



**Australian
Privacy
Foundation**

7 June 2005

Big Brother to watch the days of our lives

Submission to the Australian Bureau of Statistics on proposed changes to the Census

1. Introduction

The Australian Bureau of Statistics (ABS) has invited public submissions in relation to its Discussion Paper entitled 'Enhancing the Population Census: Developing a Longitudinal View' (Discussion Paper 2060.0, 26 April 2005).

The Discussion Paper proposes changes to the census, primarily by way of creating a Statistical Longitudinal Census Dataset (SLCD).

This Submission in response to the Discussion Paper has been prepared by the Australian Privacy Foundation (APF).

About the Australian Privacy Foundation

The Australian Privacy Foundation is the leading non-governmental organisation dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians.

Since 1987 the Australian Privacy Foundation has led the defence of the rights of individuals to control their personal information and to be free of excessive intrusions. For further information about us see www.privacy.org.au

Contact Details for the APF and its Board Members are at:
<http://www.privacy.org.au/About/Contacts.html>

2. Overview of proposal and the Australian Privacy Foundation's position

The proposal to change the Census

The Australian Privacy Foundation's view of past censuses is that the Census is a very privacy-intrusive process with the potential to generate an extraordinarily privacy-threatening database. However the Census Act and the ABS have traditionally managed to reconcile the important public interest in statistics with privacy protection through the guarantee of early de-identification, and the absence of any association of individual records arising from the Census with any other personal data.

By contrast the current proposal strips away those key privacy protections that Australians have come to expect. The result is the creation of a national population database, to be continually updated by the ABS.

The key proposal is will convert the Census, from being an anonymous 'snapshot' of Australians' lives once every five years, into a permanent 'movie' of every aspect of their lives, on an identifiable and on-going basis.

The building-blocks necessary to implement this proposal are:

- for the ABS to retain name and address data, instead of destroying that data immediately on return of the Census
- for the ABS to use that name and address data to link every person's Census return with data from birth and death registries, disease registers, immigration data, the agricultural census and other "specific statistical studies", to thus build up an even more comprehensive picture of every person's life than the Census currently allows
- for the ABS to then (after using the data for more than a year) delete the name and address from each person's record – but still keep all other identifying information (such as sex, date of birth, country of birth, geographic region, family relationship, religion, language spoken, and so on) that allows further data linking to occur on each person
- for the ABS to then use that more enriched data and identifying information to link each Census to the next, starting retrospectively with data from the 2001 Census

The impacts of the proposal

The Discussion Paper presents this proposal as though its use would be limited to wholly benign epidemiological research projects such as identifying correlations between early residence or occupation and particular kinds of disease (p.vii, p.1). With respect we consider this approach to be disingenuous, given the overall implications of the proposal for the way in which the ABS operates to provide data to researchers and others.

The effect of these proposals will in fact be to create a national population database, drawing from multiple sources and containing a rich, deep and intimate picture of every Australian – not just once every five years, but on an on-going basis. This level of intrusion by government into private lives is unprecedented in Australia's history.

The implications of this proposal for the privacy and security of Australians cannot be exaggerated. Instead of an anonymous 'snapshot' of people's lives, 'Big Brother' will have a full-length feature film on every Australian, to watch at his leisure.

The Australian Privacy Foundation is particularly disappointed that assurances granted by the ABS following a previous round of consultation on the 2006 census have been rendered fairly meaningless by the proposal outlined in the Discussion Paper. The earlier assurance that the ABS "will not retain names and addresses as part of the 2006 census" is shown to be hollow.

The proposal is indeed to retain and use name and address data, to link census data with various other sets of data, such as DIMIA's immigration data, birth and death information from each State and Territory, disease registers from each State and Territory, and the results of other ABS surveys (see part 4 of this submission).

