy and we want a whole range of things in our society, but at the same time we do not want bad people to abuse those privileges. So you have to find a balance somewhere in the middle. What we try to do is find the balance.

For example, I could tell you that we could end money laundering in this country tomorrow. The way would do that is to vet every international transaction that ever goes in and out of the country. You might get rid of money laundering in that international sense, but you would certainly kill your economy. So if you then take a step back in terms of balancing, you say, 'Where is an acceptable position where you do what you have to do, you get the reports you need, but you deal with them in such a way that you try and protect people?'

I have a 'good guy' database. Many of the people whose personal information is on the records, the reports we get, have done nothing wrong. They are there because there are a set of objective criteria that determine that an institution should report. So I have to protect them and that is why we have MOUs about access, we have audit trails, so that people cannot fish through and look for their neighbours' records. We have to really look after them. So I think in that wider context for a lot of people, the more information that is collected by a government in relation to this, the more safeguards they want. I am not saying that TFNs should not go on, but I would like to be able to reassure a privacy committee that I have and the wider community that it is only going to be used in particular ways and so forth. I mean, it is up to government, but I think that is part of my job.

**Ms BURKE**—Do you think there is an increase in fraud? We have been asking that of quite a few people in front of us today with respect to both fraud overall at a criminal level and taxation fraud. From what you have seen, have you seen an increase in it?

**Ms Montano**—There is an overall increase in fraud and I think one of the reasons for that is because it is so easy to be someone else. You have been listening to Births, Deaths and Marriages and there are a whole lot of other regulators and licence issuers who can talk about how you can manipulate, create and falsify documents. It is just much easier to pretend to be someone you are not, and therefore do criminal things and never be caught and, yes, I think tax fraud is an element of that, because it is easier to be another person.

**Ms BURKE**—I was fascinated to read the article on the weekend about the world's worst robbers in the States that have literally been picked up because they walked in with 20,000 bucks and bought a new car. They

are not going to walk into the casino and say, 'I'm here, giving you \$10,000 in cash, and this is my tax file number.' So from the reporter's end, unless it is an institution like a bank, it would be almost impossible to ask or regulate, wouldn't it?

**Ms Montano**—Well, that is the issue. Again, it is a risk thing. Is it good enough to get TFNs on a few of the reports, or do you want it on everything? I will give you two examples. There is not only the issue of someone walking into a casino with lots of cash – and, by the way, lots of people do, and they are identified. They are at present not required to produce TFNs, so that is almost automatically one report that you could not get a TFN on. You can take the view that you are only asking for TFNs where the institution that is reporting already has the TFN and you are not asking them to do any more work in that respect.

The international telegraphic transfers we get inward from overseas institutions are, first of all, not regulated. We regulate the receiver, being the institution in our country. They would not have a TFN for the beneficiary, for example, of the transaction. That does not necessarily mean that the receiving institution does not have the TFN but there may well be lots of examples where you just cannot get it.

That is what I mean by in principle yes, and then the more you go into it the more you think okay, there will be some things you can and some things you cannot. How does that affect what you are trying to do as a matching technique? They are just all things to be weighed up and, on balance, it might still be right to do it, but it may not be the solution to the whole issue of trying to stop tax evasion. It is obviously one strategy amongst a whole lot of others.

**Mrs HULL**—Given that you already take a lot of data from records such as drivers licence, bank accounts, et cetera, why would it be that using tax file numbers would be an even greater privacy concern?

**Ms Montano**—I think it is because of the concern – and it is almost an historical thing rather than a logical thing to be honest – that it is another link into people's personal affairs. It is an automatic in. Drivers licences and those sorts of things we do not get per se. For example, if it is on an international transfer in the free text we might get additional information, we will get address information but we do not require drivers licences on a lot of other things. What our system does do though is oblige the institutions to identify their customers.

It might well be in the course of identifying a customer that some of those personal things the bank holds but we would not necessarily hold. But the reality is that it is there and if a law enforcement or revenue agency needs it they can go and look at it or at least there will be a record of it on the account opening forms and so forth. I think it is a question of degree. There are lots of intrusions into privacy. Where do you draw the line? Where do you think that the benefit outweighs the privacy concerns?

**Dr SOUTHCOTT**—A couple of years ago the Cash Economy Task Force recommended that tax file number quotation be extended to the AUSTRAC recorded transactions. Do you think that has any part to play?

**Ms Montano**—No. Mr Ryan was on that task force and is still a member of it. No, we think that has merit. It should be explored, but you still have to weigh it up. When a government makes a decision as to whether it wants it to do that, it needs before it information about both the pros and the cons and the costs and the benefits. That is what we are still trying to work out. We are still trying to work out exactly what it is the tax office will use it for, what we can actually ask the institutions to put it on. Then, having formed that view, we can go to them and say formally, 'Okay, we want you to put it on this, this and this, but not that. Can you tell us how you can do that? If you cannot do that but you can do something else which gives us almost the same effect, then we'll have to think about how we do that.'

A lot of the things we have in place in our reporting process is the result of exactly that sort of almost negotiation. As an example, with our international funds transfer instructions, traditionally the way you get reports of transactions has always been that you fill out a form and you put it in. That would have been a really big burden because the institutions put through millions of these transactions every year. Obviously there would be a lot of detail that our law enforcement agencies and revenue agencies would want to see, but it was going to be terribly expensive and very slow to get.

The compromise reached was to ask, 'What do you need to do to do your business?' They sent it through the SWIFT system which is used by the international banking system. The agreement reached was that we would take just the contents of that message. It meant that law enforcement and revenue agencies did not get absolutely everything they wanted, but they got something that was pretty good. They got the actual transaction. It was not transcribed again – where problems can happen – it was quick and it was cheap to produce. It meant there was a compromise but everyone has been more than happy with what has happened in relation to that.

It might well be that that is something we have to explore in this context. It may not be all that easy for the institutions to very quickly do their TFNs over. This is speaking without having looked at it because each institution will also be different because they do not all have the same IT systems. They do not all have the same capacity to internally link. We might continue to get the reports and we could get TFNs another way and

try to do matching somehow and then pass it on. That might be an interim measure. That might be the way we have to try and do it for some institutions until they can actually do something else. For a financial institution to change their IT processes so that we can take those extractions is not a small task; it is actually quite big and it takes them a long time. I am not making apologies for them. There is more to it than just saying, 'You will report.'

**Dr SOUTHCOTT**—I follow that. Given your objective is that you get good information which you can track, when do you expect to finalise your response to that recommendation?

**Ms Montano**—We have already responded in the sense of saying to the tax office, 'Let's explore it. Yes, let's look at this.' We work with the tax office all the time on this and other issues obviously. We have talked to the Privacy Commissioner's office about it on a number of occasions. What is their perception of how this will be perceived in the wider privacy groupings? What is it exactly they want?

I find it hard to go to an institution and say, 'I want you to do this,' if I can't tell them exactly what it is. Their reaction will depend upon exactly what it is they are asked to do. If I can give you an example: we have a number of amendments to our legislation being worked on under the national illicit drug strategy where we thought of some preliminary things, so we went to government. Government was saying, 'What are a number of strategies we can work on in relation to the drugs issue?' One of them was legislative change so we said, 'I've got a number of ideas but please don't go and put them into legislation in the next sitting because I haven't worked out the details with the institutions yet.' So I received permission to negotiate and consult and to work with them.

