



PACIFIC PRIVACY CONSULTING

Census Enhancement Proposal:

Privacy Impact Assessment Report

For

Australian Bureau of Statistics

June 2005

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Disclaimer

This PIA report does not constitute legal advice, and should not be construed or relied upon as legal advice by any party. The advice and guidance given in the report is based on the experience of the consultant. It is given in good faith but is no more 'correct' than any other interpretation of privacy laws, other than tribunal or court decisions.

Executive Summary

The five-yearly Census results in a uniquely comprehensive set of data about all Australians. By linking successive Census datasets at the unit record level, the Census Enhancement Proposal would create an even more significant and progressively more comprehensive profile of individuals' lives.

In relation to privacy concerns, the Census Enhancement Proposal can be seen in two very different lights.

For many people, the Proposal is likely to be seen as no more than a marginal change in the way in which the Census data is processed and used. No additional data is to be collected or held, and the only uses will be for statistical purposes within the well-established highly protective legislative and procedural framework, with no disclosure of identifiable personal information.

However, some will see the Proposal as a radical departure from established practice, which will create a data resource so rich and valuable for administrative uses that the privacy and secrecy framework under which the ABS operates may come under great and possibly irresistible pressure, if not immediately, then at least in the medium to long term.

Given these different perspectives, there can be no objectively 'correct' assessment of the privacy risk posed by the Census Enhancement Proposal.

In regard to any concerns about non-statistical administrative uses, this would only be possible if radical changes were made to the authorising legislation.

The legislative framework within which the ABS operates in general, and conducts the Census in particular, is as protective of individuals' personal information as is possible. Subject to some recommended clarification, the *Census and Statistics Act 1905* and the *Statistics Determination 1983* together provide an assurance that no identifiable personal information will be disclosed by ABS, and that any uses of the information will be confined to statistical and not administrative purposes.

The ABS is also subject to the *Privacy Act 1988*, which requires compliance with a set of Information Privacy Principles covering a wider range of issues than just use and disclosure. The Proposal could operate consistently with the Privacy Act, assuming the necessary attention by ABS to notices to individuals and to security.

Despite the rigour of the legislative protections, and the ABS' track record both of procedural safeguards and of defence of the principle of confidentiality, there remains a residual privacy risk of future changes in legislation to allow administrative or other non-statistical uses.

The magnitude and significance of this risk is ultimately a matter of subjective judgement, which depends largely on levels of trust in future governments not to overturn the longstanding principles underlying the *Census and Statistics Act*.

The history over the last 100 years has been one of strengthening privacy protection in the ABS legislation rather than the reverse.

If implementation of the Proposal led to a loss of quality in Census data, then the suitability of the data for non-statistical purposes would be further reduced. While this could make it less attractive for such uses, it would also compound the privacy risk to some individuals of any such uses. However, evaluation of the 2001 archiving initiative did not indicate a loss of quality attributable to that project, where some might have been expected.

A privacy benefit of the Proposal could be reduced pressure for, and incidence of, longitudinal datasets outside the protection of ABS legislation and processes.

Recommendations are made for abandonment of name matching other than for ABS quality studies; for implementation of proposed operational practices, and for minor but significant legislative amendments.

Census Enhancement Proposal

Privacy Impact Assessment

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Appendix 2. Timing and notice of the Proposal

1. Background

1.1. Pacific Privacy Consulting was engaged by the Australian Bureau of Statistics (ABS) to carry out a Privacy Impact Assessment (PIA) on the Bureau's Census Enhancement Proposal, as described in the Discussion Paper *Enhancing the Population Census: Developing a Longitudinal View 2006*, published in April 2005.

1.2. The ABS has already recognised privacy as a significant consideration in relation to this proposal, and committed in the Discussion Paper to the commissioning of an independent Privacy Impact Assessment (PIA), in parallel with the public consultation¹. The PIA report will be made public.

2. Privacy Impact Assessment

The PIA technique

2.1. The technique of Privacy Impact Assessment (PIA) has been developed over the last decade in response to public concerns not only about strict compliance with privacy laws, but also about the wider implications of government initiatives for the level of surveillance and monitoring of individuals in society.

2.2. PIAs are now mandatory in some overseas jurisdictions² and in our own region they are recommended by Privacy Commissioners in Australia, New Zealand and Hong Kong. The federal Privacy Commissioner has issued a draft Guide to Privacy Impact Assessment³, and this PIA follows that Guide.

2.3. It is important to recognise that a PIA does more than assess compliance with statutory privacy principles. It also addresses wider privacy concerns and perceptions.

2.4. The PIA process describes the initiative, identifies and analyses the privacy implications, and leads to recommendations for minimising privacy intrusion, and maximising privacy protection. The PIA report then provides one input to the decision making process, as recognised and anticipated by the ABS in the Discussion Paper⁴.

¹ Discussion Paper Executive Summary p.ix

² For example in the USA for federal agencies and in some Canadian jurisdictions.

³ Office of the Federal Privacy Commissioner (OFPC), *Managing Privacy Risk – An introductory Guide to Privacy Impact Assessment* Consultation draft, November 2004

⁴ Discussion Paper Executive Summary p.x

The PIA process for this Proposal

2.5. This PIA has been conducted in a particularly compressed timeframe, to fit in with the ABS public consultation period⁵. While a PIA process would normally involve consultation with interested parties, this has been limited in this case to a discussion with staff of the Federal Privacy Commissioner⁶, and attendance at an ABS meeting with representatives of a civil liberties group⁷, and at one of the ABS public seminars on the Proposal⁸. The consultant has however been aware of other public reaction to the Proposal, both in the media⁹, and on websites, primarily that of the Australian Privacy Foundation¹⁰.

2.6. Instead of taking into account wider input from interested parties, this PIA is largely confined to an expert professional assessment of the Proposal, albeit based on wide experience and knowledge of privacy issues and concerns¹¹. The ABS intends to publish the PIA. It can then be taken into account both by the ABS alongside submissions on its Discussion Paper, and by other interested parties in any future debate on the Proposal.

2.7. The ABS first publicly raised the possibility of data linkage in 2003. Regrettably, the various consultation processes appear to have only been partially successful in picking up privacy concerns. This meant that some privacy concerns were first raised only during the consultation process on the specific proposal in early 2005. A more detailed account of the earlier consultation processes is attached as Appendix 2.

3. What is proposed by the ABS?

3.1. The primary objective of the ABS Census Data Enhancement Project is to enhance the value of data from the 2006 Census of Population and Housing by combining it with future censuses. The central feature is the creation of a Statistical Longitudinal Census Dataset (SLCD)¹². In creating the SLCD, the ABS would use probabilistic data matching techniques, rather than names and addresses, to link records.

3.2. The Census Enhancement Proposal has several components, which are outlined in Table 1. Some of the components can be seen as 'optional' extras, which would increase the value of the project but are not in themselves essential to the basic SLCD proposal.

⁵ The consultant commenced work on the PIA on 6 May 2005, and delivered the final report on 17 June.

⁶ By telephone on 16 May 2005.

⁷ ABS meeting with NSW Council for Civil Liberties, on 9 May 2005.

⁸ In Sydney on 10 May 2005.

⁹ Primarily the coverage in the Australian Financial Review, e.g. on 17 & 18 March and 27 April 2005.

¹⁰ See www.privacy.org.au. The consultant declares an interest as a member of the Board of the Australian Privacy Foundation. However, since being engaged to conduct this PIA, he has not taken part in any further analysis or campaigning on this issue, and has only read APF material and views that have been published or reported.

¹¹ For details of the consultant's experience, see <http://home.iprimus.com.au/nigelwaters/>

¹² from Discussion Paper - Preface

The ABS discussion paper itself acknowledges this and the questionnaire which accompanied that paper invited separate comment on some of the ‘extras’.

Table 1	
Proposal	Description
<i>Base or core proposal</i>	
A	The creation of the SLCD by combining data from 2006 Census with data from future censuses. While the SLCD itself will not exist until after the 2011 Census (subject to Proposal B below), the preliminary establishment of the data framework would commence after the 2006 Census ¹³
<i>Other proposals (involving probabilistic matching but not name and address)</i>	
B	Extending the SLCD by including 2001 Census data
C	Using the SLCD in conjunction with other ABS datasets for specific approved projects.
D	The use of selected data ¹⁴ from the SLCD with specific third party datasets for specific approved statistical research projects. Three distinct groups of third party data sets are specified: <ul style="list-style-type: none"> • Birth and death register data • Long term immigration data • National disease registers
<i>Other proposals (using name and address information during the period of Census processing* to bring together certain datasets for specific uses)</i>	
E	2006 Census data with the 2005-06 Agricultural Census data for analysis
F	Census data and other selected ABS datasets to undertake quality studies
G	Census data and other selected ABS datasets for specific statistical studies where probabilistic matching techniques will not produce a dataset of adequate quality for a significant statistical purpose ¹⁵ . ABS has no immediate plans to use name and address for any such studies, but it is a possibility for the future
H	Census data and other selected third party datasets (as listed in option D) for specific statistical studies where probabilistic matching techniques will not produce a dataset of adequate quality for a significant statistical purpose ¹⁶

* The period of census processing is expected to be no more than 15 months – for the 2006 Census from August 2006 until November 2007.

¹³ It is significant that the addition of data to the SLCD from future Censuses would be by probabilistic matching only, without the use of names and addresses.

¹⁴ The ABS does not envisage any projects which would require the use of the entire SLCD (i.e. all records and all data items), but there would be projects that required a subset of data items or subset of records.

¹⁵ The resulting combined dataset would be maintained within the ABS for use for statistical purposes, and these datasets would not contain name and address or any other identifiers (Discussion Paper p.ix)

¹⁶ The resulting combined dataset would be temporary and used only in the specific approved project. (Discussion Paper p.ix)

What are the main features of the proposal and how will it differ from previous practice?

3.3. The Census Enhancement Proposal will not in itself involve the ABS collecting more or different information than in previous censuses. The precise questions asked vary from census to census, but are always strictly 'rationed' i.e. for every census the ABS is asked to collect far more than it would be reasonable to expect respondents to answer. There has always been a common core set of questions, with some changes at the margin.

3.4. Independently of the Census Enhancement Proposal, but of significance from a privacy perspective, the ABS will in processing the 2006 Census introduce a finer grained geographic unit – the mesh block¹⁷.

3.5. Under the proposal, names and addresses would not be kept for any longer than in previous censuses – all names and addresses would be deleted before the end of the processing period.

3.6. Also independently of the Census Enhancement Proposal, for the first time names will be captured electronically and converted to an electronic text file and stored as electronic records in a database alongside the other information from the form (but only for the processing period). This is to make the various existing quality checks easier. It will also facilitate the additional name and address matching which is proposed as part of the SLCD project (proposals E, F, G and H in Table 1).

3.7. The census forms themselves and any images of them held by ABS will be destroyed at the end of the processing period. As in 2001, the government has decided that a separate choice will be given to individuals to have their part of the imaged forms transferred to the Australian Archives (where they will not be available for any use for 99 years). This decision relates to future genealogical and historical research and is not an ABS initiative.

3.8. Previous censuses (since 1971) have recorded all the information from the forms, except the name and address, in separate databases (one for each Census), as unit records, and these are held indefinitely by the ABS. It has always been theoretically possible for the unit records from one census to be compared with those from another to try to match records relating to the same individual. This has not been done in the past, partly because it would have been, until recently, technically challenging and very expensive on an ad hoc basis.