That names and addresses will later be deleted is almost irrelevant – the damage will have been done. The proposal set out in the Discussion Paper will have (and indeed is designed to have; see part 5 of this submission) the same effect as if names and addresses were retained on the database along with all the other data – from identifying information such as sex, date of birth, geographic region and country of birth, to particularly sensitive information as religious affiliation, family relationship, income, and disease history.

Indeed the proposal even contemplates researchers gaining access to data on identifiable individuals rather than just 'cells' or groups of people – even including name and address data in some circumstances.

Short-sighted focus on research blurs vision

A significant cause for concern is the conceptual starting point for this proposal, which is (perhaps understandably) pro-research.

The Discussion Paper seems to accept without question the notion that research is primarily a good thing that must be facilitated, that privacy acts as a significant barrier to conducting important research projects, and that therefore this barrier must simply be overcome.

We believe reality is a little more complex, and less dichotomous, than that approach would suggest. Privacy and research do not always stand in conflict, with the accuracy of data (data integrity) being core to both interests. The ethics of research is therefore a key concern, in which the protection of privacy can enhance, rather than hinder, research outcomes.

The National Health and Medical Research Council's *National Statement on Ethical Conduct in Research Involving Humans* states: "all kinds of research involving or impacting upon humans should conform to the highest standards of academic integrity and ethical practice."

Researchers are exhorted to value and respect privacy, which is defined by the NHMRC as "a complex concept that stems from a core idea that individuals have a sphere of life from which they should be able to exclude any intrusion."

Attitudes towards privacy and research in the wider community may also suggest that this proposal's starting point is not justified. For example the results of March 2004 Roy Morgan research into the privacy attitudes of Australians, commissioned by the Office of the Federal Privacy Commissioner, state that 64% of respondents felt that an individual's permission should be sought before de-identified information, derived from personal information about them, is used for research purposes.

We also know that attitudes towards privacy are highly contextual, with research suggesting influencing factors include age, gender, ethnicity, and education levels. The Victorian Privacy Commissioner's research into privacy attitudes in our culturally and linguistically diverse community for example suggests that some groups (for example Vietnamese-Australians) who have experienced first hand misuse of personal information by government, may find it difficult

to trust a government or government-funded body. In particular, attitudes to Census questions generated mixed reactions, with people of different backgrounds finding different questions offensive, to the point of resisting providing an honest answer.

Unjustified intrusion on privacy will harm research interests too

Any potential benefits of such a rich source of information about every Australian must therefore first be more clearly identified by the ABS, and then be weighed against the negative impacts on the privacy of every Australian. History has shown us that personal data collected and used for 'positive' research can just as easily be used to harm individuals. The Australian Privacy Foundation considers that the clear and overly invasive implications of this proposal by far outweigh the vague, unsubstantiated benefits claimed for it.

Indeed the Australian Privacy Foundation submits that because the very notion of privacy supported by the National Health and Medical Research Council - "the freedom of individuals from observation or surveillance" – is under such significant threat from this proposal to alter the Census in favour of some vague research interests, that the claimed public benefits such as health research will be lost through declining data quality.

We predict that this proposal will ultimately be rendered futile, and the exercise counter-productive in terms of the ABS's reputation.

We urge that all aspects of this proposal be withdrawn by the ABS, and never again considered.

3. Summary of the proposal and its impacts

The key features of the proposal in the Discussion Paper are as follows:

- For the first time, name and address from census forms would be:
 - used to merge census data with additional personal data from:
 - registries of births and deaths
 - disease registers
 - immigration records
 - results from the agricultural census, and
 - other ABS sources and statistical studies
 - perhaps even made accessible, in unspecified, 'exceptional' circumstances
- Personal data from various sources would be merged, based on demographic data, and this new form of 'statistical' or 'probabilistic' technique would be used:
 - to merge data from:
 - every census from 2006 onwards
 - the 2001 census, retrospectively
 - various other sources, and
 - as a basis for:
 - indefinite retention of personal data
 - re-identification of the data by directly relating it to a specific person

In short, this proposal would effectively transform the ABS from its historical role as a provider of reliable statistics into the operator of a national population database.