The funny thing is – it is not funny, it is actually quite predictable in a way – that a number of the views we had as to how things could be done have changed because they have actually come up with better ways to do it. For example, the law enforcement agencies wanted automatically recorded the second names that people use which can be used to quite confuse the matching, some of which is deliberate. We had some problems with how we could do that, the way the banks hold that information. We found another way to deal with that was just to ask the institutions to check whether the second name that is used is in fact a valid second name, as it were.

It is a bit complicated, but they actually worked out a very practical way to deal with it which meant they did not have to alter their reporting systems but we still achieved the objective that the law enforcement agencies wanted – that is, people who open an account in their real name but then say they are known by another name and then open other accounts in the other name but they are not actually false names because they have been identified. The bank knows it is the same person with two names, but it does not show up in our reports as the correct picture. We had to think whether we wanted them to go through this big process of changing the IT, or could we deal with it in some other way. The other way is the way we are looking at it.

I think we have to really look at this quite closely and we need to do some work on it. Quite frankly, we also need to know whether this is something which is politically palatable because it is a big change. In the context of this sort of information is it something that government wants to do and society wants to do? Do we think enough about tax fraud and tax evasion that we want to do this? If we do, then fine, let us do it. But it is almost a threshold question in a way.

**CHAIR**—With your knowledge of tax fraud and so on, what changes would you like to see to the tax file number system to assist you?

**Ms Montano**—I should say for a start I am not an expert on the tax file number system. There are a number of concerns about whether they actually do what they are supposed to do. I think there are lots of misunderstandings. A person can legitimately have more than one tax file number if they are paying tax in different capacities. But then there are the issues of people who sell their tax file numbers. How do you actually regulate and avoid that sort of thing where a tax file number can be quite legitimately issued but someone then gives it to someone else and they use it for improper purposes? It is very difficult for the tax office to deal with that.

There is a range of things. If you actually go to the tax office and say, 'Here I am. I am a person and here are my identity documents to prove it,' and those identity documents are false, then you could have a tax file number properly issued but under a false name. It is not automatic to say, 'I have a tax file number and that guarantees I am who I say I am and I am never anyone else.' It does not work that way.

**CHAIR**—You raised two interesting points there. You talked about selling tax file numbers and also getting them issued in a false name. How many cases are you aware of where this is occurring? Is this something you see as widespread?

**Ms Montano**—I just mentioned that in terms of anecdotal material about tax file numbers. We have not done a lot of research on that because it is really not our jurisdiction.

**CHAIR**—But you have come across a few cases?

**Ms Montano**—I am not aware of any personally. I am only anecdotally aware of that, as a problem with the system overall, or potential issues with the system. Mr Ryan might be able to talk about that, being a member of the Cash Economy Task Force.

**Mr Ryan**—Yes, in the course of task force discussions that has certainly been discussed, but the bigger problem really is the foundation of the proof of identity systems. People are able to much more easily get documents that can establish them with a new tax file number, or a second tax file number. That is the real root of the problem, I think, rather than the tax file number system itself. It is the foundation of the problem.

**CHAIR**—Can you elaborate on how widespread you see this?

**Mr Ryan**—I do not have any sort of statistics in terms of how widespread it is. It is simply things that are happening because of advances in technology and things that are happening in the course of the ways in which people are more easily able to use desktop publishing and things like that to do things like establish identity.

**Ms Montano**—It might be that it is really hard to actually say how many, because if you knew how many that means you could identify them and you could cancel them. It is almost like how you can tell how much money laundering there is. If we knew exactly what it was it would not be laundered, because we would have identified it. We do not know statistically. I think the tax office might have an idea, but we do not.

**Mrs HULL**—How do you identify a suspect individual? What methods do you use to identify them?

**Ms Montano**—A number. We have a number of automated monitoring processes which are rules based. We will build up profiles. It is almost like profiling in the sense that we have people of certain occupations dealing in large amounts of money, doing particular kinds of transactions often in sequence and they will be very typical money laundering typologies. If you are interested we can go in camera and I can tell you a bit more about that. There are a number of things about the way people do particular activities which trigger our interest. That is the automated way. The other way is that the institutions provide suspect transaction reports and we look at each one of those when they come in. They are classified in terms of what sort of thing we think they are looking at. They are reports on their face so there is nothing behind it to say whether the official bank teller's views are in fact accurate or not, or where it is, but we will look at that and refer it on to the agency we think it should be referred to based on that. That is how we identify.

**Mrs HULL**—Because of the ability to fabricate or to put false documents and things together I just wondered how you were able to identify those.

**Ms Montano**—That is why using a range of things to do your targeting can help because, again, you would have to be very good and very consistent to deal with some of these things and avoid detection. Often some things will be made up and other things will not.

**Ms BURKE**—I just want to know what time reporting you are getting – real time reporting or delayed time reporting. When is the record coming through to you?

**Mrs HULL**—It comes through quicker than the legislation requires it to come through and that is because of the electronic reporting and the leveraging of business practices. Typically we will get transactions next business day or within two or three business days. Typically what we have done is provided software to each of the institutions to allow them to extract the information from their systems. They will have, for example, a stand-alone PC sitting in their head office or wherever and transactions will go into that. They will extract out the ones which have to be reported to us – and no others; that is always an issue – and it is sent via dedicated encrypted lines to us. They go in batches overnight if there is a big backup. If there are a lot it might go the next day but they are usually within two or three days. In international terms that is just the fastest. For some of those transactions we will have a report about it before, for example, the bank in New York opens where someone can go and take the money out.

**Mr PYNE**—I think my question has been answered, Mr Chairman.

**CHAIR**—You said an amazing amount of cash goes through casinos. Could you elaborate on that?

**Ms Montano**—I am saying it is not unusual for large amounts of cash to go into casinos. It is a lifestyle, cultural thing. Some people put a lot of money through casinos.

**CHAIR**—Launder a lot of money through casinos?

**Ms Montano**—I did not say 'launder'. A lot of people put a lot of money through casinos. That is why they have been chosen to be one of the reporting entities for our legislation, in that it is a high cash industry.

**Mr PYNE**—Rather than declare it as income, they go to the casino.

**Ms Montano**—You do not know where it has come from, though. When it walks in the door and it is cash, you do not know what that is. It may well be the takings from the till and 'We have not bothered to organise whether we are going to be able to pay our tax liabilities.' You do not know what it is.

**Mr PYNE**—But when they walk out of the casino and they are paid –

**Ms Montano**—Without their large quantities of cash.

**Mr PYNE**—Or with a similar amount of cash, a bit less or a bit more – whatever – and they come to do their tax at the end of the year and do not put it down as income and the tax man says, ‘Where’d you get that money from that you’ve been spending on the boat?’ they say, ‘I won it at the casino.’

**Ms Montano**—Cannot happen. It has nothing to do with us. Under the rules it should not happen. It is not a Commonwealth matter. It has nothing to do with our regulations. For example, if I walk into a casino with cash, with \$100,000, and I walk around, I play a few tables, I have a drink, I come back with my chips which I have and say, ‘Look what I won. Can I have a winner’s cheque, please?’ they will not give it to you. They will give you back a cheque endorsed with, ‘Return of funds brought back in.’ In fact, they will give you back cash again. They will not give you a cheque – I do not think they can. I think they always give you back what you came in with, because that is obviously a classic way to launder, to convert it from illegitimate to legitimate.