¹⁷ Censuses to date have converted addresses into collection districts, which contain between zero & 550 households. The mesh block is a smaller geographic building block – to be used as a universal building block by the ABS and many other agencies for both statistical and other purposes. The ABS will publish only simple population counts for Mesh Blocks - all other data will be further aggregated before publication. Mesh blocks will contain either zero households or a minimum of 30 households. There is no upper limit for the number of households in a Mesh Block. In high density areas they may contain 200 or more households.

3.9. The base SLCD creation proposal (Proposal A in Table 1) is to do what would have been possible in the past, but in a structured way deliberately designed to facilitate a range of 'new' or enhanced uses of the data (as described in proposals C-H in Table 1). All of the proposed uses would fall within the category of 'uses for statistical purposes', which the ABS interprets as precluding administrative or client management purposes¹⁸.

3.10. The ABS proposes to set up a separate unit within the organisation to control the SLCD, with limited access to the data on a need to know basis.

4. Comparative experience overseas

4.1. This section of the PIA is based on material supplied by the ABS. In the time available it has not been possible to conduct any independent review of overseas experience.

4.2. To ABS' knowledge, no other countries currently do exactly what the ABS is proposing to do, although some countries have linked censuses in the past, and some countries have replaced censuses with administrative systems that link information on people longitudinally.

4.3. Only Australia and New Zealand have 5 yearly 'long form' censuses of the whole population (the UK is 10 yearly), ie where the full set of census questions are asked of all households in respect of all persons. Some other countries have a 'short form', collecting only basic demographic information, of all persons, and a long form for a sample of the population. The sample changes with each census.

4.4. Some further information about the UK Longitudinal Study and New Zealand linked census-mortality studies is provided below.

United Kingdom

4.5. The UK Office of National Statistics (ONS) coordinates the ONS Longitudinal Study which has linked census and vital event data (e.g. births and deaths) for a sample of the population of England and Wales since 1971. This study uses name and address information in the linking process. Information from the 1971, 1981, 1991 and 2001 Censuses has been linked together, along with information on events such as births, deaths and cancer registrations.

4.6. The Longitudinal Study was set up in the 1970s to meet the need for better data on mortality and fertility. Since then it has been used to address a wide range of research questions including studies of social mobility, ageing and migration. Studies that make

¹⁸ See definition of 'statistical purposes' in the Glossary to the Discussion Paper. This definition does not however appear in the CSA or *Statistics Determination*.

the fullest use of Longitudinal Study data are those that link social, occupational and demographic information at successive censuses to data on vital events. Examples include studies of mortality, cancer incidence and survival, and fertility patterns.

4.7. Because of the nature of the data held in the Longitudinal Study, confidentiality is very important, and microdata is not released outside the ONS. A review of the study in 1998 re-emphasised that the confidentiality of the Longitudinal Study remains the first priority.

New Zealand

4.8. The New Zealand Census–Mortality Study (NZCMS) has been established to measure and monitor the association of socioeconomic factors with mortality in New Zealand. The study data is formed by anonymously and probabilistically linking census and mortality records. The probabilistic record linkage is the same method that the ABS is proposing to use, although the data items the ABS decides to use may be different.

4.9. The NZCMS only linked data from a single census with mortality records from a subsequent period (3 years in the study referred to below), so does not include census to census linkage.

4.10. A report on the NZCMS contains comparative information about similar types of studies in other countries that have linked census (or other population) data with mortality data¹⁹.

Consultant's Observations

4.11. The overseas experience cited by the ABS suggests two things of relevance to this PIA.

4.12. Firstly, that it is clearly possible for national statistical organizations to undertake the sort of longitudinal studies proposed by ABS, involving linkage of data at the unit record level between successive censuses, within a framework of privacy law that is broadly similar to Australia's. Both the UK and New Zealand have information privacy laws with similar principles²⁰. In the UK case, albeit that this is only for a 1% sample of the population, use of names and addresses to link the data is accommodated by the legal framework.

4.13. Secondly, that privacy and confidentiality are major issues, requiring very clear safeguards and limits, including the principle of non-disclosure of identifiable microdata.

4.14. While international comparisons are of some relevance, it is important that decisions about the use of Australian Census data ultimately be made on the basis of

¹⁹ Tony Blakely, *The New Zealand Census–Mortality Study – Socioeconomic inequalities and adult mortality 1991–94*, Department of Public Health, Wellington Medical School.

²⁰ *Data Protection Act 2000* (UK), and *Privacy Act 1993* (NZ).

domestic considerations. In 1996, the then Australian Statistician cited with approval the following statement from a 1989 Australian Archives report on name identified records:

“... the degree of public sensitivity attached to the Census in other countries can give no indication of similar reaction in the Australian context, because of differing conditions, social attitudes and policies which make each country unique to itself.”²¹

United Nations Principles

4.15. In 1994, the United Nations Statistical Commission adopted the Fundamental Principles of Official Statistics²². Principle 6 reads:

‘Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.’

4.16. The ABS is an active participant in international statistical circles and the current Australian legislation fully complies with the UN Principles.

5. Research into Community Attitudes

5.1. The ABS commissioned survey research in 2004 to explore community attitudes to early versions of the sort of proposals now included in the Census Enhancement Proposal²³. The findings need to be interpreted cautiously because the scenarios used commenced with the use of name and address information to establish the linkages for a permanent longitudinal dataset compiled from successive censuses.

5.2. The research comprised 29 Focus Groups in total over a three month period, held in different parts of NSW and Queensland. The focus groups were designed to cover segments of the population with different social, demographic and other characteristics, and to explore different views, but were not designed to represent the population²⁴.

5.3. There was significant majority support for the sorts of uses of census data proposed, and this support increased given explanation of the secrecy and confidentiality safeguards applying to Census data.

²¹ Cited by Bill McLennan, Australian Statistician, in an address to the Australian Archives Council, 24 November 1995, reproduced in the ABS Annual Report 1995-96, Chapter 3.

²² See <http://unstats.un.org/unsd/goodprac/bpabout.asp>

²³ The comments in this section are based on the consultant’s interpretation of the Executive Summary Report and Final Report, both entitled *Outcomes of focus group discussion research to explore initial public reaction to possible data linking concepts proposed for Australian 2006 Population Census* (unpublished reports to the ABS by Market Attitude Research Services, December 2004).

²⁴ Focus groups provide exploratory qualitative rather than quantitative research. Findings from the focus groups in terms of the percentage of people with particular views cannot be generalised to make inferences about the percentage of people in the population with those views.

5.4. However, under the scenario of using name and address information to establish the link, a significant minority of participants (around 20%) expressed concern or negative views about the proposed linkages.

5.5. These concerns were to some extent allayed if the purpose of data linking was clearly explained; data linking was restricted to data sets that the ABS was already perceived to have (eg births and deaths registrations and other ABS controlled collections), and assurances given that identifiable data would always remain within the ABS and could not be accessed by any other organisation.

5.6. Nevertheless, under focus group conditions and under the scenario of keeping name and address and using it to establish the link:

“... across all of the options considered, one in ten people stated that under any of these options they would not complete Census 2006 or they would give false answers.”

5.7. Under the scenario of using name and address information to establish the link, a minority were clearly concerned about ‘function creep’. Even when considering the more limited linkage of Census 2006 only to data files obtained by ABS under the CSA:

“... many public housing and social security reliant population segments, and Aboriginal people, feared leakage of their Census answers back to Centrelink and public housing authorities.”

5.8. Under the scenario of using name and address information to establish the link, the research identified:

“stronger levels of trust in the ABS undertaking data linking if there were guarantees that all such data linking activity was only undertaken with highly secured areas within the ABS, and using time-proven ABS privacy protection procedures.”

5.9. Under the scenario of using name and address information to establish the link, there was lower public support for

“data linking projects where there was involvement of outside parties (such as organizations receiving anonymous linked data files) ...”

5.10. Under the scenario of using name and address information to establish the link, the research found that the most effective way for the ABS to retain public trust was to:

“provide strong guarantees that information provided to the ABS will continue to remain confidential to the ABS and that no person or organization outside the

ABS (including courts, police, social security, taxation authorities, or private business) would ever be able to access the data.”

5.11. Also:

“public trust would be lost if concerns or perceptions arose that answers given in confidence to the ABS were being given to other government agencies ... “

5.12. The research also found unpredictable volatility in responses, depending on what scenario was being considered, although all within the context of keeping names and addresses and using it in linkage.

5.13. The ABS emphasises that these findings were in response to scenarios in which names and addresses were retained and used to establish linkages. Another conclusion by the researchers was that:

“Some of these ‘rejecters’ advised during discussion that they would drop their objection if the ABS undertook data linking processes which did not allow linkages using ‘name’, ‘date of birth’ and ‘address’ identifiers. If the ABS did this, the level of serious resistance to data linking of 2006 Census information would likely reduce to one in twenty people (at this level of resistance the research found that ‘serious resisters’ are really objecting to the ‘slow loss of individual privacy’ due to increasing linkage of government data bases.”

5.14. The consultant suggests that public trust in the ABS, while very high, could be easily damaged not only by any actual breaches of confidence but even by perceptions that assurances might not be ‘ironclad’.

5.15. Community attitude research commissioned and published by the Federal Privacy Commissioner in 2004²⁵ does not go specifically to the issues of census or survey data or trust in the ABS, but does generally highlight significant levels of concern and distrust, of government as well as business, about the use of personal information for secondary purposes without consent²⁶.

5.16. One finding of relevance to the Census Enhancement Proposal was that almost two thirds of respondents (64%) felt permission should be sought before even de-identified health information derived from personal information about them is used for research purposes²⁷. Note that this finding related to health information specifically, which is not included in the SLCD but would be in some of the other ABS and third party datasets proposed for linkage.

²⁵ *Community Attitudes Towards Privacy 2004*, Roy Morgan Research, for the Office of the Federal Privacy Commissioner, June 2004

²⁶ See for example Figure 15, Table 18, Table 33 and Table 34.

²⁷ *Ibid*, Section 8.4

6. Legislative privacy protection

6.1. Limits on use and disclosure of Census data are imposed by two laws, the *Census and Statistics Act 1905* and the *Privacy Act 1988*. The Privacy Act also imposes a range of other obligations in relation to the management of personal information.

Census and Statistics Act 1905 (CSA)

6.2. Section 19, the secrecy provision of the CSA, prohibits the disclosure of any information collected under that Act except for the purposes of the Act; in accordance with a determination, or to the person from whom the information was obtained (the respondent). ABS believes that 'purposes of the Act', while not defined, could only include (in relation to disclosure) either publication in accordance with section 12, or prosecution of offences under s.20.²⁸

6.3. Section 12 has the effect that the ABS is simply not allowed to publish or disseminate results or abstracts of any compilation or analysis '*in a manner that is likely to enable the identification of a particular person or organisation*' (s.12(2)).

6.4. Section 13 provides protection for information released under a determination, and specifically states that:

'Information of a personal or domestic nature relating to a person²⁹ shall not be disclosed in accordance with a determination *in a manner that is likely to enable the identification of that person.*' (CSA s.13(3)) - emphasis added.