The impact of this proposal is likely to destroy the credibility of the ABS as a privacy-respecting organisation and stimulate widespread public resistance, resulting in people ceasing to respond to the Census in an accurate manner, and in some cases ceasing to respond to it at all.

The remainder of this submission:

- reviews the nature of previous Australian censuses (part 4)
- analyses the elements of the proposal (part 5)
- compares the proposal with previous attempts to establish a national databank (part 6)
- shows that additional uses of such a scheme ('function creep') are inevitable (part 7)
- explains why privacy laws are powerless against such a scheme (part 8), and
- concludes that the proposal is both unacceptable and ultimately futile (part 9)

4. Prior Australian Censuses

4.1 The Nature of the Australian Census to 1996

The APF's understanding is that the Australian Census had been run on much the same basis until 1996. The data was collected in an identified manner, but the identifying information, including address, was retained only as long as necessary to enable administration of the collection process. It was then removed and destroyed. After capture, the forms on which the data was collected were destroyed.

The information collected on each household is stored and released in such a way that information on individuals can be associated only with statistical districts of considerable size. Considerable attention has always been paid to control over access to the data, both in its original form and subsequently. No credible report of abuse of the confidentiality of census data has ever come to light. Moreover, great care has always been taken to avoid small counts in cells disclosing data in a manner that might enable association with an individual.

4.2 Optional Permanent Identifiability of 2001 Census Data

One major change was made in the 2001 Census. As the Discussion Paper explains:

“For the 2001 Census, all people completing the census form were provided the option of having their name identified census information archived for the use of future generations. The information about those people who elected to have their 2001 information retained is in the custody of National Archives of Australia, and is not accessible for 99 years. A separate proposal to allow this archiving option for future censuses, including the 2006 Census, is under Government consideration.” (Discussion Paper footnote 1, p. viii. See also pp. v, 17).

There was no other change in relation to name and address data. It continued to be retained by the ABS only as long as necessary to enable administration of the collection process. It was then removed and destroyed. After capture, the forms on which the data was collected were destroyed.

This appeared to the APF at the time to be a fairly sensitive initiative, with risks for those who consented. However, because of the consensual nature of the measure, and the reasonably clear communication of the terms, the APF did not oppose it.

The ABS has advised that 54% of respondents agreed to retention. This means that, even without any campaign of opposition, nearly half of all respondents - many millions of Australians - either did not wish their information kept separately and securely for release after 99 years, or did not trust the assurances given.

This outcome should have re-affirmed to ABS the fact that the Australian public is deeply suspicious of attempts to produce a national database of personal information.

5. Proposed Changes in the 2006 Census

The Discussion Paper of 26 April 2005 contains a substantial and multi-faceted proposal, which would result in dramatic changes in the nature of the Census. This part of our submission identifies and discusses each element, and provides an analysis of their combined impact on the privacy of Australian citizens and residents.

5.1 Proposed New Uses of Name and Address

This sub-section brings to attention the many elements of the proposal that involve unprecedented use of the name and address that people provide to the ABS through the Census forms.

(a) Use of name and address from Census forms

The relevant reference in the Discussion Paper is:

"name and address information could be used to bring together census data and other selected datasets" (p. viii)

This is of significant concern, for the following reasons:

- this is a new and highly privacy-invasive use of personal data. Until now, this data was collected solely for the administration of census collection activities, has only ever been used for that purpose, and has been destroyed shortly after the Census date
- although the proposal is qualified by "during the period of census processing", the concept of "the period of census processing" is very flexible, and provides no protections at all in relation to:
 - how long the data will be kept; and
 - what it will be used for during that period.