**Mr PYNE**—If you have \$100,000 – which is more than I was thinking about – and you spend all night at the casino and the tax man says, ‘Where’d you get that money from?’ can’t you say, ‘I had \$100,000 and then I lost \$100,000. But by the time I left at 6 o’clock yesterday morning, I actually had \$100,000 again because I won it back’? You cannot get around that, can you?

**Ms Montano**—What the casinos do is register who comes in with what.

**Mr PYNE**—And watch them on the camera?

**Ms Montano**—Yes, they do. I think so. That is the system.

**Mr PYNE**—Is that right?

**Ms Montano**—Yes, that is the system.

**Mr PYNE**—Good.

**Ms Montano**—The state authorities have people under 24-hour surveillance in those places. I cannot say if there are lapses in how the systems works, but the systems are there to stop that. There are easier places to money launder than casinos. Having said that, it is a lifestyle thing. If there is a group of people who are engaged in certain kinds of activities, perhaps the casino is their social recreation. They just happen to go there as well.

**Mr PYNE**—There is nothing wrong with going to the casino. I was not saying that. I thought that would be an easy way to do it but I had not realised they were able to track a person from the beginning to the end of the whole experience. I did not know, but to hear that is the case -

**Ms Montano**—Apart from the fact that there are regulatory obligations to do that, they obviously have to do that from their own perspective because they want to see if someone is trying to cheat.

**Mr PYNE**—That does not happen at the races, does it?

**CHAIR**—Someone trying to cheat?

**Mr PYNE**—No. There was a case involving a former minister in the government who had this same thing happen to him. I thought the defence he put was that he had lost it and won it all at the racecourse or the casino. Maybe at the time it was different.

**Ms Montano**—Obviously at racecourses bookmakers are obliged to report to us in relation to their cash transactions. We have a number of groups that we are in the middle of doing some audit work on to see whether they comply or not with their reporting obligations. Yes, you are right. They do not have cameras sitting there watching the bookmakers on the field. That is an issue of enforcement rather than systems. That is when, of course, the states and territories have the better systems.

**Mr PYNE**—I am sorry, we got off the tax file numbers. But AUSTRAC always has that happen because everyone is so excited about what you are doing.

**Ms Montano**—What it does show is an interaction between systems. It is a good state and territory regulatory system in relation to casinos and what you can do in them. That minimises the risk from our perspective of money laundering, so they are quite complementary.

**Mrs HULL**—Is there an amount that obliges a bookmaker or a casino or any other person involved in the gambling industry to report to you? Is there a ceiling amount?

**Ms Montano**—They have the same obligations as all the financial institutions – a bet of \$10,000 in cash. They have obligations to report suspicious transactions under the legislation and the big bookmakers have their own international transfer facilities – and so do the casinos – for the big gamblers, particularly from overseas, where they will have accounts and they will do debits and credits according to how luck they are that day. So they have all those obligations.



**CHAIR**—Going back to a couple of points: you were talking about transactions that AUSTRAC look at that usually have tax file numbers attached. Which ones? Do you have a list of those?

**Ms Montano**—That you might attach it to?

**CHAIR**—Yes.

**Ms Montano**—The ones where the banks – and it is typically banks, I have to say – have collected tax file numbers for account holders, where there are transactions for account holders which involve the cash, suspect transactions; internationals you could do going out, but again we are asking them to go to another part of the bank and link it in and then we put it all together. That is not as easy as it sounds. They would be the candidates you would look at. For example, some banks do a lot of transactions with non-account customers, so you can walk in off the street with cash and say, ‘Can I have an international transfer, please, to my brother's account’ – in somewhere or other – ‘and here's the cash.’ They are not account holders, so the banks have not identified them. That is an issue we are working on in relation to the National Illicit Drug Strategy amendments. We are hoping that we can, in fact, trace that money through by getting identification. That, for example, would be difficult to get TFNs on because they do not even necessarily know who they really are because they use false names on the international transfers.

**CHAIR**—So there is no restriction on someone walking in with a roll of cash – tens of thousands of dollars – and saying, ‘I want to shift it to someone overseas’?

**Ms Montano**—There is no obligation under our legislation for those people to be identified and verified and that is an amendment we are working on now.

**CHAIR**—Another area you touched on that I would like you to elaborate on was the problem with proof of identity. Would you like to expand on what you think is lacking and what needs to be done to tighten that up?

**Ms Montano**—We are involved in two groups and we chair one of them, a steering group with the Bankers Association, the tax office – a whole range of agencies. We are looking at the issue of those documents, the issuance of them and their physical qualities, that you can deal with. I know you have been speaking to Births, Deaths and Marriages about some of the issues. We have been looking at what we can do to deal with that. If you cannot tell a forged birth certificate from a legitimate one when you look at them because the counterfeit is so good, then what other mechanisms can you use? Can you have a verification process and check back with the issuing institution? Can you have issuing institutions being very careful at the beginning of the process in relation to, say, drivers licences? There is a whole range of things they could probably do, but that is an ongoing task.

I have to say some issuing organisations are more amenable to trying to fix up those issues than others, particularly where a document is not meant to be an identity document, but the reality is that it is used in practice as an identity document. You get a drivers licence not to prove who you are; you get it as evidence that you have passed a test and that you are licensed and that if you have an accident they can follow and trace cars and things. They are not meant to be general purpose identity documents and yet, as a society, we use a drivers licence all the time as an ID. There is a whole issue about what these things are used for in practice and what then should be the regime surrounding them being issued and replaced and all those sorts of things.

That is an ongoing task. We have a steering group working through that because we are trying to make sure we get a fair degree of unanimity about what should be done. We have, for example, under our legislation, a 100-point system for identifying customers and there is a range of documents you can use and they each gets points up to 100. We would like to see all those documents having integrity because then we can be assured that if you get to 100 points, every one of those documents has added to the argument that you are who you say you are. We really do need to be consistent, but that involves working with the states and territories as well and that takes time.

**CHAIR**—Thank you very much for coming before the committee. We appreciate the time and the effort that has been put into this. The committee will now take a break.

**Proceedings suspended from 2.55 p.m. to 3.15 p.m.**

**CHAPMAN, Mr William Aubrey, Chief Manager, Operational Control, Westpac Banking Corporation**

**HOLGATE, Mr Brian William, Senior Manager, Operational Risk, Colonial State Bank**

**LOVNEY, Mr Adrian, Senior Adviser, Policy and Public Affairs, Credit Union Services Corporation (Australia) Ltd**

**SALA, Mr Alexander, Chief Executive, Endeavour Credit Union**

**WOODS, Mr Ian Robert, Associate Director, Australian Bankers Association**

**CHAIR**—I welcome the representatives from the Australian Bankers Association, Westpac, Colonial, Credit Union Services Corporation and Endeavour Credit Union to today's public hearing. I remind you that the evidence you give at the hearing is considered to be part of the proceedings of parliament and therefore any attempt to mislead the committee is a very serious matter and could amount to contempt of the parliament. The committee has received submission No. 10 from the Australian Bankers Association which has been authorised for publication. Are there any corrections or amendments you would like to make to that submission?

