

# The Law Reform Commission

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Report No. 12

## PRIVACY AND THE CENSUS



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The Law Reform Commission is established by section 5 of the Law Reform Commission Act 1973 for the purpose of promoting the review, modernisation and simplification of the law. The Chairman and first Members were appointed in 1975. The offices of the Commission are at 99 Elizabeth Street, Sydney, N.S.W., Australia (Tel. 02 231 1733).

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# Contents

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	<i>Paragraphs</i>	<i>Page</i>
Terms of Reference		vi
Participants		ix
Summary of Recommendations		x
 1. THE CENSUS AND INFORMATION PRIVACY		 1
<b>The Reference</b>	1	1
The Census	1	1
A Report on the Census	2	1
<b>The Census</b>	3	2
Origin and Development	3	2
The Census in Australia	4	2
The Bureau and the Australian Statistics Advisory Council	5	3
General Function of the Census	6	3
Importance	6	3
Sensitivity	7	4
Special Functions of the Census	8	4
<b>Privacy</b>	9	5
Information Privacy	9	5
Basis for Concern	10	5
European Developments	11	6
Developments in the Common Law World	12	6
O.E.C.D. Privacy Guidelines	13	7
Information Privacy and the Census	14	7
 2. THE COLLECTION OF CENSUS INFORMATION		 9
<b>Principles</b>	15	9
<b>Sampling and Compulsion</b>	16	9
Sampling	17	9
North America	17	9
The United Kingdom and Australia	18	10
Bureau's Views	19	10
Users' Views	20	11
Compulsion	21	12
Law and Practice	21	12
Non-response Rates	22	12
Special Factors	23	12
Conclusion	24	13
<b>Informing the Public</b>	25	14
The Purposes of the Collection	25	14
Advertising and Publicity	26	14
Misleading Warnings	27	15
Voluntary and Compulsory Questions	28	15

<b>The Information Sought</b>	29	16
Sensitive Questions	29	16
Names and Addresses	30	16
Handicaps	31	18
Race and Religion	32	18
Conclusion	33	19
Prescribing the Topics	34	20
Variations	34	20
The Constitution	35	20
The Procedures	36	22
Matters and Questions	37	22
Ambiguities	38	22
Pre-clearance of Topics	39	23
Pre-clearance of Questions	40	23
<b>Personal Collection</b>	41	24
The 1976 Procedures	41	24
Occupier, Householder, Household Head	42	24
Personal Slips	43	25
Special Envelopes	44	25
Recruitment of Collectors	45	26
Alternative Return Routes	46	26
<b>Collection by Mail</b>	47	27
North American Censuses	47	27
Effectiveness of a Mail-back Census	48	27
Costs of a Mail-back Census	49	28
Relevant Factors	49	28
Comparative Costs	50	28
Mail Tests in the United Kingdom	51	29
Voluntary Test Census	51	29
Rejection of the Mail	52	29
Conclusion	53	30
<b>3. RELEASE OF CENSUS INFORMATION</b>		31
<b>Release to the Subject</b>	54	31
The Principle of Access	54	31
Access to Statistical Records	55	31
A Limited Proposal	56	32
<b>Release to Third Parties</b>	57	33
Confidentiality	57	33
Legal Provisions	58	33
Legislative Defects	59	33
Other Anomalies	60	34
Release of Unidentified Census Information	61	34
Sample Information	61	34
Reidentification	62	35
Safeguards	63	35
Release of Identified Census Information: Legal Process	64	35



The Problem	64	35
Reserving the Commission's Position	65	36
Release of Identified Census Information: Research	66	37
Destruction of Identified Census Information	66	37
Possible Research Uses	67	37
Recent Developments: United States	68	38
Recent Developments: United Kingdom	69	39
Medical Research in Australia	70	39
Identification and Counselling	70	39
Family History	71	40
Historical and Sociological Research	72	41
Group and Longitudinal Studies	73	42
The Anonymous Multitude	74	42
Value to Australia	75	42
Retention: Effects on Response and Validity	76	43
Burden of Proof	76	43
Confidentiality	77	43
Retention: Misuse of Information	78	44
Cases in Point	78	44
Other Means Available	79	45
Costs	80	45
Provisional View	81	46
The Archives	82	46
Archival Release	83	47
A Different View	84	48
<b>4. MINORITY GROUPS AND THE CENSUS</b>		49
<b>Migrant Groups</b>	85	49
Initiatives in 1976	85	49
Increased Co-operation	86	49
<b>Aboriginals</b>	87	50
Some Problems	88	50
Queensland	88	50
Western Australia	89	51
European Bias	90	51
The Department's View	91	52
Modifications in 1976	92	52
<b>Conclusion</b>	93	52
<b>APPENDIXES</b>		
A. Census and Statistics (Amendment) Bill		55
B. Schedule of Organisations and Persons who made Submissions		62
C. Table of Legislation		68
D. Bibliography		71
<b>INDEX</b>		73

# Terms of Reference

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## I, ROBERT JAMES ELLICOTT, Attorney-General, HAVING REGARD TO—

- (a) the function of the Law Reform Commission, in pursuance of references to the Commission made by the Attorney-General, of reviewing laws to which the Law Reform Commission Act 1973 applies, namely—
  - (i) laws made by, or by the authority of, the Parliament, including laws of the Territories so made; and
  - (ii) any other laws, including laws of the Territories, that the Parliament has power to amend or repeal;
- (b) the provisions of section 7 of the Act which provides that, in the performance of its functions, the Commission shall review laws to which the Act applies, and consider proposals, with a view to ensuring—
  - (i) that such laws and proposals do not trespass unduly on personal rights and liberties and do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and
  - (ii) that, as far as practicable, such laws and proposals are consistent with the Articles of the International Covenant on Civil and Political Rights; and
- (c) the provisions, in particular, of Article 17 of the Covenant which provides, inter alia, that 'no one shall be subjected to arbitrary or unlawful interference with his privacy':

HEREBY REFER the following matters to the Law Reform Commission, as provided by the Law Reform Commission Act 1973,

## TO INQUIRE INTO AND REPORT UPON—

- (1) the extent to which undue intrusions into or interferences with privacy arise or are capable of arising under the laws of the Commonwealth Parliament or of the Territories, and the extent to which procedures adopted to give effect to those laws give rise to or permit such intrusions or interferences, with particular reference to but not confined to the following matters:
  - (a) the collection, recording or storage of information by Commonwealth or Territory Departments, authorities or corporations, or by persons or corporations licensed under those laws for purposes related to the collection, recording, storage or communication of information;
  - (b) the communication of the information referred to in sub-paragraph (a) to any Government Department, or to any authority, corporation or person;
  - (c) without limiting the operation of sub-paragraphs (a) and (b), the collection, recording, storage and communication of information obtained pursuant to the Health Insurance Act 1973–1975 and the Health Insurance Commission Act 1973;
  - (d) powers of entry on premises or search of persons or premises by police and other officials; and
  - (e) powers exercisable by persons or authorities other than courts to summon the attendance of persons to answer questions or produce documents;
- (2) (a) what legislative or other measures are required to provide proper protection and redress in the cases referred to in paragraph (1);