6.5. The relevant determination is the *Statistics Determination 1983*³⁰, Clause 7 of which provides for the disclosure of information 'in the form of individual statistical records' only on certain conditions. These are:

- the removal of '*identifying information such as name and address*' (CI 7(1)(a))
- disclosure only '*in a manner that is not likely to enable the identification of the particular person or organisation to which it relates*' (CI 7(1)(b))
- relevant undertakings from the recipient (CI 7(1)(c)) - terms and conditions for these undertakings are spelt out in CI 7(3).

²⁸ Also relevant is the *Australian Bureau of Statistics Act 1975 (ABSA)*, which sets out the functions of the ABS (s.6). While these emphasise the purely statistical role of the ABS, they do not expressly rule out contributing to other administrative purposes. Like the CSA, the ABSA does not contain any definition of statistics or statistical purpose.

²⁹ This is a more limited concept that 'personal information' under the Privacy Act (see paragraph 6.15), implying some judgement as to what amounts to 'personal' or 'domestic'. The use and disclosure limits in the Privacy Act (IPPs 10 & 11) will apply to all personal information held by ABS, whether or not ABS regards it as 'of a personal or domestic nature'. However, the limits imposed by the IPPs are not as strict as those under the CSA and Statistics Determination. The ABS will comply with its statutory obligation to treat all of the information to be held in the SLCD as 'of a personal or domestic nature' so that the stricter controls will apply.

³⁰ Statistics Determination 1983 as amended.

6.6. The only exception to Clause 7 is where ‘disclosure is to assist the Statistician to perform statistical functions’ (*Statistics Determination 1983* Clause 7A) – in such circumstances the Statistician is given a discretion to approve disclosures outside the terms of Clause 7. But Clause 7A expressly *does not apply to* ‘information of a personal or domestic nature which is likely to enable the identification of that person’ (in the remainder of this PIA report, this is referred to as ‘*identifiable personal information*’). This means, for example, that even contractors and consultants engaged by the ABS cannot see identifiable personal information.

6.7. ABS advises that there are *no* other exceptions to these limits – that *any* Ministerial determination under s.13(1) authorising disclosure of ABS information would have to be consistent with (i.e. include) the express limitation of s.13(3) as regards identifiable personal information.

6.8. The ABS is confident that information collected under the CSA is securely protected by the stringent secrecy provision of that Act and by the statutory independence of the Australian Statistician. The ABS is not aware of any power under other Acts that could override the CSA secrecy provision, but this has never been tested in the Courts. In the event that any attempt was made to use other powers to obtain identifiable personal information, ABS is committed to defending its secrecy provisions in the courts.

6.9. The CSA already contains an express defence against access to information by courts and tribunals, but this currently only applies to information from the 2001 census. The provision (s.19A) was inserted to cover the information in the census forms which were subsequently transferred (imaged) to the Australian Archives with the express consent of the respondent, but applies to all 2001 Census information. It is arguably unnecessary given the effect of the privacy and secrecy provisions, but it is nevertheless proposed to extend this express defence to the 2006 Census information. The defence does not and will not apply to ABS information more generally.

6.10. Breaches of the CSA secrecy provisions are criminal offences carrying a penalty of up to 2 years imprisonment and/or a fine of up to \$5000. It may sometimes be necessary to disclose identifiable personal information for the purposes of a prosecution under s.20 of the CSA, either for a breach of the secrecy provision s.19, or for a breach of either ss.14 or 15 (which make it an offence to refuse or fail to provide information (other than about religious beliefs) or to make false or misleading statements).

6.11. ABS officers are required to sign an undertaking of fidelity and secrecy which is set out in a Schedule to the *Statistics Regulations*³¹ (Regulation 4). This binds them to comply with the disclosure limitations of the CSA and *Statistics Determination*.

³¹ Statutory Rules 1950 No. 43 as amended

Privacy Act 1988 (PA)

6.12. The ABS, as a Commonwealth agency, is subject to the Information Privacy Principles (IPPs) in s.14 of the PA.

6.13. These principles impose limits and conditions on the collection, use, disclosure, and disposal of personal information; require reasonable steps to ensure data quality and security, and give individuals a right of access and correction.

6.14. Breaches of the IPPs are defined as ‘interferences with privacy ‘ about which individuals can complain to the Federal Privacy Commissioner (FPC). The FPC can investigate alleged breaches of the IPPs either as a result of a complaint or on her own initiative, and can make recommendations for remedial action, and attempt to conciliate a resolution. In the case of complaints, the Commissioner can make a determination that an agency act in a certain way and pay compensation (unlimited), but if the agency declines to comply, determinations can only be enforced by a Federal Court after a fresh hearing of the complaint.

6.15. ‘Personal information’ is defined in the Act and has a broader meaning than ‘information of a personal or domestic nature which is likely to enable the identification of that person’ in the CSA³².

6.16. However, the use and disclosure limitations in the Privacy Act (IPPs 10 & 11) are less restrictive than the specific provisions of the CSA, so that the CSA provides a higher standard of privacy protection than the PA in this respect.

6.17. The way in which the IPPs bear on the Census Enhancement Proposal is analysed in detail in Table 2.

7. ABS implementation of secrecy provisions

7.1. The secrecy obligation imposed by the Census and Statistics Act applies to all information collected under the Act. The prohibition³³ of disclosure of any information ‘*in a manner that is likely to enable the identification of [a] person...*’ is taken very seriously by the ABS and this will continue, and apply to the SLCD.

7.2. Procedures to ensure the confidentiality of the ABS tabular output are set out in ABS policies and procedures, and are kept current through continuous improvement. The overriding objective is ensuring no disclosure of identifiable personal information. These procedures take effect when any cell in a table would contain only a very small number,

³² See footnote 3

³³ The only thing that stops this from being an ‘absolute’ prohibition is the two very limited exceptions already explained in section 6, i.e. disclosure back to a respondent, and disclosure in the course of a prosecution for CSA offences.

and include deliberate perturbation (alteration) of the data, cell suppression and/or collapsing cells into more aggregate tables.

7.3. The general rule for tabular output would apply to any tabular output from the SLCD or the SLCD used in conjunction with other data source. The ABS keeps the effectiveness of the rule under review and is currently undertaking research into its application and effect.

7.4. The ABS also makes available microdata in the form of confidentialised unit record files (CURFs).

7.5. Existing procedures designed to protect the confidentiality of the individual records of persons and organisations included in microdata files released by the ABS are described in the ABS brochure *CURF*³⁴ and include:

- Removing name and address and *any other information* that might uniquely identify an individual
- Changing a small number of values, particularly unusual values, and removing very unusual records (known as perturbation of the data)
- Controlling the detail available for all records
- Controlling the modes of access to restrict access to more detailed data (There is a hierarchy of modes:
 - CD-ROM supplied to clients
 - Internet access, under ABS supervision, to an ABS Remote Access Data Laboratory (RADL)
 - analysis on ABS premises under ABS supervision (ABS Site Data Laboratory (ABS DL)).
- Placing restrictions on how the data are used, supported by legal undertakings (backed up by the same penalties and sanctions as apply to ABS officers (CSA s.19(2)))

7.6. Persons applying to use CURFs are required to demonstrate they are needing it for statistical purposes. They are also required to read a Training Manual³⁵ before signing the undertaking.

7.7. These processes are overseen by a CURF Management Unit which is responsible for the client interaction and management, and by a Data Access and Confidentiality Methods Unit (DACMU) which is responsible for confidentiality aspects. The DACMU assesses all proposals for release of CURFs and makes recommendations, including any proposed perturbation etc, to a micro data review panel (MDRP) which comprises three senior ABS officers. The MDRP may accept or vary the recommendations before forwarding the application to the Statistician for personal approval of each initial CURF application.³⁶ The Statistician has delegated to the Deputy Australian Statisticians the

³⁴ Available on the ABS website. A more detailed account of the background to and procedures for access to microdata was given in Chapter 3 of the ABS Annual Report for 2002-03

³⁵ *Responsible Access to ABS CURFs* - latest edition March 2005

³⁶ Each specific release of an approved CURF is expressly approved by one of the two Deputy Statisticians

authority to approve specific uses of already approved CURFs. In 2003-04 212 CURFs were approved for release to organisations³⁷. 300 individual users are currently approved to use specific CURFs, of whom 184 are registered to access these CURFs via the RADL.

7.8. The processes outlined above for access to microdata in the form of CURFs will also apply to access by third parties to the SLCD, with the exception that SLCD microdata will never be handed over to third parties on CD-ROM. SLCD data would only be made available through RADL and ABSDL after it had been made unidentifiable.

7.9. The proposed use of name and address during the processing period will never involve release or disclosure of the name or address to third parties - this would not be permitted under the CSA and Statistics Determination. It will only be used by the ABS for the limited range of purposes outlined in the Discussion Paper e.g. verifying probabilistic linkages; matching against the Agricultural Census, and specific statistical studies recommended by a special ABS Committee and approved by the Australian Statistician. In the latter cases, where matching with non ABS data was involved, the matching would be undertaken by ABS itself, with only the unidentifiable output released to third parties, in accordance with the secrecy provisions summarised above.

7.10. ABS is proactive in seeking to ensure compliance with legislative requirements and the internal administrative practices. Security measures meet the highest standards³⁸. Steps taken include a very active internal and external audit program both of internal ABS processes and of external users/uses. External audits of compliance with conditions under clause 7 of the Statistics Determination are undertaken regularly³⁹, and in 2003/04 there was a specific external audit of the newly established RADL facility. Staff in the Data Access and Confidentiality Methods Unit regularly audit Remote Access Data Lab job logs and outputs.

7.11 There have been no known cases of an ABS officer breaching the undertaking of fidelity and secrecy⁴⁰.

7.12. In 2003-04, the ABS received 397 complaints from data providers, continuing a steady decline in numbers since 2000-01 when there were 748⁴¹. It is not known how many of these complaints were from individuals as opposed to legal entities, or what proportion of them involved privacy issues broadly defined.

³⁷ ABS Annual Report 2003-04, p.75. There have been over 1000 CURF releases to date.

³⁸ For instance, the ABS was the first Commonwealth agency to receive certification at the 'In confidence' level by the Defence Signals Directorate for its Internet Gateway.

³⁹ Audits of Clause 7 compliance were undertaken by the ABS external auditors in 1998/99, 1999/2000, 2000/01, 2003/04 and one is about to commence for 2004/05, with a further audit planned for 2005/06.

⁴⁰ ABS Annual Report 2003-04, p.72.

⁴¹ ABS Annual Report 2003-04, p.73. The last Population Census fell in the year 2001-02, when there were 550 complaints.

8. Compliance by ABS with the Privacy Act IPPs

8.1. This section goes to the issue of compliance by the ABS, in respect of the Census Enhancement Proposal, not only with the use and disclosure limits in the PA, but also with the other Information Privacy Principles (IPPs).

8.2. Compliance with the IPPs is a necessary, but not necessarily sufficient, condition of satisfying privacy concerns.

8.3. In relation to some IPPs, different compliance issues arise in respect of the various components of the overall proposal. In particular, the proposed use of 2001 Census data (Proposal B in Table 1) and the proposed use of name and address information during the period of census processing (Proposals E-H in Table 1) raise particular issues, distinct from the proposal for creation and use of the SLCD (Proposals A, C & D in Table 1).

8.4. The proposed uses of name and address information during the period of census processing (Proposals E-H in Table 1) are in fact all possible independently of the SLCD, and to that extent can be considered as separate proposals, whether or not the SLCD was available.