**Mr Woods**—No.

**CHAIR**—Would each of you like to make a brief opening statement before we proceed to questions?

**Mr Woods**—Yes. Firstly, I would like to thank you for the opportunity to be able to provide the committee with a bit of background on our views on these issues. Aub Chapman from Westpac and Brian Holgate from Colonial State Bank will be able to provide concrete examples in their individual banks on specific TFN matters. They are responsible for both operational and compliance matters within their banks. Mr Chapman will also be able to provide you with a bit of background from the banks' perspective on the recent New South Wales Registry of Births, Deaths and Marriages trial.

I am going to quickly look at the identity issue, followed by recommendations 5 and 6 and recommendation 4. To start with the identity fraud issue, I would like to set the record straight insofar as the references to the ABA having a strong preference, if you like, for a biometric solution to this problem. I think this has arisen from the *Australian* newspaper on 4 January this year where I have been attributed to certain comments regarding a biometric approach. I did not make any of those comments regarding biometrics. Furthermore, the editorial of that paper refers to an ABA submission picking up, on biometrics. Once again I repeat, there was nothing in that submission on biometrics.

Our preference, in fact, is for an approach which is evolutionary rather than revolutionary and working on the basis of the existing systems that are already out there. What we need to do is, in fact, improve the documents and processes and make it easier and cheaper for financial institutions to verify identity documents with the issuing parties. In our submission we listed a few of the possible improvements and I note that the representatives from the New South Wales registry earlier today are going down that road anyway in many respects. The first thing is the improvement of the documents themselves by enhancing the security. There is a range of security features that you can use like microprinting, holograms, et cetera.

We need also to encourage the consistency. Once again, the New South Wales registry suggested that is the sort of approach they are taking with their colleagues in other states and territories. There is a need to improve the process in applying for identity documents and when there are changes to the data relating to those documents. When I refer to identity documents, of course, Australia does not really have any identity documents. These are documents which, as a secondary purpose, are now being commonly used as identity documents.

There is also the need to improve staff awareness and training – this is not just banks or financial institutions; it is the ATO, Centrelink, Medicare – in knowing what the specific features of those documents are. That is why the mention before of the need for Australia-wide consistency also helps, because the staff do not need to know what the features are of potentially hundreds and hundreds of different documents.

Our preferred verification approach would be for a national electronic gateway where an authorised party could verify the data with the document-issuing source instead of having a multitude of duplication of different approaches to, for instance, the registrars and the Road Traffic Authority. We have arrived at this sort of position after consultation with the ATO, AUSTRAC, Centrelink, law enforcement bodies – and particularly with staff at the coalface, those people who are responsible for addressing fraud issues within banks; their advice has to be carefully heeded.

We are not suggesting that to pull all this together is going to be an easy approach. It is not. It is fairly difficult. We know from the days of the FID and BAD taxation issue that it is very hard to get a common national approach, but it should be done. The problem will not disappear completely, also. Fraud is always going to be around with us but, by introducing these sorts of means, at least hopefully we will reduce the severity of the problem. Our research on the types of documents that are produced by customers or potential

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customers of financial institutions suggest that at least 75 per cent or more of those cases involve government authority issued documents. Possibly this is the reason why the government should take a lead on this particular issue.

The ANAO report highlighted the problem for the ATO. We also know it is a problem for Centrelink, et cetera . It is a problem for financial institutions and business generally and, ultimately, it is a problem for the whole community. As I said before, ABA considers that it should be a role of government to maybe lead or set direction on this issue. One immediately thinks of AUSTRAC as being the government authority that has the legislation there in relation to false name accounts, et cetera, that has the underlying identification models, including the most frequently used, the 100-point system.

AUSTRAC may be the authority to appropriately lead on addressing this issue. I guess it is in their interests to ensure, with the cash dealers, that the documents underlying that 100-point system have integrity and that those dealers can verify the data on those documents. There are widespread claims that since its inception AUSTRAC has been a world leader in anti-money laundering responses to that problem. The issue of false identification is one where AUSTRAC could set an international precedent in developing an effective national response to this problem. The ABA has been actively involved in the issue over the last two years. We will continue to work on it until improvements on those documents and the processes are made. We will also work on the need for a national verification system. We will also work actively and cooperatively with any party that leads on this issue.

I will very briefly look at recommendations 5 and 6. Recommendation 5 relates to reporting and reconciliation. The ANAO report seems to highlight that the problem is with the ATO's IT systems more than anything else. I am advised by our member banks that they are complying with those requirements – the annual reporting, et cetera – and I note particularly the comments of Assistant Commissioner Tony Goddard of the ATO, who advised at the 6 September meeting that the banks or the large players had not been flagged, to him at least, as being a problem at all.

These types of problems, which are operational issues, should be really addressed at the Interest and Investment Payers Forum. That is the appropriate forum to deal with the day-to-day operational issues. The feedback I am getting from our membership is that there is a need to refocus that particular forum. I believe at the moment it is only meeting six-monthly. There may be a need for it to meet more frequently to address these types of issues.

Recommendation 6 relates to exempt investors and the refund processes. There are references in the ANAO report to the automatic transfer of a client's TFN, but this seems to overlook that. We only have at the moment the right to put the TFN on the account that the client advises and it is the client's prerogative to advise us or to provide a TFN for any other account, so at the moment it is not possible over all accounts to place a TFN. This is another issue that could be dealt with at that forum. Once again, the banking industry will work actively to improve and simplify in consultation with the ATO on those types of issues.

Recommendation 4 relates to the extension of the coverage of the TFN quotation requirements. We are most concerned about the cost impacts and customer service impacts on this. There is potentially a substantial cost involved, although the system changes on the different types of product groupings, many of which are non-income based. The report does not make it clear, so it is very hard to quantify what those costs would be at this stage. An example of the questions that should be asked is: what would the sanction be against a client in the case of TFN non-disclosure in the case of those non-income matters? Is it proposed to make it mandatory for clients to disclose TFNs to a financial institution? If there is non-disclosure by a client, how is the ATO going to source that information? Are there going to be any sanctions against financial institutions that, for whatever reasons, fail to on-send TFN data even though they are holding that information?

Importantly, what is going to be the frequency of reporting? At the moment with AUSTRAC matters, that is done on a daily basis. I think Elizabeth Montano was talking about 7,000 suspicious transaction reports earlier today. If we are talking about all the transactions that are mentioned in paragraph 3.30, you are talking about a significant number and that would come at a cost. The costs would have to be borne by financial institutions and ultimately their customers.

I think it is admitted in the ATO's submission that to date they have not done the full investigation on these issues and there is a real need to do the hard work and do a cost-benefit analysis. In their submission dated 2 November the prospective items they talk about are real property and AUSTRAC transactions. Our view is that we would have thought that the real property transaction is the one to obviously target. AUSTRAC already provides a lot of this information. It is accessible to the ATO. Question the format – whether, because of ATO's systems, they are able to access it – but they still have access to that data, whereas real property has not been touched at all by the ATO. I do not believe there is any overview or filtering of real property data at all.

I reiterate that recommendation 4 causes a lot of significant problems and costs to the industry. The ATO's submission also states that it is not an unreasonable burden upon us. We disagree with that. It is an

unreasonable burden. There would have to be development and management of a whole range of new systems. They will be dual systems because of the need to split the TFN data from the account data. Elizabeth Montano also mentioned the significant technical problems with linkages. They will not be the same from institution to institution. That is the viewpoint we have come to also. Ultimately there is all that extra work financial institutions will have to carry out. They will have to commit substantial resources, whereas the ATO really already has access to this data.