- (b) what changes are required in the law in force in the Territories to provide protection against, or redress for, undue intrusions into or interferences with privacy arising, inter alia, from the obtaining, recording, storage or communication of information in relation to individuals, or from entry onto private property with particular reference to, but not confined to, the following:
  - (i) data storage;
  - (ii) the credit reference system;
  - (iii) debt collectors;
  - (iv) medical, employment, banking and like records;
  - (v) listening, optical, photographic and other like devices;
  - (vi) security guards and private investigators;
  - (vii) entry onto private property by persons such as collectors, canvassers and salesmen;
  - (viii) employment agencies;
  - (ix) press, radio and television;
  - (x) confidential relationships such as lawyer and client and doctor and patient;

(3) any other related matter;

but excluding inquiries on matters falling within the Terms of Reference of the Royal Commission on Intelligence and Security or matters relating to national security or defence.

IN MAKING ITS INQUIRY AND REPORT the Commission will:

- (a) have regard to its function in accordance with section 6(1) of the Act to consider proposals for uniformity between laws of the Territories and laws of the States; and
- (b) note the need to strike a balance between protection of privacy and the interests of the community in the development of knowledge and information, and law enforcement.

DATED this ninth day of April 1976.

(Sgd) R. J. Ellicott, Q.C.,  
*Attorney-General*

Office of The  
Attorney-General of Australia  
Parliament House  
Canberra, A.C.T. 2600

25 May 1976

My dear Judge,

The Government recently has had an occasion to examine the nature of the forthcoming Census. I have been asked to draw the attention of the Law Reform Commission to the Census and its implications for individual privacy, and to seek comments of the Commission in relation to future Censuses.

I should be glad if the Commission could take this request into account in the preparation of its report on the subject of privacy, pursuant to the reference that I have made to the Commission on this matter.

I attach for your information a copy of a press statement with respect to the Census that has been made by the Treasurer.\*

Yours sincerely,

(R. J. Ellicott)  
Attorney-General

The Honourable Mr Justice M. D. Kirby  
Chairman  
Law Reform Commission  
Box 3708 G.P.O.  
Sydney, N.S.W. 2001

\* Treasurer's Press Release number 86, dated 28 April 1976.

# Participants

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## **The Commission**

For the purpose of the Reference, the Chairman in accordance with section 27(1) of the Law Reform Commission Act 1973 created a Division comprising members of the Commission.

### **Chairman**

The Hon. Mr Justice M. D. Kirby, B.A., LL.M., B.Ec. (Syd.)

### **Commissioner in Charge**

Mr D. St. L. Kelly, B.C.L. (Oxon.), B.A., LL.B. (Adel.)

### **Commissioners**

Professor A. C. Castles, LL.B. (Melb.), J.D. (Chicago)

Associate Professor G. J. Hawkins, B.A. (Wales)

### **Legislative Draftsman**

Mr J. Q. Ewens, C.M.G., C.B.E., LL.B. (Adel.), Commissioner of Law Reform, formerly First Parliamentary Counsel

## **Officers of the Commission**

### **Secretary and Director of Research**

Mr G. E. P. Brouwer, B.A., LL.B. (Melb.), LL.M. (A.N.U.)

### **Research**

Mr K. P. O'Connor, LL.M. (Melb.), LL.M. (Ill.)

Mr M. Richardson, B.A., LL.B. (A.N.U.)

### **Executive Officer**

Mr B. A. Hunt, B.A. (Syd.)

## **Consultants to the Commission**

Mr R. D'Apice, Society of Australian Genealogists

Dr D. DeBats., B.A. (Mich.), M.A., Ph.D. (Wis.), School of Social Sciences, Flinders University of South Australia

Mr P. P. McGuinness, B.Ec. (Syd.), M.Sc. (L.S.E.), Australian Financial Review

Dr E. M. Nicholls, M.D., B.S. (Adel.), School of Community Medicine, University of New South Wales

Mr W. J. Orme, New South Wales Privacy Committee

Dr J. Pattison, B.Comm. (Melb.), Ph.D. (A.N.U.), New South Wales Planning and Environment Commission

## **Representatives of the Australian Bureau of Statistics**

Mr R. J. Cameron, M.Ec. (Adel.), Ph.D. (Harv.), Australian Statistician

Mr F. D. Bagley, B.A. (W.A.), First Assistant Statistician

Mr K. S. Watson, B.Ec. (Syd.), Assistant Statistician

# Summary of Recommendations

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## **1. The Census and Privacy**

The general aim of the Australian census is to produce valid statistical information for use by governments, by industry and by voluntary organisations in planning and in making decisions which affect the lives and welfare of all Australians. It is also used as a bench-mark for numerous surveys conducted by other bodies in the public and private sectors.

At the time of the 1976 census, considerable public disquiet was expressed about certain of its aspects. Matters of concern included the questions which were asked on income, handicaps and race. Criticism was also directed at the means by which census information is collected from members of a household. Some people questioned whether it was necessary to collect census information on a compulsory basis. Others asked if it was necessary to collect that information from all members of the community.

The concerns expressed in 1976 were based on the individual's interest in privacy in respect of personal information. Reasons of efficiency and convenience have required many administrative activities in both the public and the private sectors to be based on detailed personal records rather than on direct personal contact and assessment. The development of computers has led to a radical increase in the capacity of record systems to store and retrieve personal information and to a marked decrease in the cost of handling that information. Personal information has become a vital factor in the life of the community.

At present, the law in Australia provides for the protection of information privacy only in a disconnected and desultory fashion. In North America and Europe, however, laws have been passed which, subject to certain exceptions,

- place limits on the collection of personal information;
- ensure that individuals have a means of finding out what information is held about them and of challenging the accuracy of that information;
- restrict the use and disclosure of that information;
- lay down general standards aimed at maintaining the security of record systems.

Some of the concerns which have led to the passage of these laws do not apply to the census. Unlike many collections of personal information, the census is used only to produce general statistical information. It is not used to make particular decisions about individuals. Nonetheless, privacy interests are by no means irrelevant to the census. In this report, those interests and their application to the census are discussed under three main headings.

## **2. The Collection of Census Information**

### **Sampling and compulsion**

Privacy interests dictate that personal information should only be collected if it is necessary for achieving the aims of the collection. The Commission has examined the

suggestion that coverage of the whole population is not necessary for the production of valid statistical information. It has also examined the suggestion that the aims of the census could be achieved if it were conducted on a voluntary basis.

- The Commission is satisfied that sampling techniques in Australia would not provide the information in respect of small geographical areas and fine cross-classifications which is provided by the present census. It does not recommend that sampling be used in future censuses.