(b) Use of name and address to merge other ABS data with each Census

The relevant segments of text in the Discussion Paper are:

"purposes being considered include ... [merger with] 2005-06 Agricultural Census data" (p. viii, 13, 14)

"datasets under consideration [include] other collections ... by the ABS" (p. ix)

These proposals present the following problems:

- they impose much more intrusive conditions on people required to participate in surveys conducted by the ABS and may violate assurances
- especially in the case of voluntary surveys, they would represent a gross breach of the terms of consent, or assurances given to people when information is collected
- they would quite possibly involve breaches of the laws of confidence and/or privacy and amount to the ABS operating outside its powers where these are limited to the collection of 'statistical' information

(c) Use of name and address to merge personal data from registries

The relevant segment of text in the Discussion Paper is:

"datasets under consideration [include] ... birth and death register data" (p. xi, 16, 30)

This proposal is of enormous concern to the Australian Privacy Foundation, for the following reasons:

- it represents a major breach of the ABS's responsibility to gather data only for statistical purposes
- these datasets arise from compulsory reporting to State and Territory governments, with no element of consent by individual citizens to the data being gathered
- the purpose for which births and deaths information is collected by State and Territory governments has not and does not include disclosure to ABS, merger by ABS with other data, or storage by ABS as part of a national population databank
- the simple language used in the Discussion Paper obscures the fact that many datasets are involved. Each State and Territory would be required to give the ABS its complete Births and Deaths Registers, making perhaps 16 datasets
- it is not clear that the ABS has legal authority to compulsorily acquire some of this data, and hence it represents yet another extension of the ABS's powers, and/or that of every State and Territory government to provide the data
- it would require unprecedented linkage between the systems of the ABS and every State and Territory Registrar of Births and Deaths - in itself a major shift towards a comprehensive databank of personal information about the people of Australia

The presumptions made about the reliability of names appear to be remarkably naive. It takes no account of the fluidity of names in a common law country like Australia. Many people fill in forms in names other than those on their Birth Certificates. Many people's deaths are recorded in names different from those on their Birth Certificates, and indeed from those on their census forms. The presumptions are quite possibly disingenuous. The significance of this point is discussed in part 6, below.

Thus while no mention is made in the Discussion Paper of the eight State and Territory marriage registers, presumably it would be discovered at some stage that they would be useful as well, not least because marriage is a reliable predictor of change of name.

(d) Use of name and address to merge personal data from disease registers

The relevant segment of text in the Discussion Paper is:

"datasets under consideration [include] ... national disease registers" (p. xi, 16, 30)

This is an enormously intrusive proposal, for the following reasons:

- it represents a major breach of the ABS's responsibility to gather data only for statistical purposes
- these datasets arise from compulsory reporting to State and Territory governments, with no element of consent by individual citizens to the data being gathered
- in recent decades there appears to have been an explosion in the number of these registers and many of them contain highly sensitive personal data. The APF understood that access to such registers was, and was to continue to be, restricted to health researchers, subject to strict conditions

- the purpose of disease registers has not and does not include disclosure to ABS, merger by ABS with other data, or storage by ABS as part of a national databank
- the ABS states that two of the registers (the cancer and diabetes Type 1 registers) have already been consolidated by another agency (p. 30). The APF is not aware of what authority exists, what consultations were undertaken, nor what protections exist, for these national registries. Indeed the existence of these national disease registers, separate to the ABS, would suggest many of the public benefits to be gained from data consolidation, such as better access to more health data for researchers, can be achieved without the involvement of the ABS or identifiable Census data.
- it is not clear that the ABS has legal authority to compulsorily acquire this data, and hence it appears to represent yet another extension of the ABS's powers
- there are also unresolved issues over the provision of this data by State and Territory governments, especially where it is subject to privacy legislation or policy assurances, or by confidentiality provisions in the legislation governing its collection

The potential negative impacts on public health outcomes have not been fully canvassed in the Discussion Paper. Protection of personal data provided to health services is a feature of many privacy laws as well as the common law for a good reason – some people, uncomfortable with the degree to which their medical records are protected, may forgo health treatment in order to protect their privacy. This proposal will further strip away public confidence in the protection of their medical privacy.