To conclude, this particular issue should be subjected to a careful and considered analysis. It should involve all affected parties, being the FIs, community groups, privacy people, et cetera. There is a need for a complete consultative process. I notice in the ATO's submission that they mention they are already talking to stakeholders. They certainly have not been talking to the banking industry to date, from the advice I have received. Once again, thanks for the time on this.

**CHAIR**—Thank you, Mr Woods. Did anyone else want to make an opening statement?

**Mr Lovney**—Briefly, if I may. Credit unions are, as you know, an important competitive force in Australia's retail banking sector. Collectively, the nation's 222 credit unions cover more than 3½ million Australians and have more members than three of the four largest banks. We service those members in metropolitan, rural and regional areas of Australia and have a combined asset base of nearly \$21 billion. We provide the full range of retail financial products to all of our members and are, of course, mutually owned, not-for-profit financial institutions. In the truest sense, therefore, all costs of compliance with TFN and other compliance with legislation are indeed borne by our members.

Credit union structures in Australia and, indeed, across the world are characterised by a locally owned unit, a local unit which is supported and resourced by a central body. CUSCAL is the largest of those. We are owned by most of Australia's credit unions and we provide services to them and only them. CUSCAL is a non-publicly listed private company which is owned by credit unions and we provide them with services on a day-to-day basis, including treasury, financial services, funds management and a whole range of services they use to provide services to their members and others. We are very committed to the success of the TFN program and we have a strong compliance culture and we work with our credit unions on a day-to-day basis to ensure they comply with the legislation.

We intend to make, at some later stage, a written submission to the inquiry which talks about in some detail some of the particular aspects of the TFN system that impact upon our operations but, at this point, I would touch upon three key things. One of the most notable details about the credit union movement in Australia is the incredible breadth of size and sophistication. CUSCAL's largest institution has over \$1 billion in assets and about 160,000 members and our smallest has about \$1½ million in assets and about 400 members and we have everything in between. Of our 222 credit unions, over 95 per cent of the asset base is contained within the top 100 so, by implication, 122 credit unions comprise five per cent of the total asset base. Whilst size is not always a measure of sophistication, it is indeed an important marker of it.

Many of our credit unions have differing systems and some of them are quite manual and paper based. For that reason, any changes to the legislation will probably impact disproportionately on smaller credit unions than they might do on those which have quite sophisticated data and electronic systems. For example, a proposal that a TFN might be supplied in relation to a significant or a suspect cash transaction report would impact disproportionately on a smaller, paper based credit union than one which operated electronically. That is just one example.

The second thing we would touch upon is our view of the system. Currently I think it is true to say the system works relatively well for us when it works well, but it is problematic when it does not. Whilst problems lie either within the institution, within the ATO or, indeed, on the part of the account holder, it is more common that problems surface when the three interface – for example, the mismatching of information on an annual investment income return and the way that the very systems talk to each other. We will certainly provide more detail on some of those more technical issues in our written submission.

But the third factor we would highlight, which is related to the first two, is what we call the agency factor – that is, in their role complying with this legislation, credit unions and other financial institutions are actually the public face of the ATO. That is where the problems occur. Whilst the customer is actually complying with legislation which is governed by the ATO, they are in fact interacting with us on a day-to-day basis.

Where problems occur it is the credit union or financial institution that bears the brunt of the customer's discomfort around that situation. If they do not have a tax file number or have an incorrect tax file number, or if wrong information is provided to the ATO and mismatched and the ATO pursues one of our customers because they believe they have not disclosed sufficient interest income, then it is the credit union or FI that bears the brunt of the customer's discomfort, rather than the ATO itself. That is one factor which is at the forefront of our mind. For example, if a situation was to evolve whereby perhaps accounts might be blocked on the instruction of the ATO for non-compliance with any TFN information, then it is the credit union that is

going to get the phone call saying, 'Why is my account blocked?' rather than the ATO. That is the third thing we touch on.

As I said, generally we will provide more information on more specific details in a written submission which you will receive within the next couple of weeks. We thank you for the opportunity to appear before the inquiry.

**CHAIR**—Thank you, Mr Lovney. Mr Woods, I might come back, first of all, to that point on biometrics use that the ABA are not pursuing, although a couple of your members are trialling it, I believe.

**Mr Woods**—At least one of our members is trialling it.

**CHAIR**—Did you want to add anything further about potential use of biometrics?

**Mr Woods**—The only reason we are not really thinking about biometrics is because there is already an existing system there, rather than reinventing the wheel at this time. Particular banks internationally might use biometrics for various purposes. But you already have that existing system, so I think it should be improved upon, particularly the ability for verification. The ability to verify is the essence of solving a lot of our present problems.

**CHAIR**—Mr Chapman, do you want to talk about the survey that was done on the question of proof of identity? I think New South Wales Births, Deaths and Marriages suggested that 13 per cent of the documents being put forward as proof of identify were fraudulent. Could you tell us a bit more about that survey and how representative you think that is of the sort of material coming towards your bank?

**Mr Chapman**—Certainly, Mr Chairman. I have prepared a document which, if you are prepared to accept it on a confidential basis, I would like to table for committee members. Obviously, it is a fairly sensitive document but I think it is worthy of the committee seeing the information to understand the basis on which those statements were made.

**CHAIR**—The committee can receive a confidential document.

Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

Resolved (on motion by **Dr Southcott**, seconded by **Ms Burke**)

That the document prepared by Mr Chapman be received as exhibit 2.

**Mr Chapman**—As was proposed by the Births, Deaths and Marriages people when they were here earlier, we participated with them in this pilot over four to five weeks in a range of branches. They are listed there for your edification and you will see that they are spread. It is true to suggest that there are several there that probably fall into geographic areas of interest to law enforcement for a variety of reasons. There is also quite a number there which by any stretch of the imagination can only be described as the normal community. You will also note in the detail that, of the particular instances where a birth certificate was tabled to the bank as part of the identification documentation, some 13 per cent were found to be false when we passed the information to Births, Deaths and Marriages. You will note that it resulted in a number of people absconding from the premises before the police arrived. In four cases the person was actually arrested and charged with that and other offences.

Since the pilot was completed we continued to do this on a manual basis with Births, Deaths and Marriages. There have been a number of instances where false ID has been presented as part of the identification process. Currently under the AUSTRAC system are the points that are awarded to the various source documents. Where a client is only required to have 100 points to be identified, you will note that the birth certificate is one of the primary documents. You will probably note from the other primary documents, in fact, to obtain those you normally produce a birth certificate and so it becomes somewhat circular.

I would like to table one more document to demonstrate just how widespread this has become in the community. This is a document produced by SOCOG and SPOC, the two organising committees for the Olympic and Paralympic Games. On that front page you will note for the accreditation process, not only for contractors but for all staff who are going to be working at the Olympic Games, you have to produce 100 points of ID – and it says, 'the 100 point ID'. That demonstrates to the committee that the 100-point system, which is one of the identification processes that fall under the AUSTRAC FTR regime, is in fact now a community standard, widespread in its application. It is for that reason we believe that to head off in another direction at this point in time is probably not in the community interest. This has become a community standard and we would suggest the best course of action is to put some more rigour and robustness into that process.

**CHAIR**—Thank you for that. While you say you have been doing some manual work since, do you still feel the figure of 13 per cent would be reasonably representative of the problem across the wider community, or somewhere near it?