(Para. 20)

- It is also satisfied that a voluntary census would result in an unacceptable level of non-response and an equally unacceptable bias in responses. It does not recommend that the census be conducted on a voluntary basis.

(Para. 24)

- The penalty for failing to provide census information is \$20. This sum was first laid down in 1905. It is now unrealistic. Sections 11, 14 and 15(2), Census and Statistics Act 1905, should be amended to increase the penalties for breach.

(Para. 24)

### Informing the public

The Commission endorses the principle that an individual should be properly informed in relation to the nature and purposes of a collection from him of personal information.

- There should be an intensive advertising and publicity campaign to explain the 1981 and subsequent censuses and the measures taken to protect confidentiality.

(Para. 26)

- A statement concerning the aims and value of the census should be delivered to each household on, or shortly before, census day.

(Para. 26)

The information provided to the public should cover the consequences of failing to co-operate in the census. Privacy interests can be adequately safeguarded without insisting that a statement concerning penalties be included on the census form itself. In view of the fact that no one has been prosecuted on this basis in Australia, such a warning would be misleading.

- The Census and Statistics Act 1905 should be amended to ensure that no offence is committed unless the refusal to supply information occurs after reasonable steps have been taken to warn the individual of the legal consequences attached to his refusal to supply information.

(Para. 28)

### The information sought

Highly sensitive information should not be sought from members of the public, particularly on a compulsory basis, unless there are compelling reasons for collecting it. Where those reasons exist, principles of privacy do not forbid the collection of that information. The sensitivity of information is not the sole criterion to be applied in determining whether relevant questions are to be asked in a census.

The Commission has examined the suggestion that the census might be conducted on an anonymous basis. It is satisfied that an anonymous census, like a voluntary one, would result in an unacceptable level of non-response and an equally unacceptable bias in responses. It would inhibit or prevent the conduct of the post-enumeration survey whose function is to assess the accuracy and completeness of census responses.

- The Commission does not recommend that the 1981 and subsequent censuses be conducted on an anonymous basis.

(Para. 30)

Some of the specific topics to be covered in a census are laid down in the Census and Statistics Act 1905. Others are prescribed in regulations made under that Act and laid before both Houses of Parliament. This procedure provides a valuable opportunity for ensuring that privacy interests are taken into account in determining the questions to be asked in a census. But the procedure is defective in one important respect. The Parliament does not have available to it the precise questions to be asked in the census.

- The Commission recommends that the Census and Statistics Act 1905 be amended to ensure that the precise questions to be asked in a census are set out in the regulations. Steps should be taken to ensure that Members of Parliament have available to them advice on the privacy implications of projected census questions.

(Para. 40)

### The collection of census information

Census information is obtained by a system of personal collection. Census forms are delivered to each private dwelling. The occupier is required to complete the form, noting information with respect to all persons who spend census night in that dwelling. The forms are collected by census collectors appointed on a temporary basis by the Australian Bureau of Statistics. One of their functions is to check that the forms are completed in essential respects.

A member of the household who objects to supplying information to the occupier is entitled to a personal slip or form. A person who objects to disclosing information to the collector is entitled to return the form to the Bureau in a special sealed envelope. In 1976, the personal census form system was set out in the regulations made under the Census and Statistics Act 1905. It was drawn to the attention of members of the public on the census form. The special, sealed envelope system was not set out either in the regulations or on the census form.

An individual should not be required to provide census information to a person who is known to him and to whom he does not wish to reveal personal information. To minimise unwarranted disclosure to the occupier:

- the existence of the personal slip procedure should be drawn to the attention of each member of the household when he is asked to provide census information to the occupier;
- the occupier should obtain a personal slip for any member of the household who requests one.

(Para. 43)



To minimise unwarranted disclosure to the census collector:

- the special, sealed envelope system should be set out in the Census and Statistics Act 1905;  
(Para. 44)
- its existence should be publicised and it should be briefly described in the census form or in an accompanying notice;  
(Para. 44)
- the occupier should be requested to draw the system to the attention of each adult member of the household including members who request a personal slip;  
(Para. 44)
- the Bureau should increase its efforts to appoint collectors to census subdivisions outside their immediate neighbourhoods.  
(Para. 45)

An individual should not be required or encouraged to follow procedures which risk unwarranted disclosure of census information to third parties.

- An individual should not be invited to leave a completed form in a letter box, in a meter box or under a mat, in case he is out when the collector calls.  
(Para. 46)
- Should the personal collection system prove ineffective in a particular case, an individual should be required to mail the form to the Bureau.  
(Para. 46)

Mail procedures are now being used in the United States and in Canada in place of personal collection procedures. A mail-back census would serve valid privacy interests in avoiding unwarranted disclosure to a person known to the individual providing census information and in reducing the risk of disclosure to third parties. However, such a census might be less effective and more costly than one conducted under the traditional Australian method.

- An appropriate Parliamentary Committee should conduct a detailed investigation of the cost and effectiveness of mail procedures in North America and of the likely costs and effectiveness of mail-back procedures for Australian censuses after the 1981 census. Particular attention should be paid to questions relating to the necessity for follow-up on mailed returns and to the extent to which follow-up could be conducted by telephone. The Committee should be assisted by available expertise, including that of the Bureau. The Bureau should be responsible for conducting any field tests which might be judged necessary. The detailed results of the investigation should be made public.  
(Para. 53)

### **3. Release of Census Information**

#### **Release to the subject**

The Commission accepts the fundamental principle of privacy protection that an individual should normally be allowed to have access to, and to challenge, a record of personal information about him. This principle is based on the fact that a personal

record affects the way in which an individual is perceived by others. It is also based on the value which access has as a means of controlling the quality of the information held in a system of personal records. It does not follow that a person should have unrestricted access to his own census information. That information is used for statistical purposes, unlike many other collections of personal information; it may not be used to the individual's personal detriment. Nonetheless, experience in North America indicates that there may be good reason for allowing access in special circumstances.

- The Statistician should be required to grant access to an individual who is able to demonstrate that he has a reasonable ground for seeking access to census information and that his need for that information could not reasonably be met in other ways. Mere curiosity or a desire to check the accuracy of information which is to be used solely for statistical purposes should not constitute a reasonable ground for this purpose.

(Para. 56)

- If, as the Commission recommends later in this report, census forms were in future to be retained for research, a general right should be granted to census subjects to have access to, and to challenge, census information after it has been transferred to Archives.

(Para. 56)

- There should be a system of administrative review of decisions made with respect to such rights of access as may eventually be established.

(Para. 56)

## Release to Third Parties

### *Confidentiality*

The Commission accepts the basic principle that personal information which has been collected from the subject of a record should not normally be disclosed without his authorisation. Section 24, Census and Statistics Act 1905, recognises this principle. It forbids the Statistician, his officers and the occupier of a dwelling to divulge the contents of a return. Census officials who are Commonwealth officers are also subject to a similar prohibition imposed by s.70, Crimes Act 1914. Neither of these provisions has ever been used to prosecute an individual for divulging census information. The existence of dual provisions is unnecessary.