8.5. The analysis of compliance with the principles is contained in Table 2.

8.6. Overall, the analysis shows that the ABS should have no difficulty in complying with the Information Privacy Principles of the Privacy Act in its implementation of the Census Enhancement Proposal. Some additional steps will be required in relation to notice to individuals and the ABS will also need to ensure that its already strict security safeguards are maintained to the highest standards.

8.7. A relevant consideration in this assessment is the ABS' 'track record' of privacy compliance, particularly in relation to issues similar to those raised by the Census Enhancement Proposal.

8.8. From published reports, there appear to have been no audits of compliance with the IPPs by the Office of the Federal Privacy Commissioner (OFPC). The statistics on privacy complaints published by the OFPC are not broken down by agency and neither the OFPC nor the ABS were able, in the time available, to provide any details of privacy complaints experience since the Privacy Act took effect in 1989.

8.9. The OFPC Annual Reports do contain references to policy issues discussed with the ABS over the years. These include:

- Concern, in the 1990s, about the clarity of the ABS communication with respondents about its powers of compulsion⁴². This concern appears to have been addressed by the ABS providing further information about its powers, including in relation to the Population Census.
- The retention periods for name and address information and the separation of names and addresses early in processing.⁴³ The common thread of these advices was recognition of the very limited use of name and address information.
- Consultation in 1993-94 on the amendments to the Statistics Determination concerning access to microdata⁴⁴. The Privacy Commissioner expressly cautioned about the possibility of re-identification.

8.10. The Privacy Commissioner was also an active participant in the debate which led to the opt-in retention of census forms by the Australian Archives, first introduced in 2001⁴⁵ (see paragraphs 3.7 and 11.22-11.24).

8.11. Overall, the Privacy Commissioner has been very supportive of the Australian Statistician and the operation of the ABS and its legislation. The then Commissioner said in 1996:

“The Bureau of Statistics fully complies with the privacy principle that personal information should only be used for the purpose for which it is obtained ...”⁴⁶

Table 2 follows on the next pages

⁴² Privacy Commissioner Annual Reports 1989-90, p.16; 1990-91, p.24; 1991-92, p.25; 1992-93, p.37; 1993-94, p.26; 1995-96, p.67.

⁴³ Privacy Commissioner Annual Reports 1991-92, p.25; 1992-93, p.37; 1995-96, p.67.

⁴⁴ Privacy Commissioner Annual Report 1993-94, p.26.

⁴⁵ Privacy Commissioner Annual Reports 1992-93, p.37; 1996-97, p.19; 1997-98, p.17; 1999-2000, p.23.

⁴⁶ Privacy Commissioner Kevin O'Connor in a letter to the Editor of the Sydney Morning Herald, 12 July 1996.

Table 2: Compliance with Information Privacy Principles (IPPs)
(s.14 Privacy Act 1988)

The analysis in this table in most cases applies to all components of the Census Enhancement Proposal (i.e. Proposals A-H in Table 1).

To the extent that Proposal B is an optional extra, and that Proposals E-H are self contained and could proceed without an SLCD, additional comments are made about these where there is something different or additional to be said.

IPP	Summary ⁴⁷	How ABS will comply for Census Enhancement Proposal
1	<p>IPP 1 says that agencies can only collect personal information:</p> <ul style="list-style-type: none"> • for a lawful purpose that is directly related to their functions; and • if collecting the information is necessary for or directly related to that purpose. <p>Agencies must not collect personal information unlawfully or unfairly.</p>	<p>To the extent that creation of the SLCD and of datasets to be compared involves collection, that collection is clearly for a lawful purpose directly related to ABS functions. While not strictly necessary, in that previous Censuses have fulfilled their purpose without being linked into an SLCD, the collection is for a purpose directly related to the purpose of the Census, and therefore passes the second element of the test.</p> <p>The ABS clearly collects the information that will make up the SLCD lawfully. In the 1990s the Privacy Commissioner raised with the ABS the clarity of information about the ABS' powers of compulsion when conducting censuses and surveys (see also IPP2). This issue now appears to have been resolved with a much clearer statement included in the Census Guide.</p>
2	<p>IPP 2 says that if an agency asks a person for personal information about himself or herself, it must normally tell the person:</p> <ul style="list-style-type: none"> • why the information is being collected (the purpose) • whether it has legal authority to collect the information; and • who it usually gives that sort of information to. 	<p>The ABS will need to ensure that the notice given to respondents in connection with the 2006 Census covers these requirements. As noted above, the issue of disclosing the ABS powers of compulsion appears to have been resolved with the Privacy Commissioner, who was consulted on the notice given in the 2001 Census form and Guide⁴⁸.</p> <p>While there is no express requirement to explain how the information will be used, in the case of the Census where the retention of names and addresses is such a controversial issue, it would be inadvisable not to explain in 2006 the significant changes in the proposed storage (separate digitisation initiative) and use (Proposals E-H) of names and addresses.</p> <p>Unlike the equivalent private sector principle (NPP 1.5), there is no requirement for the ABS to ensure that individuals about whom it collects information from third parties (such as the householder respondent in the census) informs the other individuals about these matters. However, the ABS voluntarily advised respondents in the 2001 Census Guide about the availability of a privacy envelope, and the option of household members completing a separate form. Question 50, relating to the option to have an image of the form retained by Archives for research after 99 years, did require the respondent to have checked with each person in the household.</p>

⁴⁷ These summaries are mostly taken from the Privacy Commissioner's Plain English Guidelines to the Information Privacy Principles, first issued in 1994. In some cases, e.g. IPPs 6 & 7, they have been further edited and summarised. Reference should be made back to the full text of the IPPs before any action is taken on the basis of this analysis.

⁴⁸ Note that the equivalent private sector principle – NPP 1.3 – requires notice of 'the main consequences (if any) for the individual if all or part of the information is not provided'. The Commissioner was also consulted about a more detailed *Census Obligation Statement* which was handed to householders if they asked about the census being compulsory. ABS will include equivalent notices in 2006. The Commissioner's web site at www.privacy.gov.au includes an FAQ addressing the issue of the Abs collection powers.

3	<p>IPP 3 says that when an agency asks for personal information, the agency must do its best to make sure that the information is:</p> <ul style="list-style-type: none"> • relevant to the agency’s reason for collecting it; • up to date; and • complete <p>IPP3 also says that when an agency gets personal information from people, it must do its best not intrude unreasonably on their personal affairs.</p>	<p>ABS processes for designing the census ensure that all information requested is relevant. The ABS also has a clear interest in ensuring that information is as up to date and complete as possible. It largely has to trust respondents as it does not undertake any verification other than tests for internal consistency and integrity (see also under IPP 7), but it does have reserve powers to compel responses, and exercises these from time to time to try to ensure completeness.</p> <p>There is a risk that the Census Enhancement Proposal could lead some respondents to give less complete or honest answers. If so, the ABS by its own actions could have contributed to the census data becoming less ‘fit for purpose’ than it would otherwise be.</p> <p>The Census is necessarily intrusive. Decisions on the questions asked in each census seek to balance minimising intrusion and meeting other public interests, and involve a wide process of consultation. It is unlikely that the Privacy Commissioner or the Courts would seek to second guess the ABS on what was reasonable, provided it did not go to extremes.⁴⁹</p>
4a	<p>IPP 4(a) obliges an Agency to protect the personal information it holds with such safeguards as are reasonable in the circumstances.</p>	<p>The ABS has very strict controls over access to information both during and after each Census, and keeps the controls constantly under review. Given the additional attractiveness of the SLCD data, the ABS will need to ensure that its security safeguards keep pace to address new risks and threats</p>
4b	<p>Under IPP 4(b), if an Agency gives personal information to a person or organisation in connection with the provision of a service to the Agency, it must do everything reasonably within its power to prevent unauthorised use or disclosure of the information.</p>	<p>The secrecy provisions applying to the ABS mean that not even contractors and consultants engaged by the ABS are allowed to see identifiable personal information.</p>
5.1	<p>Under IPP 5.1, an Agency must take reasonable steps to allow any person to find out whether it has any records that contain personal information, and if so, the nature of that information; the main purposes for which it is used; and the steps that a person should take if they want to obtain access to it.</p>	<p>The ABS complies with this Principle through its privacy policy and statements, including the privacy statement in the Census Guide, privacy related FAQs on its web site⁵⁰, and the statement which appears in the annual Personal Information Digest. These policies and statements may need updating to reflect the proposed SLCD and its uses (see comment above in response to IPP 2 concerning explanation of names and address information – Proposals E-H).</p> <p>In respect of the steps that a person should take if they want to obtain access to [the information], the ABS would explain its exemption from the FOI Act.</p>
5.2	<p>IPP 5.2 says that an Agency does not have to tell a person about personal information it holds or controls, if it is required or authorised not to do so by a Commonwealth law that provides for access to documents.</p>	<p>The ABS does not suggest that its exemption from the FOI Act relieved it from this general information obligation, and would respond to any reasonable request for information under IPP 5.1</p>

⁴⁹ It is interesting to note that the UK Office for National Statistics is currently embroiled in controversy over the proposed inclusion of an ‘earnings’ income question in the next UK population census due in 2011. In Australia questions about income have been asked since 1976 and seem to be widely accepted. This may be partly due the absolute guarantees of confidentiality which are at the centre of this privacy assessment.

⁵⁰ www.abs.gov.au – see Survey Participant Information

5.3	This requires that each Agency which has possession of or control over records of personal information, shall maintain, for each type of record containing personal information, a statement of (specified matters); maintain its statement throughout the year; make the statement available for public inspection, and provide its statement to the Commissioner annually (for publication in the Personal Information Digest)	See response to IPP 5.1
5.4		See response to IPP 5.1
6	the individual concerned shall be entitled to have access to that record, except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record	The Statistician is exempt from the Freedom of Information Act in respect of documents containing information collected under the CSA (FOIA Schedule 2, Part II, Division 2). This means that individuals have no right of access to personal information about themselves held by the ABS, although the ABS does have a discretion to return data collected to the person who provided it.
7	IPP 7.1 requires each Agency to take all reasonable steps to ensure that the personal information it holds is accurate and, given the purpose of the information, is relevant, up to date, complete and not misleading.	See response to IPP 3. The ABS largely relies on respondents as it does not undertake any verification other than tests for internal consistency and integrity. In the context of a population census this is reasonable, and no further steps are likely to be considered necessary, provided the information continues to only be used for the purposes stated in the proposal. If knowledge of the elements of the Census Enhancement Proposal led to a significant reduction in the quality of the responses to the Census, a case could perhaps be made that in making the changes the ABS had breached IPP 7.1, but this would be an unprecedented retrospective challenge. The likely effect on the quality of responses is an important issue which the ABS will need to take into account 'up-front' in making a decision on the Proposal.
7.2 & 7.3	An application for amendment of personal information by the subject of the information should initially be dealt with under the FOI Act or other relevant administrative processes.	The Statistician is exempt from the Freedom of Information Act in respect of documents containing information collected under the CSA (FOIA Schedule 2, Part II, Division 2). This means that individuals do not have any rights of correction under Pt V of the FOIA in respect of documents containing personal information collected for statistical purposes.
7.1	[if request is] for amendment ... on the grounds that the information is irrelevant, [or] for deletion, must process under PA	The additional rights of correction on grounds of 'irrelevance' and of deletion conferred by IPP 7.1 do apply but are rendered somewhat academic because of the absence of a right of access. Individuals could still request correction on the grounds of irrelevance and deletion, but the ABS would arguably be able to successfully resist any such requests on the grounds that Census records cannot by definition be irrelevant and that deletion would frustrate the purpose.
7.3	[if no correction made] the Agency must take all reasonable steps to attach to the personal information a statement by the person of the change he or she has asked for	The Statistician is exempt from the Freedom of Information Act in respect of documents containing information collected under the CSA (FOIA Schedule 2, Part II, Division 2). This means that individuals do not have any rights of annotation under Pt V of the FOIA in respect of documents containing personal information.
8	An agency must take reasonable care to check that personal information is accurate, up to date, and complete, <i>before</i> using it	It would not be reasonable to expect the ABS to take any steps to comply with this principle – it is not compatible with the ABS purposes.
9	An agency must only use personal information for a purpose to which it is relevant.	The ABS can readily demonstrate compliance with this principle. All of the proposed uses are for 'statistical purposes'.