(e) Use of name and address to merge personal immigration data

The relevant reference in the Discussion Paper is:

"datasets under consideration [include] ... long-term immigration data" (p. xi, 16)

This aspect of the proposal raises the following concerns:

- it represents a major breach of the ABS's responsibility to gather data only for statistical purposes
- these datasets arise from collection and reporting by federal government agencies, with no element of consent by individual citizens to the data being gathered
- the purpose of these data collections has not and does not include disclosure to ABS, merger by ABS with other data, and storage by ABS as part of a national databank
- the inclusion of information relevant to people's movements and country of origin represents a frightening concentration of data and power, especially in relation to Australian citizens

(f) Combined impact of use of name and address to merge multiple sources of data

The preceding sub-sections have drawn attention to many separate elements of the proposal. This sub-section considers the additional impact of them being consolidated into a single scheme.

This is an enormously invasive proposal, raising the following issues:

- any one of these combinations creates great risks for citizens. They bring data together that were collected at different times, in very different circumstances, for different purposes, using different definitions – resulting in apparent conflicts among entries and hence misunderstandings and misinterpretations

- combining several or all of them into a single dataset produces an enormously rich record, which large numbers of government agencies, and every consumer marketing corporation in the country, would be delighted to get access to
- there is no natural boundary. Once the trust and the privacy of Australian citizens have been so comprehensively breached through the use of identified personal data in such ways, governments would inevitably regard trust and privacy as both being dead, and use the data for whatever purposes the ABS or any of its clients dream up
- the proposal contemplates researchers accessing data on individuals – even including name and address data in some circumstances (see p.23 of the Discussion Paper)

5.2 Proposed New Identification Technique

This sub-section considers the many elements of the proposal that involve applying a new means of relating data to specific individuals, even though the person's name and address have nominally been deleted from the record.

(a) Use of demographic identity data

The relevant segments of text in the Discussion Paper are:

"Creating the SLCD by combining the data provided in the 2006 census with the data provided in future censuses, ... using statistical techniques ... The SLCD could be extended by including 2001 Census data, again using statistical techniques" (p. viii)

"probabilistic record linkage' ... involves bringing together data from two different datasets using a number of characteristics such as age/date of birth, sex, geographic region, and country of birth. All possible linkages based on these data items are evaluated. The records for which the linkage is most likely to be correct would be brought together. For some individuals, the linkage would be correct while for others it will not, but there is no certainty associated with the linkage for any particular individual." (p. 6)

"For many cases, the two records brought together using probabilistic record linkage would reflect the data for the same individual" (p. 24)

"statistical techniques' refer to the method that would be used to bring together census data over time to form the SLCD, and to bring the SLCD together with other datasets. The proposed method is often referred to as probabilistic record linkage, which involves bringing together data from two different datasets using a number of characteristics such as age/date of birth, sex, geographic region, and country of birth. All possible linkages based on these data items are evaluated. The records for which the linkage is most likely to be correct are brought together. In this proposal, the statistical techniques used do not involve the use of name and address information to bring together data from two different sources" (p.31)

This linkage of records, using identifiers other than name / address to conduct the linking, is of significant concern, for the following reasons:

- the data set is very rich, because it comprises not only answers to every question answered in each and every Census, but also much, much more, culled from an unspecified range of government registers
- with rich data-sets, many individuals can be identified without name (the 48-year-old head of household at <address>), or without name or address (the 24-year-old Armenian-born Kurdish-speaking female in a particular statistical district)

- the data is not effectively de-identified, because it has a very strong chance of being correctly associated with an individual, both in the form in which it is held by ABS and in the form in which it is provided to researchers and other users
- hence, as the Discussion Paper acknowledges, this so-called 'statistical' or 'probabilistic' merger is potentially highly accurate. Indeed it is this very accuracy which creates the problem when the data is reused
- the data-set will be available to every future government, which will be able to re-use it as it sees fit, including to use it for national security, law enforcement, social control and administrative purposes

This is one of the most extreme proposals for the creation of a national databank that has ever been proposed anywhere in the world.