- Disclosure of census information should be an offence only under s.24, Census and Statistics Act 1905. The application of s.70, Crimes Act 1914, should be excluded.

(Para. 59)

The Census and Statistics Act 1905 is itself defective in certain respects:

The Act should be amended:

- to include a definition of 'officer' in order to ensure that confidentiality is preserved by all those who have access to census information;
- to apply to former as well as present officers;
- to increase the penalty for breach.

(Para. 59)

The principle of confidentiality is not at risk when the subject of a personal record authorises disclosure.

- The Act should be amended to permit the Statistician or the person filling in a census form to disclose census information with the written authorisation of the person or persons concerned.

(Para. 60)

#### *Release of Unidentified Census Information*

In some countries sample census information from which personal identifiers have been removed is released to users of census information to enable them to generate their own statistical data. Section 24, Census and Statistics Act 1905, prevents the Bureau from adopting this procedure in Australia.

- The Act should be amended to allow the Statistician to provide users with sample census information, provided:
  - personal identifiers have been removed and it is unlikely that reidentification can take place; and
  - the recipient signs a prescribed form undertaking to fulfil certain conditions to ensure that confidentiality is protected.
- It should be an offence to break any of the conditions undertaken by the recipient of sample census information.

(Para. 63)

(Para. 63)

(Para. 63)

#### *Release of Identified Census Information: Legal Process*

Under the present law it is not clear whether census forms are subject to subpoena by courts and other bodies with similar powers. The issue concerning the extent to which personal information, including census information, should be subject to subpoena and like requirements is a matter left to a final report on information privacy.

#### *Release of Identified Census Information: Research*

In New Zealand, the United Kingdom and the United States identified census information is retained for strictly limited research purposes after a substantial period of time (varying from 72 to 100 years) has elapsed from the date of the relevant census. In Australia, census information is not preserved for these purposes. In 1971, the Treasurer directed that identified census information then held by the Bureau be destroyed. He also directed that similar information to be obtained in the 1971 census be destroyed as soon as it had been processed for statistical purposes. This procedure was followed in 1971 and again in 1976. While the destruction of personal information is one means of protecting privacy, it is not the only means. Retention of personal information under strict conditions of security and confidentiality is another. Identified census information has great value as a potential source for medical, genetic research as well as for historical, sociological and genealogical research. The Commission's provisional view is that:

- Identified information should not be destroyed but should be transferred in an appropriate form to Archives.

(Para. 82)

- Access for most purposes should be forbidden for 75 years. In the case of medical research, the Director-General of Archives should have a discretion to allow access within the 75-year period. Access should be subject to such conditions as the Director-General lays down. In the case of access within the 75-year period, unauthorised disclosures to third parties should be totally prohibited.  
(Para. 83)
- A breach of the conditions laid down by the Director-General should be punishable as a serious offence.  
(Para. 83)

#### **4. Minority Groups and the Census**

For people who are not fluent in the English language, the completion of census forms raises special difficulty. The census of Aborigines, particularly those living in traditional ways, gives rise to unique problems. It is vital that these difficulties and problems be solved. Under-enumeration of migrants or Aborigines reduces such claims as they may have for various forms of government assistance. It may even distort legislative representations and the funding of the States.

- A detailed investigation should be undertaken by the Statistician into these problems. He should obtain advice and comment from the Australian Statistics Advisory Council, from the Departments of Aboriginal Affairs and Immigration and Ethnic Affairs, from the Australian Ethnic Affairs Council and the Commissioner for Community Relations. He should also seek assistance from persons with special knowledge of Aboriginal and ethnic cultures and traditions and from Aboriginal and ethnic communities themselves. The detailed results of his investigation should be presented in his Annual Report to the Minister and should be examined by an appropriate Parliamentary Committee.  
(Para. 93)

The Commission's proposals for legislative change are set out in Appendix A. They are in the form of a Bill designed to amend the relevant provisions of the Census and Statistics Act 1905. The Bill is accompanied by an explanatory memorandum indicating the present provisions and wordings which should be deleted and the provisions and wordings which should be inserted in the Act. The draft Bill is limited to implementation of the recommendations contained in this Report. The Commission draws attention to the fact that the present Act is in need of revision and redrafting in many other respects.

# 1. The Census and Information Privacy

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## The Reference

### The Census

1. On 9 April 1976, the Commission received a wide-ranging reference on Privacy from the Commonwealth Attorney-General. Paragraphs 1(a) and (b) of the reference directed the Commission's attention to the information practices of Commonwealth and Territory departments, authorities and corporations. While the reference contained no specific mention of the Census of Population and Housing conducted every five years by the Australian Bureau of Statistics, the compulsory collection of personal information which the census involves clearly fell within the subject-matter referred to the Commission. At about the time the reference was received, public controversy arose in relation to certain privacy aspects of the census which was to be held on 30 June 1976. On 25 May 1976, the Attorney-General wrote to the Commission and requested that the implications of the census for individual privacy be taken into account in the preparation of the Commission's report on its general reference on that subject.

### A Report on the Census

2. The Commission has already published a report dealing with particular aspects of this reference. In its report, *Unfair Publication: Defamation and Privacy*<sup>1</sup>, it advanced proposals for limited protection of privacy in the context of the publication of private facts. In April of this year, the Commission published a discussion paper on the subject of the present report. Public hearings were held in each capital city in May and June. It is the Commission's intention to publish discussion papers on the wider aspects of its privacy reference later in 1979. There is a special reason why the Commission is presenting this report on the census in advance of its report on the general aspects of information privacy. The next census will be held on 30 June 1981. Much of the planning has to be done, and many of the decisions have to be made, well in advance of census day. If its recommendations for privacy protection are to be available to those who decide the procedures to be followed in the 1981 census, the Commission's report must be presented to the Attorney-General now, well in advance of the projected completion of the Commission's report on the general privacy reference. This might be thought to pose certain difficulties for the Commission in requiring it to draw conclusions with respect to a particular subject-matter before determining the final form of its more general proposals. However, work on the general aspects of information privacy is well advanced. Many of the questions to be examined in the Commission's other work in this area are only peripherally relevant to the census. Throughout this report, a distinction is drawn between statistical and administrative uses of information. Unlike most of the other collections which are covered by the reference, the census is a collection for statistical, not administrative, purposes. The information is used in connection with the compilation of statistical information in an anonymous form. It is not used for the purpose of making administrative decisions with respect to the grant, refusal or withdrawal of individual benefits, whether by the government or by private organisations. Nor is it used for the purpose of imposing sanctions or assessing taxes. Owing to the universal coverage of the collection and its compulsory nature, the census raises certain privacy issues

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1. ALRC 11 (1979).

which are not relevant to other collections. These may properly be dealt with in a report prior to final determination of the Commission's views on the more general aspects of privacy protection. In drafting its report on this subject, the Commission has been careful to draw attention to those of its recommendations which have wider implications and which must, therefore, be subject to the possibility of later reassessment in the context of its general report on information privacy.