10.1	<p>An agency must not use personal information for any purpose other than that for which it obtained the information, <i>unless</i>:</p> <ul style="list-style-type: none"> (a) the person the information is about consents, or (b) the use is necessary to protect against a serious and imminent threat to a person's life or health, or (c) the use is required or authorised by law, or (d) the use is reasonably necessary to enforce the criminal law or a law imposing a pecuniary penalty, or to protect public revenue, or (e) the use is directly related to the purpose for which the agency obtained the information. 	<p>In relation to the 2006 and future censuses, the ABS does not intend to use the information collected for any purposes other than those for which it will obtain it – and these purposes will be clearly explained. The ABS could argue that the uses would be for the primary purpose. Even if this was challenged, the uses would be authorised by law (in the sense that they would clearly come within the ABS's statistical functions) (c), and also arguably directly related uses (e). On one or more of these grounds, the ABS would therefore comply with IPP 10.</p> <p>In relation to 2001 census records (Option B), it could be argued that linking these records to the SLCD would be a use for a new purpose, not anticipated or explained at the time of the Census, and therefore not the primary purpose (depending on how the declared purpose was interpreted). The linkage would however be both a use authorised by law (in the sense that it comes within the ABS's statistical functions) (c), and also arguably a directly related use (e). It would therefore comply with IPP 10.</p> <p>The same compliance issues arise in relation to the proposed uses of name and address information (Proposals E-H). Again, they are arguably new secondary uses, but if so would certainly be authorised by law and, again arguably, directly related.</p>
10.2	<p>An agency that uses personal information under exception 10.1(d) must note that use on the record containing the information.</p>	<p>The secrecy provisions of the CSA do not prevent the ABS from <i>using</i> SLCD data for these purposes but it is difficult to envisage circumstances in which this would be of any value without subsequent <i>disclosure</i>, which is not permitted for any of these purposes (other than releasing it back to a respondent), or in the course of a prosecution for an offence under the CSA).</p>
11.1	<p>An agency must not disclose personal information <i>unless</i>:</p> <ul style="list-style-type: none"> (a) the person the information is about has been told in a valid IPP 2 notice, or is otherwise likely to know, that that kind of disclosure is commonly made, or (b) the person the information is about has consented, or (c) the disclosure is necessary to protect against a serious and imminent threat to a person's life or health, or (d) the disclosure is required or authorised by law, or (e) the disclosure is reasonably necessary to enforce the criminal law or a law imposing a pecuniary penalty, or to protect public revenue. 	<p>The secrecy provisions of the CSA impose even tighter controls over disclosure of identifiable data and these exceptions do not therefore come into play, with two exceptions:</p> <p>The release of identifiable information back to a respondent is expressly permitted as an exception to s.19(1), and this would fit within both exception (b) and exception (d) of IPP 11.1</p> <p>The release of identifiable information in the course of a prosecution of an offence under the CSA would be permitted under s.19(1)(b) (for the purposes of this Act), and would fit within both exception (d) and exception (e) of IPP 11.1</p> <p>However, it should be noted that even if the CSA <i>did</i> allow disclosure of personal information in other circumstances, IPP 11 would not prevent it, as exceptions (a), or (d) or both would apply.</p>
11.2	<p>An agency that discloses personal information under exception 11.1(e), must note that disclosure on the record containing the information.</p>	<p>The secrecy provisions of the CSA do not allow the ABS to disclose identifiable data for these purposes even under compulsion, so this principle does not apply.</p>
11.3	<p>If an agency discloses any personal information, the recipient must only use or disclose it for the purpose for which it was disclosed to them.</p>	<p>The ABS has very detailed processes, described in section 6, to ensure both that any data disclosed is both de-identified and unidentifiable and that the recipient is bound by enforceable undertakings not to attempt re-identification.</p>

9. Compliance by other parties with privacy laws

9.1. While ABS cannot be held responsible for compliance by other parties with either federal or State or Territory privacy laws, a relevant consideration for this PIA is what if any effect the Census Enhancement Proposal will have on levels of compliance with those laws by other parties.

9.2. Relevant third parties include sources of other datasets proposed to be used in conjunction with the SLCD and recipients or users of data under the Proposal.

9.3. It should firstly be noted that while some private sector organisations (including some potential users of the SLCD data) and most public sector agencies in NSW, Victoria, Tasmania, the ACT and the Northern Territory are subject to privacy laws, agencies in other States⁵¹ and many smaller private sector organisations are not.

9.4. The question of compliance with other privacy laws arises most particularly in relation to the other datasets which it is proposed to use in conjunction with SLCD data, under proposals D & H – specifically:

- Birth and death register data
- Long term immigration data
- National disease registers – currently the National Cancer Statistics Clearing House, and the National Diabetes Register

9.5. These datasets are further defined and explained in the Glossary to the Discussion Paper. The Paper also makes it clear that the linkage under Proposal D would only be by probabilistic matching of information other than name and address. In these cases, no name and address information would be included in the immigration or disease register datasets concerned. Similarly, information linked from birth or death registers with the SLCD would not include name or address. Names and addresses are included in birth and death registration information already obtained by ABS for population measurement and health statistics purposes, but currently these do not enter processing systems and are only used for specific follow-up; e.g. clarifying cause of death. Projects under Proposal H may require name and/or address information to be used to link the SLCD data and the other data source, and the ABS would need to make arrangements with the custodians of the other data sources to bring this additional information into the ABS.

9.6. Provision of these datasets involve compliance with applicable privacy principles by, respectively:

- State and Territory Registrars of Births, Deaths and Marriages
- The Commonwealth Department of Immigration, Multicultural and Indigenous Affairs

⁵¹ Public sector agencies in WA, Qld and SA are subject to varying levels of administrative privacy principles but without any enforceable rights. For a full picture of privacy jurisdictions in Australia see the Privacy Victoria website at www.privacy.vic.gov.au - see link 'Relevant Laws'

- The Australian Institute of Health and Welfare (a Commonwealth agency)

9.7. Each of these agencies will form their own view as to whether applicable legislation applies to the datasets concerned, and if so allows them to supply, or continue to supply, the information to the ABS for use in the ways proposed.

9.8. Assuming that each of the agencies concerned confirms that they would be able, and willing, to supply information for use in the ways proposed, this does not in itself necessarily dispose of privacy concerns that others may have about their involvement in the Proposal.

9.9. The timetable for this PIA has not allowed for the positions of these ‘source’ agencies to be ascertained. They can be expected to make submissions in response to the Discussion Paper, and any views they express on privacy issues should be taken into account by ABS in the context of this PIA Report.

10. Specific Privacy Issues arising from the Proposal

10.1. Notwithstanding that the Census Enhancement Proposal could be implemented in full compliance with both the CSA secrecy provisions and the Privacy Act Information Privacy Principles, it raises a number of privacy issues and concerns.

10.2. These include some generic concerns which apply to more than one of the component proposals (A-H in Table 1), and some which apply only to particular proposals.

Generic Privacy Issues

Uniquely comprehensive dataset

10.3. Any assessment of privacy issues arising from the five-yearly Census must start with an acknowledgement that it results in a uniquely comprehensive dataset about all Australians⁵². Few datasets held by any government agency or private sector organization come close to the Census in terms of coverage.

10.4. This characteristic is highly significant in relation to fears that the SLCD (or any one Census dataset) could form the basis of a comprehensive population register. Whilst this is clearly not intended, and various protective mechanisms stand in the way of such a development, it is an important context for discussion of privacy issues.

⁵² The ABS estimates that in 2001, only 1.6% of individuals present in Australia on Census night were not captured by the Census.

Identification vs Association

10.5. The ability of the ABS itself, or any other party, to conclusively identify an individual to whom a particular SLCD record relates will be limited by the absence of name and address. However, this will become a decreasingly significant limit over time as most SLCD records become more comprehensive and 'unique' by the addition of five-yearly supplementary information. Until an SLCD exists and can be analysed, it will not be possible to say how much this longitudinal dimension will add to the potential for association. However, lack of name and address will make association more difficult, and there will be a lack of certainty.

10.6. Also, during the processing period for each census (15 months every five years, or 25% of the time), the ABS will actually hold names and addresses alongside the other unit record data for that census, which could be readily linked to the SLCD database resulting in association of most SLCD records with an individual. While it would have been possible to attempt this association during every Census processing period to date, by manual comparison with personal details on the forms, it will be made practicable for the first time in 2006 by the digitisation of names (an initiative independent of the Census Enhancement Proposal – see paragraph 3.6).

10.7. While current legislation prevents any third party from having access to the full SLCD unit record data, if this was to change, then a third party in possession both of the full SLCD records, and of sufficient other data containing names and/or addresses, could readily associate most (but not all) SLCD records to particular individuals. The exclusion of names and addresses from the SLCD itself puts a barrier in the way of association but does not prevent it. (This paragraph makes a hypothetical point which could only eventuate if there was a radical change in the legislation.)

10.8. In this respect, comments by the Privacy Commissioner in her recent review of the private sector provisions of the Privacy Act are relevant. In a chapter on New Technologies, the Commissioner notes:

“Whether or not a person's identity can be reasonably ascertained from information is becoming difficult to determine. With the advent of new technologies it is increasingly difficult to conclude that information that may appear to be de-identified, or not identified can never be connected with a real person. There is evidence that information about people is increasingly used to make contact with people in ways that people find privacy invasive even if it cannot necessarily lead to the physical location of individual or their actual name (for example, email). It is also being used to profile individuals.”⁵³

⁵³ Privacy Commissioner, *Getting in on the Act: Review of the Private Sector provisions of the Privacy Act 1988*, March 2005, p.252.

10.9. The Commissioner has recommended that the government should review

“... the National Privacy Principles and the definition of personal information to assess whether they remain relevant in the light of technological developments...”⁵⁴

10.10. The conclusion from this section of the analysis is that the ABS would be unwise to place too great a reliance on the limited use of names and addresses in the linkage proposals. What is important from a functional privacy perspective is the ability to associate a record with a particular known individual, whether or not the information uniquely identifies that individual.

10.11. The absence of names and addresses from the SLCD itself would substantially impede association, and should reduce the prospect of any pressure for access to the data for non-statistical uses.

Effect of the Proposal on data quality

10.12. Any public perception that the Proposal intrudes on personal privacy to a greater extent than previous practices could affect the honesty and completeness of responses, and consequently the quality of the resulting dataset. While this would be of great concern to the ABS for reasons other than privacy, it would also be a privacy issue in relation to the data quality principle.