(b) Use of demographic identity data to merge data from successive Censuses

The relevant segment of text in the Discussion Paper is:

"combining the data provided in the 2006 census with the data provided in future censuses ... using statistical techniques" (p. viii)

This is of equal concern, for the following reasons:

- the personal data provided in a single census already has enormous sensitivity
- that sensitivity would be greatly compounded if records from successive censuses were combined

The proposal also assumes that sufficient of the data on successive Census forms will be the same. That is not naturally the case, because the demographic data that individuals provide changes over time. To ensure linkage, other changes might well need to be made to the framework of identity management in Australia. This is discussed further in section 6 below.

(c) Retrospective merger of data from the 2001 Census

The relevant segment of text in the Discussion Paper is:

"The [consolidated dataset] could be extended by including 2001 Census data, ... using statistical techniques" (p. viii)

This aspect of the proposal has the following implications:

- it heaps yet more personal data into the consolidated record, making it yet more attractive to social control agencies, marketers, and national security and law enforcement agencies
- it represents a breach of trust by the ABS, because that data was provided on the understanding that it was for statistical purposes only, and would not be able to be related back to individuals
- it may represent a breach of the law of confidence and/or of privacy laws

(d) Use of demographic identity data to merge data from even more sources

The relevant segments of text in the Discussion Paper are:

"other collections conducted by the ABS, such as household surveys" (p. viii)

"other collections conducted by the ABS, such as household surveys and the agricultural census" (p. ix)

This presents the following concerns:

- despite repeated assurances provided in the text, there is no actual limitation on what data-sources could be tapped in order to expand this national databank
- there are no natural limitations on extensions to additional sources
- it allows government agencies to evade their own privacy laws (whether federal, State or Territory laws), by getting government agencies to provide only 'de-identified' personal information to the ABS, which it then re-identifies using the probabilistic techniques described in the Discussion Paper
- there are no requirements for public consultation on such extensions. Once the ABS has used the current exercise to redefine its function from statistical body to national databank operator, it would be unlikely to see any further need for consultative processes

(e) Indefinite retention of re-identifiable personal data by the ABS

It appears that there would be no limitation on the retention of the data once it is captured into the national databank, and no way in which data could be removed from the databank, or corrected.

This means:

- a 'cradle to grave' record for every citizen – the basis for authoritarian regimes
- it will inevitably attract a host of supplicants for special treatment, commencing most likely with those citing interests in national security and medical research, but soon extending to law enforcement and social research, and then to social control
- it is inevitable that the databank would harm citizens' interests, but it would be out of their reach, and outside their control

(f) Ready accessibility of personal data

The relevant segments of text in the Discussion Paper are:

"A tailored dataset ... would be produced [which combined data from the SLCD and ABS collections]. If access to non-identifiable unit record data was required ..." (p. 22)

This makes clear that the proposal includes the provision of personal data at record-level, including items culled from many different sources. It would be a very rich set of data, and sub-sets of data-items would still be very rich.

The privacy provisions of the Census Act have been effective in the past only because of the early and permanent de-identification of the data. This proposal removes these limits, because the data-records are easily re-identifiable, despite only the temporary retention of name and address.

(g) Other changes to the nature of data collection

Currently, the Census is most commonly completed by one household member on behalf of all others. The use of the returns as the basis of a permanent, ongoing, record about each individual, who may not have been aware of what was recorded about him or her by another family member, raises massive privacy and data quality problems. Apart from marital and parental relationships within households, other relationships include step-parent, flatmates and landlords.