## The Census

### Origin and Development

3. The modern census is the product of a long historical development. Babylon, Egypt and China are said to have conducted surveys in the nature of a census some two to three thousand years B.C. The numbering of the people by Moses<sup>2</sup> and the decree by Caesar Augustus that all the world should be taxed, each in his own city<sup>3</sup>, are two of the better known examples of ancient censuses. The Roman census appears to have been the most highly developed in the ancient world. It was apparently held every five years and played an important part in the Roman system of administration. It provided a roll of citizens and their property against which their obligations and privileges could be entered. But while the Roman census may have been the most developed of ancient censuses, its general function was by no means unique to Rome. Ancient censuses were commonly used for administrative purposes, including the imposition of religious and military duties and the levying of taxes upon individuals. China apart, censuses appear to have lapsed in medieval times. They were resuscitated in the seventeenth century, early examples including Virginia in 1624, French Canada from 1665, Sweden from 1748 and the United States from 1790. The first modern census in England was conducted in 1801.<sup>4</sup> The growth in popularity of censuses in the latter half of the eighteenth century and in the nineteenth century appears to have been related to increased awareness of, and interest in, problems associated with growth in population. In some countries, a further contributing factor lay in political considerations. The origin of the United States census, for example, lay in the Constitution of the Union, providing for representatives in the Lower House to be distributed among the States in accordance with their respective populations as determined by means of a census to be held every ten years.<sup>5</sup> The most startling difference between the ancient and the resuscitated censuses lay in the fact that the latter were used for statistical purposes rather than administrative ones. So far from collecting information for imposing duties on specific individuals, governments eventually came to offer guarantees that confidentiality would be preserved and that the information provided would not be used to make administrative decisions affecting individual members of the public.

### The Census in Australia

4. The first Australian census or 'muster' of the population was taken in 1788, soon after settlement at Sydney Cove. Musters took place at short intervals to obtain information on the age, sex and legal status of the population. Their main purpose in the early days of settlement was to determine the infant colony's requirements for food and stores.<sup>6</sup> They were also used as a

2. The Bible, Numbers 3:14 f.

3. The Bible, Luke 2:1 f.

4. For a history of the census, see *Census of the Commonwealth of Australia 1911* (1917) I, 1 f. See also Horner, 'The Evolution of the Census', Address to the Economic Society of Australia and New Zealand (N.S.W. Branch), 23 April 1954.

5. Horner, 4.

6. *Census of the Commonwealth of Australia 1911* (1917) I, 27-8; 1 *The Australian Encyclopaedia* (3rd edn, 1977), 499; Johnson, 'General Census of New South Wales, November 1828', 154 *Royal Australian Historical Society Newsletter*, 4; Lea Scarlett, *Roots and Branches* (1978), 76 f.

means of maintaining checks on the convict population. A regular census was introduced into New South Wales by the Census Act 1828. Similar legislation followed in the other colonies. Although based on a common prototype, colonial censuses differed in several respects, not least in their timing. Conferences of Statisticians in 1890 and 1900 sought to reduce the area of difference, yet even the censuses held on a common date failed to produce certain statistical totals for the whole of Australia.<sup>7</sup> When the Commonwealth Constitution was enacted, power was given to the Commonwealth Parliament to legislate with respect to 'census and statistics'.<sup>8</sup> The Australian Parliament first exercised this power in the Census and Statistics Act 1905. The first Commonwealth census was held in 1911 and was followed by censuses in 1921, 1933, 1947, 1954 and 1961. Since 1961 it has been held on a five-yearly basis.

### The Bureau and the Australian Statistics Advisory Council

5. Prior to 1976, the census was conducted by the Bureau of Census and Statistics which was located within the Commonwealth Department of the Treasury. The Australian Bureau of Statistics conducted the 1976 census and will conduct the 1981 and future censuses. It was established by the Australian Bureau of Statistics Act 1975 which came into operation on 3 May 1976. The Bureau is an independent statutory authority headed by the Australian Statistician, a statutory officer who is responsible to the Treasurer and whose permanent staff are employed under the Public Service Act 1922. The Bureau is Australia's official national statistical service and is responsible for providing governments, private enterprise and the community in general with an extensive range of economic, social and other statistics. As part of its role in providing an integrated statistical service to both Federal and State Governments, the Bureau has offices in each State, headed by a Deputy Commonwealth Statistician who is normally the Statistician of the relevant State Government.<sup>9</sup> The Australian Bureau of Statistics Act 1975 also established the Australian Statistics Advisory Council. This body performs an advisory role with respect to statistical matters including the census. The functions of the Council are stated as being:

to advise the Minister and the Statistician in relation to:

- (a) the improvement, extension and co-ordination of statistical services provided for public purposes in Australia;
- (b) annual and longer term priorities and programs of work that should be adopted in relation to major aspects of the provision of those statistical services; and
- (c) any other matters relating generally to those statistical services.<sup>10</sup>

Both the Australian Statistician and the Executive Member of the New South Wales Privacy Committee are members of the Council. State Premiers' nominees are also appointed to the Council.<sup>11</sup> In other respects, it is largely representative of the users of statistical information.

### General Function of the Census

#### *Importance*

6. The census is a periodic collection of information from all members of the public. This information is used for the compilation of statistical data for use not only by government and industry, but also by voluntary organisations and private individuals. It is the most important source of statistical information in the country. It also provides an invaluable bench-mark for

7. *Census of the Commonwealth of Australia 1911* (1917), 28.

8. Paragraph 51 (xi).

9. Further co-operation between the States and the Commonwealth is provided for in the Statistics (Arrangements with States) Act 1956. The relevant arrangements do not affect the census.

10. s. 18(1).

11. s. 19(3).

numerous surveys conducted by governments and by other bodies on a much less extensive scale.<sup>12</sup> Without the statistical and other benefits of the census, planning and decision making affecting the lives and welfare of all Australians would be based on inadequate and incomplete data, resulting in many instances in a high level of waste and inefficiency in the allocation of material and human resources. Changes in society and in attitudes since the establishment of the Commonwealth have led to a great expansion in the need for statistical information and in the amount of personal information collected at census time. Statistics produced from census information assist in identifying, and in providing remedies for, numerous social problems. They also provide a sound basis for proper planning in the private sector in relation to the establishment of industries and in the provision of goods and services to the public.<sup>13</sup>

### *Sensitivity*

7. Rapid growth in the complexity of society and changes in attitudes towards the responsibilities of government are two factors which have contributed to an expansion in the amount of information collected in some recent censuses. Another factor is the revolution which has taken place in the technology available for analysing information and for producing statistics from raw data. As the amount of information sought from members of the public has increased, so has the sensitivity of some of the questions asked. Yet there is almost invariably an acceptable purpose for which the information is collected. A question concerned with handicaps, for example, may elicit information to be used in determining the location of special schools and clinics; questions relating to child minding and contributions towards retirement benefits may be aimed at assisting in the assessment of the funds necessary for the provision of child care centres and of retirement benefits for non-contributors; questions on housing reveal the extent of overcrowding, the lack of sanitation, the comparative cost of rental and mortgage housing and the proportion of total income spent on housing. Intrusive questions are asked to enable the census to produce the type of information which can be used to benefit the public.