**Mr Chapman**—I must admit we were quite shocked by the figure. As I have indicated to you, whilst the actual automated pilot has ceased while we now get into formal negotiation and user pay arrangements, we will welcome this when it becomes formal and we certainly will participate in it. The level of fraudulent activity in source ID documents continues to be of concern to us and leads to some major fraud. We have been involved in some major cases in the last 12 months whereby groups of people have used drivers licences and the like to identify themselves and create a scam whereby clearly the intention, right from the outset, was to defraud the institution.

One particular case which is before the courts at the moment involves a group of the same ethnic background who have all opened accounts, obtained loans and created a false market in real estate in that they keep building up the value of these properties. In fact it is a circular buy and sell operation with a view to inflating the prices of real estate. Yet all of the ID is false; it all happens to have been issued under the one Northern Territory drivers licence number. But the photo is very different on each of them and they are a pretty good representation because of the technology that is now available to the general community through scanning devices and so forth.

**Dr SOUTHCOTT**—In terms of that 13 per cent level, which I think shocked the committee as well, when we were speaking to the New South Wales Registry of Births, Deaths and Marriages they did mention that the branches had been selected in areas where you perhaps thought fraud may be higher. Is that fair to say?

**Mr Chapman**—No. As I indicated in the statement a moment ago, there are clearly some there that are of interest to law enforcement and certainly of interest to us because of the historical fraudulent activity of their clientele, but I suggest to you that if you browse through the names of the branches that are listed there are a number where you could not possibly suggest that it is other than the normal community.

**Dr SOUTHCOTT**—Was it a random selection of branches?

**Mr Chapman**—It was spread to give us a range of size and ethnic and demographic diversity.

**Dr SOUTHCOTT**—What sort of training do you think your staff should have in identifying documents and verifying them?

**Mr Chapman**—Given the quality and varied presentation of source ID documents at the moment, I find it extremely difficult to come up with a solution for 26,000 Westpac staff to be able to identify, bearing in mind that our industry now has a lot of part-time employees and the whole focus is on competition, fair sales and so forth. What we have been pursuing, as Mr Woods has indicated, is that for some two years now we have made representations to a number of bodies, including Mr Woods and I appearing before the Australian Law Reform Commission's review into the proceeds of crime. We believe a national gateway should exist whereby registered parties, being financial institutions and other bodies, should be able to seek confirmation that the data elements in a source government document are in fact valid.

The privacy concern I think can be overcome. I discussed this with the last Privacy Commissioner, Ms Scollay. If there is a perfect data match we do not even want to know that back. But if there is a data mismatch, surely we are not talking about a genuine person anyway, so there is no privacy issue in us receiving a negative response. What that would do is simply put the financial institution on inquiry as to whether they had made an error, had the client produced something that was invalid or is there something terribly wrong with this transaction? That would be a wholesome way of getting an efficient system and looking after those clients who genuinely produce documents which are real.

**Dr SOUTHCOTT**—Do you think it could be something like the identification that we saw this afternoon from the New South Wales registry?

**Mr Chapman**—That is exactly the sort of thing we are talking about. But as one of the major banks in Australia I would not like to see a duplication of that whereby I have another system for passports and DETYA and another one for each of the RTAs. To provide community acceptance of such a checking system, I think we could put it through a single gateway whereby even the institution that is verifying would not necessarily know which financial institution had asked for that to be confirmed or denied.

**Dr SOUTHCOTT**—I wanted to ask some questions about biometric identification. I listened to your comments in the opening statement and I accept them. I also understand that there are some banks in Sydney who are undertaking studies into biometric identification. Have you looked at the cost of this sort of system and do you know how the trial is going amongst those Sydney banks?

**Mr Woods**—I do not.

**Mr Chapman**—Our bank is not doing biometrics but we have certainly examined it and we question the ability of such a system to address all of the delivery channels we are now moving into. A lot of our interaction with customers is not face to face. As we move into e-commerce that will become even less. There are other regimes, public and private encrypted keys and so forth, which become the identification methodology for

dealing with those clients. We continue to look at a system which is robust and addresses the very large majority of our retail customer base. I have no figures to produce to you about the cost of such a system.

**Dr SOUTHCOTT**—Are there any other banks, anywhere around the world, that use a biometric test for identification?

**Mr Woods**—I think Russell Smith in his presentation in December cited a few US and Canadian examples.

**CHAIR**—Going back to this national electronic gateway, have you any idea what such a system might cost? Given that there would be some benefits for the banks as well as for others, what would the bank's attitude be towards paying for it or helping to pay for it?

**Mr Woods**—We do not know what it would cost. We have not gone down that road to look at any assessments of cost at all. The banking industry would expect to pay for the service provided. At the moment if you were to physically search a birth certificate it could be \$20 or more. We do not expect to pay that sort of amount to have verification. Going back about 12 months ago, the ABA, including Aub Chapman, were involved in discussions with representatives of the Victorian government which, at that time, were looking at specific systems down there. Cost was a discussion and they understood it would be to recover the cost of the system but there certainly would not be any of this \$20 to \$30 per verification check.

**CHAIR**—Mr Lovney, would you like to comment on that, too?

**Mr Lovney**—I guess I would echo those comments. I think it would be a question of cost-benefit analysis for us in terms of whether we would be willing to participate. It certainly is the case that if we could derive benefits in terms of fraud reduction, then I think we would certainly make a decision to participate and wear the cost of that if it were able to demonstrate significant benefits for us.

**CHAIR**—Do you have the same experience with fraud in proof of identity?

**Mr Lovney**—We certainly have not been as systemic, I do not believe. We have not been systemic on an industry wide basis of detecting fraud, but it is certainly the case, at an individual level anecdotally, there is a certain amount of fraud that occurs in relation to proof of identity but also in relation to substantiating documentation around capacity to repay, for example.

**CHAIR**—I missed that last one.

**Mr Lovney**—A customer might produce a document which said they had a certain level of income and used that as evidence to get a significant line which they then may or may not default upon.

**CHAIR**—Relating to an earlier comment, you were talking about one of the reasons you were not that interested in biometrics, Mr Woods, was the fact that people are changing their banking habits and moving to e-commerce and so on. Are you seeing in actual practice more fraud from that and, if so, how would you be trying to counter that?

**Mr Woods**—The ABA is not collating stats on fraud at all but anecdotally we have a fraud working group that meets from time to time to discuss general industry issues. Anecdotally the sort of information coming through is that it is increasing, particularly the fraud we are talking about – false identity fraud – which has concurrently presumably risen with a sort of positive correlation with the decline in the cost of technology. Fifteen to 20 years ago you would need an experienced printer to produce some of the documents that can be processed on a \$3,000 computer and scanner, et cetera. In response to fraud issues, generally each bank has its own risk assessment procedures. They use specific software, for example, to check patterns of unusual transactions on specific accounts. There are other methods they use. Not all banks use the same sort of approach to fraud prevention at all.

**Dr SOUTHCOTT**—I would like to ask some questions about withholding tax which the audit office report addressed. Do you think the withholding tax arrangements have been effective in reducing tax evasion on interest payments?

**Mr Woods**—This would have to be a personal opinion from the sort of feedback I have had – and it would have to be effective.

**Dr SOUTHCOTT**—The report felt that it had been, but also recommended that withholding tax be broadened to include other financial transactions as well as just interest payments. Do you have a view on that recommendation?