10.13. It might have been expected that the 2001 Census would have demonstrated the possible effect of privacy concerns on data quality, in relation to the Archives retention option. However, in a paper to the Australian Statistics Advisory Council, the ABS noted that while overall the 2001 Census data were of slightly poorer quality than for the 1996 Census, it was not possible to establish the contribution (if any) of the retention issue to that decline in quality.

10.14. Poor data quality could not affect individuals adversely as long as census information was only used for statistical purposes, but in the event that it was ever used for other purposes, deliberate error introduced by respondents could be protective of privacy in some ways but could compound the threat if the users acted on the data as recorded.

10.15. Unfortunately, the fact that census data, particularly if held in a longitudinal data set compiled by probabilistic matching, is simply unsuitable for administrative uses is no guarantee that attempts could not be made to use it in this way. This residual risk is addressed in the conclusion of this report.

⁵⁴ Recommendation 69, p.257.

Identifiers

10.16. Leaving aside the proposed linkage with 2001 Census data (see Proposal B), the SLCD would not actually come into existence until 2011 census data was linked to the 2006 data. Between 2006 and some time after the 2011 census, the 'proto' SLCD would contain no more data than the 2006 census dataset would do in the absence of an SLCD initiative.

10.17. The ABS is not yet in a position to say how the SLCD would be structured but it seems reasonable to assume that there will be a unique record number or key assigned to each SLCD unit record.

10.18. An SLCD record number would 'represent' an individual even if the probabilistic association was not guaranteed. It would arguably be an 'identifier' as defined in the *Privacy Act 1988*. The National Privacy Principles, introduced in 2000, contain a specific principle (NPP7) governing the use of federal government identifiers by the private sector. While there is no identifier principle in the IPPs, an SLCD record number would arguably be an 'identifier' subject to the protection of NPP7 in relation to any use by the private sector. It should also be borne in mind that the Privacy Act came into existence in the context of enhanced use of the tax file number (TFN), and contained specific rules for the use of the TFN.

10.19. The presence in the SLCD of a record number or identifier for every Australian could fuel privacy concerns. However, it is important to note that the SLCD record number would be for ABS internal use only. Unlike other government identifiers which give rise to particular privacy concerns, such as the TFN or Medicare Number, it would not have any external use. As explained elsewhere, any privacy risk derives from the creation of the linked unit records, independently of any administrative record number. To the extent that privacy fears relate to potential use of SLCD records by third parties for non-statistical purposes, there would be nothing to stop any such third party adding their own sequential number to the SLCD unit records. The use by the ABS of an administrative record number does not therefore add to the privacy risk.

Sensitive information

10.20. While the Privacy Act as it applies to Commonwealth agencies does not distinguish 'sensitive' information, the private sector jurisdiction, enacted in 2000, does so. Sensitive information is defined as

- (a) information or an opinion about an individual's:
 - (i) racial or ethnic origin; or
 - (ii) political opinions; or
 - (iii) membership of a political association; or
 - (iv) religious beliefs or affiliations; or
 - (v) philosophical beliefs; or
 - (vi) membership of a professional or trade association; or
 - (vii) membership of a trade union; or

(viii) sexual preferences or practices; or
(ix) criminal record;
that is also personal information; or
(b) health information about an individual.
(PA s.6)

10.21. It is clear that some of the information that the ABS collects in the Population Census falls into this category of sensitive information. Questions proposed for the 2006 Census⁵⁵ which would be either definitely or possibly⁵⁶ 'sensitive' under the private sector jurisdiction definition (while not applying directly to ABS) include:

- Religious affiliation (this question is expressly voluntary in the Census)
- Country of birth
- Indigenous status
- Main language spoken at home
- Country of birth of parents
- Ancestry

10.22. In the federal private sector jurisdiction, sensitive information can only be collected where the individual has consented or where collection is required by law.

10.23. Even if the ABS was subject to a sensitive data principle, it would be able to comply – in the case of religion because it is with consent, and for all other sensitive data because the collection is required by law (see next section - Compulsory acquisition).

10.24. The ABS recognises that some of the information it collects through the Census is particularly sensitive – apart from the categories already mentioned, the income question would also be seen by many individuals as sensitive. It is partly in recognition of this that the secrecy provisions of the CSA, the provisions of the Statistics Determination and the ABS administrative practices are so strict⁵⁷.

10.25. The fact that the Census collects information which is widely regarded as sensitive is an important factor in any overall privacy assessment of the Census Enhancement Proposal

10.26. Sensitive information is also a factor in relation to the proposed linkages of SLCD data to other ABS survey data both on a probabilistic basis (Proposal C) and, potentially, using name and address information during the Census processing period (Proposal G).

⁵⁵ Taken from the list appended to the 2005 Discussion Paper

⁵⁶ It is arguable whether country of birth and language are in themselves indicators of 'racial or ethnic origin', but they can certainly be used as (often inaccurate) surrogates.

⁵⁷ These safeguards are arguably even more important in relation to information collected in some of the ABS' other surveys, which deal with highly sensitive details of health and financial affairs.

10.27. This is because some of the other ABS surveys collect much more highly sensitive information than the Census itself. Examples are the National Health Surveys and the Household Income and Expenditure Surveys, both of which have been controversial in the past on privacy grounds⁵⁸. The suggestion, as part of this Proposal, that sensitive information from these and other surveys may be linked to Census information will be seen by some as a qualitative change in the degree of intrusion, notwithstanding that all of the safeguards described in this PIA will continue to apply.

10.28. Some of the privacy concerns about this proposal are either based on, or exacerbated, by the inclusion in the SLCD of sensitive data which, like all the data in each record, has the potential to be associated with particular individuals (subject to all the safeguards outlined elsewhere in this report).

Compulsory acquisition

10.29. The fact that the Census information can be compulsorily acquired is an important factor in any overall privacy assessment of the Census Enhancement Proposal.

10.30. Although the willing cooperation of individuals is sought by the ABS, the ABS has the power to require persons to provide statistical information (CSA ss. 10 & 11). While this power is generally held in reserve and rarely used, particularly in relation to the Census, it is now made clear on the forms and in the Census Guide, and means in effect that Census information is obtained 'compulsorily'⁵⁹.

10.31. It would clearly be preferable if individuals could 'opt-out' of the providing information in the first place⁶⁰, and uses and disclosures which might be considered reasonable if individuals could choose may be seen as unacceptable in the situation where they have no choice.

10.32. However, no-one seriously suggests that the five-yearly Population Census can be made 'optional' – even in relation to specific questions (other than the religious beliefs question). To do so would compromise the value of the results, which are essential for a wide range of planning and service delivery functions, including allocation of funding for State, Territory and local governments.

10.33. In *Johns v Australian Securities Commission* (1993) 116 ALR 56, the High Court held that if someone compulsorily obtains information using a statutory power, they must:

- only use or disclose that information for the purposes set out in, or implied by, the statute, and
- otherwise treat the information as confidential.

⁵⁸ In relation to both to the questions asked and to the issue of compulsion – see Privacy Commissioner Annual Reports 1989-90, p.16; 1990-91, p.24; 1991-92, p.25; 1992-93, p.37; 1993-94, p.26; 1995-96, p.67

⁵⁹ See the comments in relation to IPPs 1&2 in Table 2

⁶⁰ See references to the Privacy Commissioner's views in footnote 56 = espec. AR 1994-95, p.42.

10.34. Applying the decision in *Johns* case, uses and disclosures that would otherwise be permitted by IPPs 10 & 11 of the Privacy Act are unlawful if they fall outside the more limited purposes set out in or implied by the particular statute granting the powers of compulsion.

10.35. However, in relation to the ABS, the existing and proposed uses and disclosures of the Census information are clearly all for the purposes of the CSA, and the decision in *Johns* would not appear to add anything to the confidentiality protection already provided by the CSA and the *Statistics Determination*, which already effectively implement, in a detailed way, the same constraints.

Privacy Issues with particular proposals

Addition of 2001 Census data to the SLCD

10.36. In relation to 2001 census records (Proposal B), the ABS sees the proposed linkage of these records to the SLCD as a new expression of the original purpose of collection⁶¹. However, given the fact that linkage would be systematic and comprehensive, it could equally be seen as a use for a new purpose, not anticipated or explained⁶² at the time of the Census, and therefore not the primary purpose. The linkage would nevertheless comply with IPP 10 (see Table 2) as a secondary purpose ‘... authorised by or under law’.

10.37. Proposal B nevertheless involves the systematic use of 2001 Census data in ways not envisaged or explained at the time of collection. The question arises as to whether respondents to the 2001 Census would have given different responses to any questions had they known about the possible linkage of their answers (albeit only by probabilistic matching) to an SLCD?

10.38. Since it is impossible to retrospectively remedy the lack of awareness of 2001 respondents about the new use of the Census data, the issue comes down to whether it will be perceived as an acceptable secondary use.

10.39. The fact that this linkage will only be by probabilistic matching, giving no certainty of association, can be put forward as a re-assurance, but the probability of linked records being about the same individuals will presumably be no less than in the proposed future matching of 2006 and 2011 census data, so all of the privacy risks associated with the ‘future’ creation of the SLCD (Proposal A) also apply.

⁶¹ i.e. a new process rather than a new purpose or use.

⁶² The Household Guide for the 2001 Census *How to Complete your Census Form* mentions that ‘ABS will use the most advanced data processing methods currently available’ (p.16) but does not expressly mention linkage to past or future census data.

The use by ABS itself of SLCD data in conjunction with other ABS Household survey datasets

10.40. This is Proposal C in Table 1. The ABS Household survey program includes a wide range of routine, occasional and special surveys. It includes the relatively well known periodic National Health and Household Income and Expenditure Surveys and monthly labour force surveys, but also many other surveys in areas such as housing, literacy, education and training and disability, culture and leisure. See Appendix 1 for a more comprehensive list.

10.41. This particular type of use could be controversial for some from a privacy perspective. While it would comply with IPP 10, the spirit of the notification principles, IPPs 2 & 5, will require that the ABS clearly explains (to respondents to both the Census and the other surveys) that the two sets of survey responses will be brought together using probabilistic matching (see Table 2)⁶³.

10.42. How individuals will react to this information cannot be predicted. Survey research on privacy suggests that individuals are generally willing to participate in research subject to assurances that their answers will not be linked with information obtained from other sources⁶⁴. This proposal would mean that respondents could not be given this assurance and would need to be appraised of the potential for their answers to be linked with information provided in other ABS collections, in each such collection. .

The use of selected data from the SLCD with specific third party datasets

10.43. This proposal (Proposal D in Table 1) is for linkage of SLCD data, by probabilistic matching, with specified third party datasets (births and death register data, long term immigration data and AIHW national disease registries).

10.44. There are two significant differences from Proposal C uses that may raise additional privacy concerns. The first is that in many cases under Proposal D, the use of the third party dataset will be arguably unrelated to the purpose for which the information was originally provided⁶⁵. The second difference is that any notice of proposed uses given to individuals whose information is included in third party datasets is out of the ABS' control. It may or may not meet equivalent standards to that which the ABS must meet under the Privacy Act⁶⁶.

⁶³ The ABS confirms that it is already taking steps to ensure that this notification takes place.