### *Special Functions of the Census*

8. Apart from the general uses to which census data are put, mention should be made of the important special functions which the census, as a strict enumeration of people, plays in respect of federal elections and money grants to the States. Section 24 of the Australian Constitution<sup>14</sup> requires that the number of members of the House of Representatives to be chosen in the several States should be in proportion to the respective numbers of the people. Until 1977, the numbers of the people were required to be ascertained by reference to the census itself.<sup>15</sup> Since the Representation Amendment Act 1977, the numbers are required to be ascertained in accordance with the latest statistics of the Commonwealth<sup>16</sup>, for which census information provides the starting point. The census as an enumeration of people is also of vital importance in determining the allocation among the States of grants of money under various Commonwealth Acts. The States (Personal Income Tax Sharing) Act 1976, for example, requires that there shall be paid to each of the States in a given year an amount which is to be calculated on a basis which takes account of the increase in the population of each of the States

12. Queensland State Statistics Co-ordinating Committee, *Submission*, 1 June 1979, 2; J. M. McKean, Management and Marketing Consultant, *Public Hearings* (Hobart), 45 f.; K.R.W. Brewer, Director, Survey Research Centre, A.N.U., *Public Hearings* (Canberra), 2745.

13. On the value to marketing of census statistics, see S. Schmideg, Market Researcher, *Public Hearings* (Melbourne), 2646-7; J. M. McKean, Management and Marketing Consultant, *Public Hearings* (Hobart), 45 f.

14. See also s. 105, Constitution.

15. Representation Act 1905, s. 4.

16. s. 4.

17. s. 7.



since the preceding year.<sup>17</sup> Although the census is not mentioned in these Acts, it forms the bench-mark from which the Statistician makes the required statistical determinations.

## **Privacy**

### **Information Privacy**

9. The law has long given incidental protection to some privacy interests, notably in civil and criminal laws dealing with trespass. These laws have given limited recognition to the interest which members of the public have in seclusion. But claims to privacy are not based solely on the interest in seclusion. An increasing number of them rest on other interests, particularly the interest which members of the public have in respect of the handling of personal information. The law offers protection to this interest only indirectly and in a desultory manner:

- In some States protection against the publication of defamatory personal information is provided by the rule that a defamatory statement is not justified by its truth alone, but only by a combination of truth and public benefit or public interest.<sup>18</sup>
- An action lies in equity to restrain publication in breach of confidence. Until recently, the proceedings appear to have been limited to cases where the publication was in breach of contract or property rights. Recent developments indicate a trend towards wider protection.<sup>19</sup>
- Evidentiary privileges are provided in respect of communications between lawyer and client and, in some States, between doctor and patient and clergyman and penitent.<sup>20</sup>
- A duty not to disclose information which is received by virtue of their office is imposed on public servants.<sup>21</sup>
- The handling of credit information is now regulated by statute in Queensland, South Australia and Victoria.<sup>22</sup>

Even in combination, these laws provide only fragmentary protection. A coherent framework for giving recognition to the interest in information privacy has yet to be established.

### **Basis for Concern**

10. There can be no doubt that there is a pressing need for the creation of such a framework. Reasons of efficiency and convenience have required that many administrative activities in both the public and the private sectors be based on detailed personal information rather than on direct contact with the persons concerned. The development of computers has led to a radical increase in the capacity of record systems to store and retrieve personal information and to a marked decrease in the cost of handling that information. Cross-linkage of record systems has also been facilitated. Personal information has become a vital factor in the life of the community. Claims based on information privacy are not necessarily aimed at arresting this trend. It is widely recognised that it may be in the best interests of an individual to provide personal information rather than withhold it. But there are numerous situations in which economic and other factors reduce the individual's freedom of choice in this matter. Often enough he is unaware of the uses to which information may be put and of the persons to whom it

18. See ALRC 11, *Unfair Publication: Defamation and Privacy* (1979), para. 123 f.

19. e.g. *Fraser v. Evans* [1969] 1 All ER 8; *Foster v. Mountford & Rigny Ltd* (1976) 14 ALR 71.

20. See, e.g., Evidence Act 1958 (Vic.), s. 28; Evidence Act 1910 (Tas.), s. 96.

21. See, e.g., Crimes Act 1914, s. 70. The extent of the duty is determined by the rules applicable to particular public servants. Specific duties not to disclose are contained in other Acts.

22. Invasion of Privacy Act 1971 (Qld); Fair Credit Reports Act 1974 (S.A.); Credit Reporting Act 1978 (Vic.).

may be disclosed. In some cases, decisions are made about him on the basis of information provided by third parties, even without his knowledge. He rarely has a right of access to a personal record in order to check what is on it or to challenge the accuracy of the information which it contains. Concerns such as these have led to a widespread recognition of the individual's claims to participate to a greater degree in decisions relating to the handling of personal information about him.

### European Developments

11. The movement towards establishing a framework for the protection of information privacy has gone further in Europe than it has in several common law countries. Sweden was the first country to establish national legislation in this field. The Data Protection Act 1973 set the stage for many subsequent developments. Under that law, computerised data banks must be registered with a central authority. They must comply with the authority's requirements as to the collection, use and disclosure of personal information. Rights of access and challenge are given to subjects of the data. Variants of this model now exist in France, Norway, Denmark and Luxembourg.<sup>23</sup> Legislation is expected in Belgium, Holland and Spain. Italy and Switzerland are also investigating these matters. In Germany and Austria, an alternative model has been developed which does not require the registration of data banks but which nonetheless establishes a data protection authority.<sup>24</sup> Some European laws extend to both the public and the private sectors. Most of them adopt a regulatory model backed by criminal penalties. Only Sweden and Norway provide for a civil remedy.