**Mr Woods**—There are two prospective ones, I guess. One is the AUSTRAC data which is already available, anyway. There seems to be a problem with matching internally by the ATO rather than not having that data. The other main one was real property. My understanding is that the ATO do not do any comprehensive research on at the moment, anyway. Paragraph 3.30 lists a whole range of other ones, including safe deposit packets, etcetera. It is up to the ATO to do the analysis but I am not so sure that after the costs involved of getting all that information it is going to be outweighed by any benefits.

**Dr SOUTHCOTT**—What changes could be made to simplify the refund process for exempt investors who have incurred withholding tax?

**Mr Woods**—I personally cannot comment on that. I suggest that is the sort of matter that should be progressed through the ATO industry forum. I do not know if you have any views on it, Aub or Brian.

**Mr Chapman**—In looking at some of the submissions there have been suggestions that certain government agencies pass information back to financial institutions. I would be totally opposed to such a matter. Could I perhaps present an example to demonstrate that. If an income benefit recipient – an unemployed person – comes to the bank and says, ‘You’ve been taking withholding tax out because I’ve given my TFN, but I’ve now changed my employment status and I’m now exempt’ – if I am going to get that, it means Centrelink will have to pass a file to me each day.

There is nothing surer but that I am going to get into a bunfight with the client as to when tax was going to be deducted and when it was not. Did I pay an interest payment the day before I received the advice from Centrelink? Two days after that they advised Centrelink that they were now unemployed and therefore I should not deduct the tax. Again, to support what was said by CUSCAL, that face of the tax collection and reconciliation process will fall back to the financial institution front-line staff where, in fact, it does not belong. I think we would be entering a field which is extremely dangerous and not the province of the FI.

**Dr SOUTHCOTT**—Do you think there is any cost-effective way of identifying those exempt investors?

**Mr Chapman**—No, I think it is the same as the non-resident issue. How does a person prove that they are a non-resident? We certainly are required by law and do provide the information on our annual returns where a non-resident has an Australian address. There are people who give their primary addresses offshore, claim non-resident status and therefore the withholding tax is 10 percent as opposed to the top margin or plus Medicare and in fact their second mailing address happens to be here in Sydney. Is it for us to identify whether they are living offshore, whether that mailing address here in Sydney is purely for their accountant, for their solicitor or someone acting as their agent, or are they really living here? Again, I do not believe that is the province of a financial institution to chase. I think it will get us into all sorts of problems.

**Dr SOUTHCOTT**—It sounds as though it would be more of interest to the ATO.

**Mr Chapman**—Correct.

**Dr SOUTHCOTT**—Do you think the quotation of tax file numbers should be mandatory for investment accounts?

**Mr Chapman**—The law at the moment says it is optional. There are instances where clients quote their TFN for certain accounts and not others. I am not speaking for Westpac at the moment but as Aub Chapman. I find it mind-boggling that someone would have their TFN attached to some accounts and not others, but then again I do not have very complicated financial arrangements, but other people do and choose to structure their accounts accordingly. Some want to pay the tax as they go, so they do not quote the TFN and therefore the tax is withheld.

There is a comment in the report that suggests the ATO is having major trouble reconciling the amounts that financial institutions report. On behalf of Westpac I can record that for the last three years, which has been since I have been managing this particular function, we have actually done self auditing and we are within 0.2 of one per cent and it is always an overpayment. There are logical reasons for why we overpay. When I say ‘overpay,’ I do not mean that we have withdrawn and made payments where they were not due but rather the data that is required on the annual investment income return is less than is really required to be deducted for a variety of reasons. The ATO are well aware of those. We have always paid more than is on the AIIR and it is within 0.2 of one per cent, and I think that is pretty good for a reconciliation when you think that the actual annual report itself is deficient on some elements.

**CHAIR**—In terms of that information, the audit office reports talked about the difficulties the ATO was having in reconciling. Nonetheless, are you aware whether the tax office is using that information you are sending in any meaningful way?

**Mr Chapman**—I cannot comment on what they use it for because I have never had a query back.

**CHAIR**—They have never commented on anything you sent.

**Mr Chapman**—No, sir.

**Dr SOUTHCOTT**—What you are talking about is the annual investment income returns?

**Mr Chapman**—Returns.

**Dr SOUTHCOTT**—Do you have any other problems completing it? You said the tax office have problems reconciling it. You have done an audit and you have found you are pretty close.

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**Mr Chapman**—There are a number of operational issues. The data formats have changed over the years. As the interest payers themselves and the Australian Taxation Office identified, there are changing requirements, different formats, et cetera. I believe they are operational issues and I support Mr Woods' contention that the focus of the interest payers group, the forum, should in fact be geared up so that they do focus on these things and come to resolutions that meet the needs of the ATO and the interest payers.

**CHAIR**—You say Westpac are complying well but I understand from the audit office that some financial institutions are not complying so well. Are they within the ABA? Where are they? What are talking about here?

**Mr Woods**—Assistant Commissioner Tony Goddard at the 6 December meeting indicated that the banks and the major players did not seem to be the problem. There are a whole lot of investment bodies that are reporting. What the ANAO report may be referring to may be some small bodies that we are certainly not aware of. They have not been documented. I am advised internally that our members are complying – apart from the instances Mr Chapman indicated.

**Mr Chapman**—They are not non-compliant, it is simply a deficiency in the reporting file.

**CHAIR**—Mr Lovney, do you want to comment on that?

**Mr Lovney**—Only in relation to the previous question concerning mandatory quoting. Our concern would be in an instance where mandatory quoting was required and a tax file number was rejected as either incorrect or misquoted. Questions would arise about what the ATO's expectations of a credit union might be in those circumstances. Again, it relates to our earlier comments that the financial institution would then bear the brunt of that issue if there were difficulties around compliance. Those issues arise for us.

**Dr SOUTHCOTT**—One of the things from the report was that investment bodies are not reporting for several years. That was raised. They were unable to reconcile the withholding tax shown in the returns with the amounts remitted to the tax office and there was also a large volume of transactions that could not be matched with the tax office client registration. The problem with that is if those investment returns are of poor quality, then it can increase tax evasion. You say amongst your financial institutions there are no problems in completing it and the sort of problems that have been raised in the report you are not aware applies to your institutions.

**CHAIR**—Mr Woods, on the question of the fact that you are reporting on these investment transactions, where there are other suspect or possibly suspect transactions, do your members inform the ATO that they have some unusual occurrences?

**Mr Woods**—In relation to any suspect transactions they are reported to Austrac. Once again that information is accessible by the ATO. They are getting it, yes.

**CHAIR**—With a tax file number correlation?

**Mr Woods**—No.

**Mr Chapman**—Because that is not reportable to Austrac at this point in time.

**CHAIR**—Do you think it would help if it was?

**Mr Chapman**—My personal opinion and Westpac's would be that it is questionable. Again, the quoting of the TFN is optional for the client.

**CHAIR**—Yes.

**Mr Chapman**—A number of the suspect transactions are for non-customers. People do not carry their TFN around with them in their wallets, so that when they come into a financial institution and purchases travellers cheques or some other instrument like that, it is accepted practice to quote your TFN – it simply is not. I would suggest that a number of suspect transactions would probably be disproportionately not carrying a TFN, because the people who perform those transactions are not likely to offer it to you anyway.