⁶⁴ This is a general observation based on privacy research findings known to the consultant over a period of 20 years, rather to any particular survey.

⁶⁵ In the cases of birth and death registration, and disease registers, it could be argued that statistical analysis is one of the primary purposes of collection. In the case of the Immigration data the use would be for a secondary purpose, although the use is clearly advised to providers of the information at the time of provision, at least on forms currently in use.

⁶⁶ In some cases, such as the AIHW Diabetes Register, the fact that consent is required for inclusion maybe seen as a higher standard, although this will depend on what individuals have been told. In contrast, the notice typically given to visa applicants by DIMIA, while technically complying with IPP2, is unlikely to

10.45. While linkage under Proposal D could comply with the IPPs, and all the assurances about ABS confidentiality and non-disclosure will apply, a proportion of respondents to the Census are likely to see it as an unwelcome non-consensual secondary use.

Use of name and address information

10.46. These proposals (Proposals E-H in Table 1) are independent of the creation of the SLCD, i.e. they could proceed whether or not an SLCD is created.

10.47. No additional information will be collected to facilitate proposals E-H. As noted earlier, in 2006, for the first time, the names will be captured from the imaged forms by scanning/optical character recognition software and turned into digital form, to be held, for the period of Census processing, in a dataset alongside the other unit record information. Names and addresses will be destroyed at the end of the processing period.

10.48. Specific privacy issues arise from each of these proposals, as follows:

Use for ABS quality studies (Proposal F)

10.49. In the past, names and addresses could be retrieved manually, but the cost and difficulty of doing this meant that use of names and/or addresses was restricted to some limited ABS quality studies.

10.50. Once the name and address information is more readily available during the processing period, it is proposed to use it for a wider range of quality studies (e.g. of non response rates, and, if the SLCD is created, of the quality of the probabilistic matching and of the resulting datasets).

10.51. This proposal is at the 'low-risk' end of the spectrum, and is likely to be seen by most individuals as reasonable and directly related secondary purpose, but it does involve a significant change of scale from long-established practices that are well understood in the community. Some may see it as an undesirable 'thin end of the wedge'⁶⁷.

Use to bring together census data with other ABS datasets (Proposals E & G)

10.52. Another type of proposed use of name and address information is for bringing together census data with the other ABS datasets. Proposal E is for a specific example – bringing together the census data with the 2005-06 Agricultural Census data, while Proposal G leaves open the possibility of linkage to other ABS datasets, although there are no firm plans at this stage.

make applicants aware that the information they give may be matched on a unit record basis with their responses to the Population Census.

⁶⁷ See specific research findings to this effect cited in section 5

10.53. These proposals carry the same privacy risk as the probabilistic linkage in Proposal C, with some additional concerns. In these cases, the spirit of the notification principles, IPPs 2 & 5, will require that the ABS clearly explains (to respondents to both the Census and the other surveys) that the two sets of survey responses will be brought together *using names and addresses* (see Table 2 – Appendix 1). The importance of mentioning the use of names and addresses is that unlike the probabilistic matching in Proposal C, there should be a much higher ‘match rate’ with the combined data in most cases relating to a known individual or individuals. The notice can however also confirm that the names and addresses in the other ABS datasets are also destroyed following the matching.

10.54. In the case of the proposed linkage with the Agricultural Census, there may be particular views in farming communities to the linkage of information provided about farming businesses with information about individuals associated with those businesses.

10.55. The ABS will be able to re-assure respondents to the population subsets involved in these studies about all of the secrecy and privacy protections that apply, including the prohibition on disclosure of identifiable personal information, but this may not assuage all concerns about this set of proposals.

Use for specific statistical studies involving specific third party datasets (Proposal H)

10.56. The third category of proposed uses of name and address information during the processing period is for bringing together one of the specified third party datasets (birth and death register data, long term immigration data and AIHW national disease registries) with census data (including SLCD data if it is created). This would be done where there was insufficient information in the datasets for statistical techniques alone to produce a combined dataset of adequate quality for a significant statistical purpose. Again, names and addresses in third party datasets held by the ABS and used for the matching would be destroyed following the matching.

10.57. This proposal combines the privacy issues of the previous category (Proposals E & G) with those arising from Proposal D, also outlined above.

10.58. The facts that uses of the names and addresses under Proposal H will comply with the IPPs, and that all the assurances about non-disclosure will apply, are again unlikely to satisfy all privacy concerns.

Possible privacy benefit from creation of the SLCD

10.59. While the analysis above has concluded that the creation of the SLCD would, even allowing for the strong legislative protection and rigorous ABS protective practices, present a residual privacy risk, there is a possible consequential privacy benefit.

10.60. This is the prospect that the enhanced use of Census data, within the highly protected confines of the ABS processes, would reduce the pressure for, and incidence of, longitudinal datasets outside this protection.

10.61. The ABS is already aware of two significant longitudinal datasets:

- Household, Income and Labour Dynamics in Australia Survey (HILDA) - The Department of Family and Community Services (FaCS), contracted to a research consortium led by the Melbourne Institute of Applied Economic and Social Research at the University of Melbourne. The other consortium members are the Australian Council for Educational Research and the Australian Institute of Family Studies.
- The Longitudinal Survey of Immigrants to Australia (LSIA) - The Department of Immigration Multicultural and Indigenous Affairs (DIMIA)

10.62. While both of these would have to comply with the Privacy Act Information Privacy Principles, and secrecy provisions in the relevant Departmental legislation, neither is protected against secondary access and uses to the same extent as they would be if conducted by the ABS. DIMIA has indicated to the ABS that the SLCD may reduce the need for its own longitudinal survey.

11. Conclusion - Privacy Risk

11.1. This section draws on the previous analysis for an overall assessment of the privacy risk posed by the Census Enhancement Proposal:

11.2. The creation of the SLCD could take place in conformity with the Privacy Act 1988.

11.3. Nevertheless, the creation of the SLCD inevitably means a more intrusive database than has been held before, and will also increase its attractiveness to a range of potential users beyond those who would only be interested in statistics.

- More intrusive in the sense that it will develop over time into a record of changes in the characteristics and circumstances of the individuals represented by the unit records.
- More attractive for the same reason, in that time series information about individuals is inherently of greater interest to both government and commercial users than simple ‘snapshots’⁶⁸.

⁶⁸ The head of the ABS Census Program is reported as describing the intention as being to turn the “snapshot” of census data “into a movie” (Australian Financial Review 27 April 2005, p.5).

Attraction of SLCD for non-statistical uses

11.4. The value of the Census data for some other non-statistical purposes is limited by the fact that it is significantly out of date by the time it has been fully processed, although it would undoubtedly have a high value for other administrative purposes.

11.5. Some critics of the proposal have in effect characterised it as a potential ‘honeypot’ of personal information, likely to attract interest from a wide range of potential users⁶⁹. While the SLCD will undoubtedly be very attractive, the ABS makes the point that its existing datasets from previous censuses are also extremely rich and valuable, and could potentially have been matched with other data in an attempt to associate unit records with individuals, for the same range of other public interest reasons as could be advanced for access to the SLCD. Despite this potential, it has never happened or been proposed.

11.6. The privacy risk derives not only from the ABS’s *own* ability to identify individuals from the SLCD and other data it collects and holds. It also derives from the potential ability of third parties to identify individuals *if* they were able to obtain SLCD data to link with other data collected and held for other purposes.

11.7. This second category of risk can also be subdivided into:

- the risk of *unauthorised third party access* (e.g. by hacking into ABS computer systems or by unauthorised disclosures by authorised personnel)
- the risk of third parties being *allowed* by law to obtain SLCD unit record data and use it in a way that could lead to identification of individuals (*authorised third party access*), and

Unauthorised access

11.8. The risk of *unauthorised third party access* is addressed firstly by the ABS’ security measures, and secondly by the legislative regime and administrative processes concerning enforceable confidentiality undertakings.

11.9. This report does not purport to assess the adequacy of the ABS’s security arrangements, but there is no reason to doubt the ABS’s assurances that their IT, physical and personnel security measures are ‘state of the art’ and adequate to meet the risk of unauthorised attempts at access to data. The security measures are also regularly reviewed and audited.

11.10. In respect of the confidentiality undertakings, the ABS’ administration of these is rigorous, and again there is no evidence that they are not proving an effective deterrent to unauthorised disclosure.

⁶⁹ See Australian Privacy Foundation papers at www.privacy.org.au

Risk of unauthorised access - Conclusion

11.11. No security measures can of course guarantee 100% effectiveness, and despite the ABS' best endeavours, there will always remain a residual risk of unauthorised third party access. However, this risk must be seen in the context of the nature of the data and its potential uses. Unlike many other administrative datasets held by government agencies and private businesses, the SLCD would have no immediate utility to any third party, particularly given the absence of names and addresses.

11.12. Third parties would need access both to a substantial sub-set of the data and to sophisticated processing capability to associate data to any particular individual with any high degree of probability. In other words, the SLCD (and other ABS datasets) are an unlikely target for third parties seeking access to specific personal information. The combined effect of the legislative sanctions, and the ABS' practical controls, should in any case be sufficient to deter and frustrate any attempt at unauthorised access.

Authorised access

11.13. As noted earlier, by far the greatest privacy concern in relation to the Proposal, as it has always been in relation to the Census more generally, is the attraction of the dataset to other official bodies in pursuit of other public interests. While no government in recent years has even attempted to access census information for administrative purposes, the risk is illustrated by an anecdote recounted by the current Statistician in a recent speech.

11.14. Before the Second World War, the then Tax Commissioner attempted to obtain information from ABS Census of Wealth for the purposes of a court action against a taxpayer. The wording of the legislation then technically allowed for this and the Tax Commissioner was supported in his demands by the Cabinet. It was only the fact that the Statistician had in the meantime destroyed the name identified census cards that prevented this administrative use of the data⁷⁰.

11.15. This incident demonstrated the independence of the then Statistician to maintain the principle of confidentiality even though there was a loophole in the legislation. Governments have subsequently removed the loophole. In his address the current Statistician assured his audience that:

“I will be similarly protective of data provided to us, but not use the same tactics.”

11.16. However, the incident also demonstrated the willingness of a past government to put short term administrative needs ahead of principle.

11.17. The risk of third parties, including other government agencies being *allowed* by law to obtain SLCD unit record data is now expressly addressed by the legislative framework. As outlined in paragraphs 6.2-6.11, the CSA and *Statistics Determination*

⁷⁰ Address by the Australian Statistician, Dennis Trewin, to the National Press Club, 9 March 2005

between them effectively prohibit third party access to identifiable personal information, although some minor amendments could make this clearer (see recommendation).

11.18. Changes in legislation to allow the use of SLCD data for administrative purposes need not involve a change in the secrecy provisions to allow direct access to the unit record data by third parties. The same effect could also be achieved by giving the ABS itself new administrative functions. But in either case, the prohibition on disclosure of identifiable personal information would have to be removed.

11.19. In respect of the legislative limits, neither the ABS nor the current government can guarantee that the current and proposed legislative controls will remain indefinitely – in the absence of any constitutional protection of privacy, they are ultimately vulnerable to the decisions of the government of the day, subject to parliamentary approval.

11.20. Those concerned about the possibility of changes – typically referred to in the privacy context as ‘function creep’ – will inevitably cite the example of the progressive extension of the use of the Tax File Number (TFN) since 1989, despite very firm promises and assurances⁷¹.