### Developments in the Common Law World

12. In the common law world, the United States led the way with the enactment of the Privacy Act in 1974.<sup>25</sup> That Act governs the handling of personal information by federal government agencies and contractors. Criminal and civil remedies are available in the event of breach of its requirements. Several American States have passed similar laws. In 1977, the Privacy Protection Study Commission, established under the Privacy Act 1974, presented a detailed report which dealt with the operation of the Act and called for substantial federal regulation of private sector record-keeping activities as well.<sup>26</sup> Legislation to implement certain of its proposals was submitted to Congress in 1979. In Canada, too, information privacy has received legislative protection. A Privacy Commissioner has been established as a member of the Human Rights Commission and Canadian citizens and permanent residents have been given limited rights with respect to the handling of personal information held by the federal government.<sup>27</sup> In Australia, on the other hand, things have moved more slowly. The most significant general development was the establishment of the New South Wales Privacy Committee in 1974.<sup>28</sup> That Committee has obtained the agreement of a number of different types of record keeper to limit unnecessary collection of personal information; to grant access to, and to allow challenge of, certain types of personal record; and to increase the security of, and control disclosure from, personal information systems. In other States, inquiries with

23. Data Processing, Data Files and Individual Liberties Act 1978 (France); Personal Data Registers Act 1978 (Norway); Public Authorities Registers Act 1978 and Private Registers Act 1978 (Denmark); Data Protection Act 1979 (Luxembourg).

24. Federal Data Protection Act 1977 (Federal Republic of Germany); Data Protection Act 1978 (Austria).

25. The report of the U.S. Dept of Health, Education & Welfare, *Records, Computers and the Rights of Citizens* (1973), provided the basis for this development.

26. Privacy Protection Study Commission, *Personal Privacy in an Information Society* (1977).

27. Canadian Human Rights Act 1977.

28. The Committee was placed on a statutory basis by the Privacy Committee Act 1975 (N.S.W.).

respect to information privacy are in hand. The Western Australian Law Reform Commission has a reference on privacy which is in terms substantially similar to our own. In South Australia, an Interdepartmental Committee is due to report in 1979. In Victoria, the Statute Law Revision Committee is continuing its work on this subject, as is the Joint Select Committee on the Privacy Bill 1974 in Tasmania. The Commission gratefully acknowledges the co-operation it has received from each of these bodies and from the New South Wales Privacy Committee.

### O.E.C.D. Privacy Guidelines

13. The proliferation of privacy legislation in Europe and North America has led to concern that the adoption of incompatible privacy rules in different countries might adversely affect the free flow of information between nations. Some countries have also expressed a fear that this flow might be inhibited by laws ostensibly drawn to protect privacy but in fact designed to protect national sovereignty and security, local employment or the development of local computer technology. Fears of this type, combined with existing inconvenience in the administration of different privacy laws in adjoining States of Europe, have led to international efforts designed to harmonise at least the basic rules to be followed in domestic privacy legislation. Discussions have been initiated by the Council of Europe, the Nordic Council, the Commission of the European Communities, the European Parliament and the Organisation for Economic Co-operation and Development (O.E.C.D.). Australia joined the O.E.C.D. in 1971. An Expert Group of the O.E.C.D. met in Paris in April 1978. The Chairman of this Commission was elected Chairman of the Group and has attended five meetings at which the basic rules for the protection of privacy have been discussed and agreed upon. Four national seminars have been held in Australia to consider various drafts of the O.E.C.D. guidelines. These seminars have been attended by Commonwealth officials, members of State government bodies examining State privacy protection legislation, representatives of business, computer manufacturers and users and academics. In identifying agreed general principles for the protection of information privacy, the O.E.C.D. project will provide a set of principles with which the Commission's own general recommendations in its subsequent report on information privacy may be compared. The immediate significance of the project lies in the fact that the broad principles identified by the O.E.C.D. reinforce the general approach taken by the Commission in this report. It is the Commission's belief that its present recommendations will prove to be consistent with the guidelines which the O.E.C.D. has yet to make public.

### Information Privacy and the Census

14. Being a collection of information for statistical purposes rather than administrative ones, the census does not pose the same threat to privacy as collections designed to assist in making decisions about individuals. Nonetheless, principles of privacy are by no means irrelevant to the census. Since it is a collection of personal information about each member of the public, the census gives rise to fears that the government may obtain from it data profiles covering the whole community. Despite the Bureau's guarantees of confidentiality and its impeccable record in this regard since its establishment, many people remain convinced that the information which they are asked to provide may be passed on to government departments and used to their personal detriment.<sup>29</sup> Moreover, privacy interests, both in seclusion and in the handling of personal information, may be just as adversely affected in a statistical collection as in an administrative one if improper or inappropriate methods of collection are adopted. Security of information while it is held in a personally identifiable form is vital for the protection of these

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29. Masidan Research, *Public Attitudes towards the Census its form and function* (1975), 68 f.; Commissioner for Community Relations, *Submission*, 24 May 1979, 1-2.

interests in each type of collection.<sup>30</sup> Limitations on disclosure are also applicable to both administrative and statistical collections. The fact that a collection of information is for statistical purposes rather than administrative ones is not itself a guarantee that privacy interests will be adequately protected.

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30. One submission alleged that, during the 1971 census, the forms for a complete census collector's district 'went missing from a railway siding in Queensland': J. D. McMullan, *Submission*, 23 May 1979. The whole issue of security is left to our final report on information privacy.

## 2. The Collection of Census Information

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### Principles

15. The Commission endorses the adoption of a number of general principles to govern the collection of personal information. Those which are relevant to the present report include the following:

- An individual should not be required to provide personal information which is not relevant to, and necessary for, the purposes of the collection. Compelling reasons are necessary to warrant the collection of particularly sensitive information.
- An individual should be informed of the purposes for which personal information is being collected from him. He should be told of the uses to which the information may be put and the consequences, if any, attached to a refusal to supply it.
- The methods used to collect information should be such as to minimise the danger of unauthorised or unwarranted disclosure of that information.

Each of the concerns which lie behind these principles is implicitly recognised in the procedures which already govern the collection of census information. The question which must be answered is whether those procedures are adequate for this purpose.

### Sampling and Compulsion

16. The census involves intrusion into the lives of all members of the public. Extensive personal information is collected on a compulsory basis. The individual is not able to exercise a free choice in the matter. At the time of the 1976 census, doubts were expressed whether it was necessary to collect information from the whole population on a compulsory basis. It was suggested that census information might be obtained on a voluntary basis from a sample of the population. In the discussion paper which it published in April, the Commission stated that insufficient information was available to it concerning the effects which implementation of each of these suggestions might have on the validity of the statistics generated from census information. It proposed that the Statistician should make an investigation of each suggestion, obtaining advice from the Australian Statistics Advisory Council, from bodies concerned with privacy and from the general public. It also proposed that the detailed results of the investigation should be published in the Statistician's Annual Report to the Minister under s. 24, Australian Bureau of Statistics Act 1975, and that they should then be examined by an appropriate Parliamentary Committee. Both at the public hearings and in written submissions, users of census information made numerous comments on this proposal, as on sampling and voluntariness in a census. The Commission is now satisfied that there is sufficient information available to it to make a judgment on each of the relevant matters. It does not recommend that a further investigation of them be conducted by the Statistician.