**CHAIR**—We seem to have had a pretty good innings here today. Before concluding I will give each of you the opportunity to add something on this question. We seemed to have concentrated a lot on proof of identity as much as anything else, but you might like to add something further, starting with Mr Chapman.

**Mr Chapman**—Thank you very much, Mr Chairman. We would strongly urge the committee to give serious consideration to a coordinated approach to improving identity and therefore reducing fraud and making it an easier community to work in as a financial institution. In relation to the attaching of TFNs to transactions to go to Austrac, we have very serious concerns about this, bearing in mind the tax legislation requires financial institutions to keep the TFN in such a confidential manner such that only when a tax matter is being dealt with can you in fact access the TFN. In the case of Westpac there are four people who can read the tax file numbers. The Privacy Commissioner audits us to ensure that in fact it is not available for general banking purposes.

To now attach that to normal banking transactions which are reportable – and you heard Miss Montano suggest that the methodologies they have developed jointly with us are as minimal extension of normal banking practice as can possibly be achieved to minimise costs and improve efficiency of reporting – that would be brought into major complexity if in fact I now have to hold those files back and do a whole matching routine when in fact still a number of TFNs will not be attached because the clients are not required to quote them to us. So I have those concerns.

**Mr Woods**—The only issue I would like to recommend to the committee to especially concentrate on is the false identity issue. The New South Wales trial is a fairly good indicator of the sort of results you can get in addressing this problem. I guess the next step is to get that working completely properly and expand it so you have a national system which picks up the most commonly used documents.

**Mr Holgate**—Mr Chairman, I can probably only endorse the comments of both Mr Chapman and Mr Woods, but adding to that, if we look at it from the identification point of view, there is something in excess of 80 different pieces of identification that can be produced to a financial institution to underpin the 100-point check. In doing that, we really need to have the obtaining of those pieces of identification firmed up to give them credibility and a better level of integrity. As we have already mentioned, the current regime of technology enhancement is making it simpler and simpler for people to obtain original documents and then make false amendments to them and it puts the financial institution at risk on a regular basis.

In terms of the tax file number issue, I think the first thing is that there would need to be enabling legislation to make the disclosure of a tax file number compulsory. It is quite reasonable to ask a potential or existing customer today to give you their tax file number for the purposes of taxation, but the national privacy principles and the new Privacy Act suggests that if you are going to seek personal information from an individual you need to make them aware what that is going to be used for. I suggest that using it for taxation purposes is quite acceptable. Suggesting to them that you are going to be using it to report it to other agencies or use it each time they access their safety deposit box or something like that will make it even more difficult. I think we would find the general community would be extremely resistant to that. The other issues are the cost of introduction to our systems and the disparity between the various financial institutions and the way in which they maintain the file numbers. The more you share a tax file number, given its present sensitive treatment, the more we dilute that activity and the objective of what it was brought about for.

**Mr Sala**—I endorse the comments from our earlier speakers. I guess if there were two variations that relate to the credit union environment it would be in these areas. Credit unions still predominantly relate to people through their workplace association and, whilst that is largely the case now, it is changing as they spread their net. There is another level of identification or identity that revolves around the workplace as well as the second level which is with the institution. To that extent there is another level of identity because salaries come through and other things where one reasonably assumes that someone else has gone through some identity process.

The other difference would be in whatever system is devised simply recognising that credit unions do not have the distribution and branch structure of major institutions and the emerging events of Internet e-commerce. We would like to feel as though we were not disenfranchised, not being able to respond to personal representation of documents and evidence and so on. The third thing I wanted to comment on briefly – and I do not know whether you mentioned this purely as an aside – was the cost of funding any proposed solutional database. If one looks at the main beneficiaries of an improved system I suspect it would be the ATO and the Commonwealth of Australia and not simply an inquiry to try and mitigate against frauds in institutions – although that is a consequence of this. We would be very happy to participate in something but in proportion to where we think the major gains would result.

**CHAIR**—Thank you.

**Mr Lovney**—I certainly echo Alex's comments. In conclusion we are supportive of any endeavours which would reduce the incidence of fraud and tax evasion and, indeed, increase the effectiveness of the existing tax file number system. However, in doing so, I guess we would ask the committee to be cognisant of the impact that those changes might have on the primary relationship between a customer and their financial institution; also to be cognisant of the disproportionate cost impact of those measures and changes on institutions such as credit unions which are predominantly smaller, sometimes with less sophisticated systems and in which case those costs are indeed borne by the members and customers themselves.

**Ms BURKE**—My apologies. I have not heard what has gone before so please forgive me if I am asking the same questions. As a couple of you have alluded to, your staff are often the meat in the sandwich for many of these things. It is often about shooting the messenger for being intrusive. As Alex rightfully points out, it becomes even more difficult with credit unions because there is an assumption that 'My employer already has my tax file number. Why are you asking for it again?' I do not know whether you all went through the super requirement to provide your tax file numbers but everybody said, 'Well, you already have my tax file number'

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as my employer. Why am I having to give it again?' Of course, they had to ask because that is what the privacy legislation required. Are there any quick comments, from anybody, really? Would any additional thing put another burden upon the tellers at the coalface who are the ones having to ask for these points if it is not made easier? I suppose you have all said that and I just want to hear everybody endorse it. That is what I am trying to get at. The other thing – as I have been nice about banks today and Westpac is the only one here unfortunately, Westpac is the one who is currently outsourcing its IT –

**Mr Chapman**—We are examining the opportunity.

**Ms BURKE**—Credit unions often use other platforms, they do not necessarily use their own platforms. They sometimes use the platforms of major banks to actually do their IT interface with a lot of things. Is there a difficulty with privacy – insofar as being once removed sometimes – in who is actually performing that IT function for you?

**Mr Lovney**—Certainly. A consistent feature of the credit union experience in this country is that often the law fails to recognise that indeed CUSCAL is a corporation which provides services to Endeavour, which is a separate corporation. In the course of doing business we will exchange information between us.

**Ms BURKE**—Yes, but most credit union cheques are cleared by a bank because you do not have the clearing facilities.

**Mr Lovney**—Yes.

**Ms BURKE**—Those sort of things the general population probably has no idea about.

**Mr Lovney**—Fortunately to date we have been reasonably successful in making that case and, indeed, we have made the same sorts of suggestions in relation to the Attorney-General's current privacy legislation in that it does recognise that credit unions operate as a group of separate but related companies.

**Ms BURKE**—If the Commonwealth Bank had been here I would have been able to put the same thing to them – the outsourcing idea.

**Mr Chapman**—Of course you could, but I am glad I am here. Agency arrangements exist all the time. The federal government is outsourcing quite a lot of it. We tender for it and we do the business. If it is government business – now that the privacy amendment bill is not progressing – we are still bound by the IPPs acting as agent of the government, so that information has to be corralled from our own information. If we outsource as the Commonwealth Bank or others may or have done, then you have a master and servant, or an agent and principal arrangement in place and the use of that information is for those purposes. So I do not see that as an issue.

**Ms BURKE**—So you do not see that there would be any great privacy issue.

**Mr Chapman**—No.

**CHAIR**—I think we have had a pretty good day. Can I thank you again very much for coming before the committee. Resolved (on motion **Dr Southcott**):

That this committee authorises publication, of the evidence given before it at public hearing this day.

**Committee adjourned at 4.17 p.m.**