Alternatively, if the solution envisaged is to require every single individual adult to complete a form, it is vital that such a major change be aired and discussed much more widely with the public.

6. The Australia Card Register by Stealth

The ABS is proposing to move the Census towards the means by which a permanent and centralised national population register is established and maintained. Such a register or databank is the pivotal storage element of a national identification scheme.

In short, this proposal can be seen as nothing less than the latest attempt to introduce a key element of the comprehensively discredited 'Australia Card'-type scheme: a national population register or database.

We note that, in the original Australia Card proposal in the mid-1980s, the Health Insurance Commission (the proposed manager of the scheme) would not have had access to anywhere near the range of personal data to which ABS proposes to merge, manage and retain.

We are highly sceptical as to the feasibility of adding concessions and safeguards to the proposal in response to the concerns we have raised. As long as the central features of the proposal remain, so would the demand to use the data it captures. For example any further de-identification of data before providing access to researchers would almost certainly lead clients of the ABS to demand a unique personal identifier, yet another key element of a national population register.

The current proposal, if it were to be implemented, would therefore lead inevitably, and quite quickly, to the implementation of the full set of elements that comprise a total population information and control scheme.

The only thing missing would be a card. This proposal thus cleverly avoids including the very symbol around which opposition to the Australia Card scheme crystallised. Instead this proposal would result in a scheme constructed around largely hidden matching and data linkage.

7. The Inevitability of Function Creep

In the past, the ABS has held no data of relevance to administrators, because identity information was destroyed after a very short time.

This proposal begins by greatly extending the use of name and address. It continues by linking census data to many other government collections. It then extends further, to longitudinal linkage between censuses.

Under this proposal, ABS ceases to be a mere statistical agency. The ABS would be transformed into a national databank operator.

The proposed ABS data-holdings would represent a 'honey-pot', containing the broadest range of the most sensitive personal data, in a form highly convenient for profiling and data mining.

A 'honey-pot' attracts bears, and is intended to do so.

If this proposal were to proceed, there is simply no doubt that personal data in the collections would quickly come to be used in ways, and for purposes, additional to the starter-set mentioned in the Discussion Paper. One likely pressure source could be budgetary - for the ABS to recoup its costs and/or generate profits by becoming a data supplier to other agencies, business and interest groups.

We note that the ABS is actively involved in working with other stakeholders to enhance the value of its statistical collections. The April 2005 issue of the ABS newsletter *Crime and Justice Statistics* drew attention to the current proposal and invited submissions. Are we to conclude from this that one driver of the current proposal is to provide enhanced access to easily re-identifiable personal data to law enforcement agencies?

8. The Vacuity of Assurances about Privacy Protection

The relevant segments of text in the Discussion Paper are:

"Respecting privacy and safeguarding confidentiality are fundamental components of the ABS business" (p. ix)

"The ABS is obligated to comply with provisions in the Census and Statistics Act 1905 and the Privacy Act 1988" (p. ix, 17)

"ASAC advice will be sought on the privacy aspects of this proposal" (p. ix, 17)

"a Privacy Impact Assessment covering all aspects of the proposal will be undertaken by a non-ABS privacy expert, and a report published" (p. ix, 17)

"any dataset created under this proposal would be used for statistical purposes only, and not for administrative or client management purposes relating to a specific individual" (p. ix)

"consultation to inform the community about the proposal" (p. 17)

"All ABS officers are legally bound to secrecy" (p. 17)

"All aggregate outputs from data held by the ABS are checked to ensure they are unlikely to enable the identification of an individual." (p 17)

The proposal set out in the Discussion Paper presents the most significant privacy concerns no matter what assurances might be offered. The assurances provided are in any case completely inadequate, for the following reasons:

- the drivers for breach of privacy protections are powerful. National security and intelligence agencies are increasingly being placed above the law, and they and an even wider range of enforcement bodies have ever-increasing powers to demand information, overriding existing legal and other limitations. Constraints on these powers, and the limited machinery of accountability, are being progressively weakened such that there is no effective brake on their use for wider and wider purposes, well beyond the threat of terrorism and other serious crimes originally used to justify them
- many protections are not statutory but are merely policies and practices that have been adopted by ABS over time, and that are subject to change by ABS whenever they choose to do so
- the protections under the two main Acts are over-ridden by provisions in many other statutes. Among other things, the Principles in the Privacy Act provide very limited protection, because large numbers of exceptions have been legislated, especially to IPPs 10 (Use) and 11 (Disclosure). These principles are incapable of applying a brake on the growth of a surveillance state in the face of politically driven exploitation of fears of terrorism and other crime. The protection they purport to provide is almost completely illusory
- government agencies can evade their own privacy laws (whether federal, State or Territory laws), by providing only 'de-identified' personal information to the ABS – but the ABS simply then re-identifies using probabilistic techniques
- promises are only as good as the next change to the legislation. From July, Australia will have a Government with control of both Houses of Parliament for the first time since modern data surveillance became possible. All statutory protections will be changeable by the Parliament under the instructions of the executive arm of Government
- there are specific precedents for function creep and extensions of executive power with respect to the use of sensitive personal information. In the late 1980s and early 1990s, the then Treasurer promised that the Tax File Number (TFN) would never be used for

anything other than tax administration, and that this was enshrined in legislation. Commencing only 3 months later, the TFN was used for data-matching schemes. The Australian public has no reason to believe that today's promises of restraints on surveillance are likely to be any less transitory

- despite the mechanisms discussed in Section 7 of the Discussion Paper, it will be much more difficult to restrict aggregate outputs of data to researchers given the much richer longitudinal datasets involved
- the discussion of data quality issues in Section 8 of the Discussion Paper fails to consider the adverse effects on accuracy of data collected as an outcome of public knowledge of, and resistance to, the intrusive aspects of the proposal
- the mention of the Advisory Committee (ASAC) as a form of protection is entirely inappropriate and inadequate. The Committee is dominated by stakeholders from government and business with strong interests in the availability of data, both statistical and personal in nature

9. Conclusion

The Australian Privacy Foundation rejects utterly all the major elements of this proposal, on behalf of all Australians who do not wish to become the subjects of pervasive government intrusion into intimate aspects of their lives.

The ABS has been granted significant legal powers to compel people to provide information for the purpose for which the agency was established, namely the collection and provision of statistical information. We seriously question the legitimacy of using these powers for the purpose of creating what is in effect a national population database.

Australians have long shown a strong resistance to any proposal to adopt a national population database and/or identity card. Even post 11 September 2001, research has indicated little change to that level of resistance, and there is recent anecdotal evidence of a considerable backlash against proposals of this kind. There are many overseas examples of successful resistance to proposals of this nature, such as Sweden's Project Metropolit, The Netherlands Census, and actions in Germany, the Philippines and Korea.

We believe the Australian public will not accept this proposal, once the implications become obvious:

- the intrusiveness of the Government maintaining longitudinal data on every Australian
- the breaches of trust by the ABS and all State and Territory governments that this entails
- the intention to centralise and retain permanently all personal data under government control, and
- the inevitability of an accompanying identifier

The public opprobrium will likely extend beyond the Census to the ABS more generally, including other compulsory surveys. But more immediately, it is likely that people will simply take action to protect their privacy by subverting the system, by providing inaccurate responses to the Census.

At such a point the claimed public benefits such as health research will be lost through declining data quality. We predict that this proposal will ultimately be rendered futile, and the exercise counter-productive in terms of the ABS's reputation.

There is nothing that can be done to improve or ameliorate this proposal. In order to protect both the Australian people and the reputation of the ABS, the Australian Privacy Foundation strongly recommends that the ABS immediately and permanently withdraw this proposal from consideration.

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