11.21. The ABS does have a documented record of resisting government attempts to change the basis of its operations or interfere with its independence. This includes the refusal of the then Statistician to allow the ABS to be included in the outsourcing program for information technology in the mid 1990s, on the grounds that the disclosure of information of a personal nature to contractors would be in breach of the CSA.

11.22. Another case study that can be perceived in two different ways is the legislative amendments to allow the retention, albeit on an opt-in basis, of imaged census forms from the 2001 Census⁷². The Statistician, the independent Australian Statistics Advisory Council, and the Privacy Commissioner had all objected strongly to the original proposal for mandatory retention⁷³. Given the Government was determined to allow some form of retention, the Statistician recommended that this only be done on an opt-in basis. This advice was accepted by the Government.

11.23. This can be seen as an example of the Statistician’s influence on government policy to safeguard privacy.

11.24. However, it can also be seen as an example of a privacy loss, despite the best efforts of the Statistician and the Privacy Commissioner. While both have accepted the ultimate arrangements for individual opt-in, secure storage by the Australian Archives

71 See the Australian Privacy Foundation submission to a 1999 Parliamentary Inquiry at <http://www.privacy.org.au/Papers/SubTFN9910.html> and Roger Clarke’s 1991 paper *The Tax File Number Scheme: A Case Study of Political Assurances and Function Creep* at <http://www.anu.edu.au/people/Roger.Clarke/DV/PaperTFN.html>

72 *Census Information Legislation Amendment Act 2000*

73 For a detailed account of this episode, see successive ABS Annual Reports, including in particular the 1997-98 Report, Chapter 2.

and express legislative protection, the compromise clearly represents a ‘second best’ solution from a privacy perspective, and now prevents the ABS from giving its previously unqualified assurances about destruction of name identified information after the processing period.

11.25. It should be noted that other recent legislative amendments have *strengthened* the secrecy and confidentiality provisions of the CSA (most recently in 2003, to ensure that seconded and former officers were covered⁷⁴), and of the *Statistics Determination* (in 1994 and 2004)⁷⁵.

11.26. The ABS also points out that while the UN Principles (see paragraphs 4.15-4.16) have no official legal status, Australia would be severely embarrassed internationally if legislation was amended in a way that offended the Principles.

Risk of Authorised access – Conclusion

11.27. Subject to the recommendations below, the legislation governing the ABS and the Census already goes as far as it is possible to go to ensure that Census information can never be used in a way that threatens the interests of individuals, or exposes identifiable personal information to third parties, even in pursuit of other public interests.

11.28. The residual privacy risk of authorised access therefore depends on the level of trust in the community that future governments will not overturn the longstanding principles underlying the Census and Statistics Act.

Do any of the subsidiary proposals add significantly to the privacy risk?

11.29. The consultant has given serious consideration to whether abandonment of any of the component proposals would make the overall Census Enhancement Proposal significantly less privacy intrusive.

11.30. Abandonment of any of the particular types of proposed uses of the SLCD (i.e. quality studies, and specific statistical studies using both ABS datasets and the three third party sources) would be largely cosmetic and would not significantly reduce the privacy risk, which resides in the initial creation and maintenance of the SLCD itself. It is the potential attraction of the SLCD for non-statistical purposes which gives rise to the residual privacy risk – of future legislative change. The marginal privacy risk posed by the particular uses is addressed adequately by the current legislative framework and administrative practices.

⁷⁴ *Statistics Legislation Amendment Act 2003*

⁷⁵ The 1994 amendments of the *Statistics Determination 1983* introduced additional conditions of release of unidentified information under Clause 7, while the 2004 amendments made it clearer who could be required to give undertakings in relation to release of unidentified information.

Use of names for linkage

11.31. In terms of public perceptions, and the consequences for trust in the ABS, it is likely that abandonment of the name matching proposals would significantly reduce privacy concerns, if that was accompanied by a clear decision – preferably embedded in the law – not to allow access to the names, during the processing period, for anything other than ABS quality studies.

11.32. Reversing the separate policy decision to digitise the names would handicap the ABS' internal use for quality studies without adding significantly to privacy protection, as in the event of a radical change in legislation to allow other uses, names could be scanned from the imaged forms at any time during the processing period.

2001 Census data

11.33. There are strong arguments of principle for abandoning the subsidiary proposal to add the 2001 Census data to the SLCD, on the basis of undesirable retrospectivity. However, it is unlikely that most individuals would see such a step as significantly adding to their privacy given the creation of and future additions to the SLCD. It would be a largely symbolic gesture to be balanced against whatever statistical value would be gained from the addition of the 2001 data.

12. Recommendations

Recommendation in respect of subsidiary proposals

Recommendation 1

Consideration should be given to abandonment of the Census Data Enhancement proposals involving name matching and of reverting to previous ABS practice of confining the use of names during Census processing periods to ABS quality studies only.

Operational Recommendation

Recommendation 2

If the Proposal is implemented, the ABS should adopt all the administrative measures it has already planned to protect confidentiality and privacy in relation to the SLCD, including in particular the setting up of a separate administrative unit within ABS to be the creator and custodian of the SLCD, and clear communication of the nature of the intended uses to respondents to all relevant surveys.

Recommendations for legislative change

While the legislation governing the conduct of the Census and subsequent use of the Census information— *the Census and Statistics Act 1905* - cannot be completely ‘future-proofed’, the privacy and confidentiality protections in it could be strengthened in several ways:

Recommendation 3

The ABS should consider seeking an amendment to the CSA to insert a definition of ‘statistical purposes’ to put beyond doubt that statistical purposes cannot include administrative, client management or law enforcement purposes that relate to specific individuals. A similar definition could usefully be inserted into the Australian Bureau of Statistics Act 1975. The precise wording of any such amendments would need very careful consideration to achieve their objective, and the Privacy Commissioner should be consulted.

Recommendation 4

The ABS should consider seeking amendment to the CSA to put beyond doubt that the reference to ‘the purposes of the Act’ in the secrecy provision (s.19) is confined, as the ABS asserts, to publication in accordance with s.12; communication between officers for the purposes of compilation, analysis and dissemination, and prosecution of offences covered by the CSA.

Recommendation 5

The ABS should consider seeking amendment to the CSA to make it clear that disclosure under s.19 ‘in accordance with a determination’ is not an *alternative to* ‘for the purposes of this Act’ (as it now reads) but rather a specific subset of disclosures *for* those purposes.

Recommendation 6

The ABS should consider seeking amendment to the CSA to apply the express defence against access by courts and tribunals (currently in s.19A in relation to 2001 Census information) both to 2006 and subsequent Census information, including the name and address information held during the processing period in whatever form, and also expressly to the SLCD indefinitely.

Recommendation 7

If the name matching proposals are abandoned (see Recommendation 1), the ABS should consider seeking amendment to the CSA to expressly confine the use of name information from Census forms to ABS quality studies, apart from the separate Census archiving provision for those providing express approval for their Census information to be retained by Archives.

Appendix 1 : ABS Household Survey Program as at early 2005

Special Social Surveys

Survey of Income and Housing 2005-06
General Social Survey 2006
Community Housing, Infrastructure Needs Survey (Indigenous Communities) 2006
Time Use Survey 2006
Adult Literacy and Lifeskills Survey 2006
Survey of Employment Arrangements, Retirement and Superannuation 2007
Survey of Income and Housing 2007
National Health Survey 2007-08
Indigenous Social Survey 2008
Survey of Education and Training 2009
Household Income and Expenditure Survey 2009-10
National Health Survey 2010-11
Indigenous Health Survey 2010-11

Monthly Population Survey

Includes common Labour Force Survey (from which employment and unemployment statistics are derived, and additional topics rotated. Additional topics include:

Labour mobility and experience	Small Business
Environment	Job search experience
Culture and Leisure	Employee earnings, benefits and trade union membership
Crime and Safety	Working arrangements
Education and Work	Migrants experience

Multipurpose Household Surveys (monthly)

Containing core topics such as education, income and labour force, plus selected other topics each year, such as

Household use of IT	Labour force barriers and incentives
Participation in Sport	Retirement and intentions
Work related injuries	Family Characteristics
Attendance at culture and leisure venues and activities	Work and family balance
Attitudes to the environment	

Appendix 2 - Timing and Notice of the Proposal

1. The formal process of public consultation for the 2006 Census commenced with the release in 2003 of an Information paper⁷⁶. That paper outlined that the ABS was considering the possibility of linking census and data from other sources to further expand the benefits available from the data. The accompanying media release drew attention to the possibility of linking anonymised census data to other data sources to expand the use of census data for statistical purposes.
2. The ABS received more than a thousand submissions on a range of topics and issues⁷⁷, of which three were on data linking. All three of these – from government agencies, supported the ABS's view to move towards linking census data with other ABS survey data. Specific suggestions included linking census data to the National Health Survey, the Agriculture Census and to administrative data sets relating to Indigenous populations.
3. Regrettably, the suggestions of linkage in the 2003 paper do not seem to have been picked up by all privacy interests at the time. The ABS recorded in minutes of a meeting of the Australian Statistics Advisory Council in May 2004 that discussions had been held with the Office of the Privacy Commissioner, who supported the work if there were clear public benefits, the arrangements were transparent, and confidentiality of census data was strictly maintained. There was no reference to this consultation in the Privacy Commissioner's relevant Annual Report.
4. The latest ABS Annual Report, for 2003-04, published in late 2004, did not contain any reference to the Census Enhancement Proposal or to its components.
5. The other mechanism through which the ABS might have expected to become aware of privacy concerns was through the Australian Statistics Advisory Council, which discussed the Census data linking initiative on the last four occasions it has met (Nov 2003, May 2004, Nov 2004, and May 2005). At each meeting, according to the ABS secretariat, the Council has, in general, been supportive of the initiative, although it emphasized the importance of assessing likely community reaction and the need to keep the quality of the census paramount, as well as noting that data linking was consistent with the co-ordination and leadership roles of the ABS.
6. While the Council includes a number of individuals with a consumer background, members are expressly not 'delegates'. None of them appears to have raised the proposal with those privacy, consumer or civil liberties groups which, having become aware of the Proposal for the first time in early 2005, have reacted so strongly against it.

⁷⁶ Information Paper: *Census of Population and Housing, ABS Views on Content and Procedures 2006* (ABS Catalogue No. 2007.0) released on 2 July 2003.

⁷⁷ Over 700 of these were calls for the retention of name identified information from genealogists and family historians.

7. It may be that some additional submissions might have been made on the Census questions during the 2003 consultations, had the greater detail in the current proposal been available at the time. While this does not affect technical compliance with the collection IPPs, it is arguably relevant to a wider concept of fair collection.

8. The fact that earlier consultation processes did not pick up the range and intensity of privacy concerns is unfortunate, and means that there has been relatively little time available for further public debate on this aspect of the Census Enhancement Proposal.

9. A Dress Rehearsal of the Census will take place in August 2005⁷⁸. Information will be provided in the Dress Rehearsal Census Guide outlining the proposal and directing respondents to the ABS website for further, more detailed information, if required. Field staff and Census Inquiry Service staff will be provided with the information they need to explain the proposal to respondents. The dress rehearsal is voluntary, and as it is a test of field procedures, is not designed to test privacy concerns.

⁷⁸ This involves the trial of a complete Census Form, on a voluntary participation basis, with 40,000 households in NSW & SA.