### Sampling

#### *North America*

17. Universal coverage, at least in respect of demographic details, is essential to a census as an enumeration of the whole population. In respect of some matters, however, universal coverage

may not be essential. Sampling has been used in connection with the collection of census information in the United Kingdom, the United States and Canada. In the latter two countries, all households are asked a basic set of questions and a sample of households is asked a number of other questions. In the 1971 Canadian census, in addition to questions asked of all households, 30 personal questions and 20 dwelling questions were asked of only one-third of the households. In the 1970 United States census, only a small number of items were collected on a total coverage basis. These included half a dozen questions needed to identify a person (e.g. household relationship, age, sex) and a dozen dealing with housing (e.g. tenure, plumbing, rent, value). The remaining questions were limited to a 20% sample of the population.<sup>1</sup> Sampling procedures are to be followed again in the 1980 United States census.

### *The United Kingdom and Australia*

18. In the United Kingdom, sampling was used in the 1961 and 1966 censuses. In 1961, 90% of householders received a short form and 10% a long form. In the mid-decade census in 1966, only a 10% sample was required to complete the census form. For a number of reasons, the validity of the 1966 results were, and remain, uncertain.<sup>2</sup> In Australia, on the other hand, there has been no experience with sampling in connection with the collection of census information. However, the financial restrictions which were imposed after the most recent census caused the Bureau to limit its analyses to a sample of total returns. Limited information from the first page of each form, including age, sex and marital status, was processed in an initial program. For the remainder of the information, full coverage was limited to the Northern Territory and to 'public' dwellings<sup>3</sup>, only 50% of private dwelling returns for the rest of Australia being processed by the Bureau. A limited use of sampling in the collection of census information would result in uneven burdens being placed on members of society. Nonetheless, it might serve valid privacy interests in two ways. First, it would reduce the fear possessed by some individuals that the census provides the government with a detailed profile of each member of the community. Secondly, one principle limiting the collection of personal information<sup>4</sup> indicates that total coverage of the population is only justified if it is necessary to achieve the aims of the census. Those aims warrant the collection of personal information, but not the collection of that information on a wider scale than is necessary for producing the statistical information which is required.

### *Bureau's Views*

19. The vital question, then, is whether the statistics generated from the Australian census might equally be obtained from a sample of the population. The Bureau's view was expressed to the Commission in the following terms:

[A] prime purpose of the census is to obtain very detailed classifications of the population which generally may not be estimated even approximately from a sample. For example, occupation in the Australian Census is tabulated in approximately 350 distinct categories, and even this number has been found not to give sufficient detail for some uses. If a tabulation of occupation by industry is formed, some 160,000 different combinations are possible; to estimate all these combinations from a sample survey is just not possible.

Since special groups of the population such as Aborigines and single-parent families constitute only a small proportion of all individuals, a sample of the general population would not yield enough

1. Kaplan, 'Some Current Thoughts on the 1980 Census', [1975] *Statistical Reporter* 25, 27. There were two 'long forms', one for 15%, the other for 5% of the population.
2. O.P.C.S., *Submission*, 20 June 1979, 1. In 1971, only 10% of forms were processed on topics such as occupation and industry, the aim being to reduce costs and speed up results. The same procedure is to be used in 1981.
3. Hospitals, hotels and other institutions.
4. Above, para. 15.

such persons for meaningful data to be derived in respect of them. The difficulty of estimating finely classified data arises from the fact that estimates derived from a sample survey are subject to sampling variability; that is, the sample estimates may differ by chance from those that would be derived from a complete Census. The fewer the number of persons in the sample falling in a particular category the larger the relative sampling variability associated with the estimate for that category. Finely classified data, such as for a small area or a small group in the community, can be collected on an economically feasible basis only by means of a complete Census.<sup>5</sup>

In discussions with the Commission, the Bureau also emphasised that its functions include obtaining information on a sample basis and that where satisfactory data on a particular subject could be obtained in that way, questions on that subject would not be asked in a census.

### *Users' Views*

20. Both at our public hearings and in written submissions, users of census statistics generally supported the Bureau's view<sup>6</sup>, emphasising, in particular, their need for finely classified data<sup>7</sup> whose validity would be doubted if they were to be produced from a sampling base. One of the most detailed submissions on this matter came from the State Statistical Co-ordination Unit of the New South Wales Treasury. That body pointed to the fact that data generated by sampling are subject to sampling error in addition to the non-sampling errors<sup>8</sup> from which a full census may suffer. The level of sampling error which is acceptable varies according to the uses to which the data are put:

For some small area data and very detailed cross-tabulations (data which the censuses are designed to provide), the sample size required to achieve an acceptably low level of sampling error could approach that of the total population.<sup>9</sup>

The submission dealt with the use of sampling in the United States as follows:

In population sampling, the absolute size of population numbers sampled rather than the proportion of the population sampled is the most important determinant of sampling error. Because of this the reliability of small area data and cross-tabulations from a 20% sample in America (40 million people) would have a greater degree of reliability than a 20% sample in Australia (3 million people).<sup>10</sup>

It then pointed to problems experienced with statistics produced by the Bureau from the 50% sampling of private dwelling returns in 1976:

The 50% processing of the 1976 Census has created considerable difficulties in a number of areas, notably in the use of census data in the planning and costing of geographically based programmes directed at specific, often small, groups of the population.<sup>11</sup>

Other arguments against sampling at the point of collection were noted in the Commission's discussion paper.<sup>12</sup> They concerned the difficulty of designing a sample for application in the

5. A.B.S., *Submission*, 6 August 1976, 'Why Sample Surveys Have not Replaced the Census', 2-3.

6. *Qualified* support for sampling was expressed by a few organisations.

7. e.g. Department of Transport (Qld), *Submission*, 25 May 1979, 3; Queensland State Statistics Co-ordinating Committee, *Submission*, 20 May 1979, 2; Department of Housing and Construction (Cwlth), *Submission*, 31 May 1979, 2; Department of Housing and Construction (Cwlth), *Submission*, 15 May 1979, 1; State Statistical Co-ordination Unit (N.S.W. Treasury), *Submission*, 9 July 1979, 3-4; State Statistical Priorities Committee (S.A.), *Submission*, 9 July 1979, 3; State Co-ordination Council (Vic.), *Submission*, 16 July 1979, 1f; C. Ivison and B. Dalton, Planning and Environment Commission (N.S.W.), *Public Hearings* (Sydney), 174-5; C. A. Forster, Centre for Applied Social and Survey Research, Flinders U., *Public Hearings* (Adelaide), 30f; K. R. W. Brewer, Director, Survey Research Centre, A.N.U., *Public Hearings* (Canberra), 2744-5; C. A. Maher, Department of Geography, Monash U., *Public Hearings* (Melbourne), 2667-9; S. Schmideg, Market Researcher, *Public Hearings* (Melbourne), 2648-9.

8. e.g. non-response, under-enumeration and bias.

9. *Submission*, 9 July 1979, 2.

10. *id.*, 3.

11. *ibid.*

12. ALRC, DP 8, para. 15.

field and the danger of departure from the procedures prescribed. While not all users of census data require the degree of freedom from sample error afforded by a full census, many of them undoubtedly do. The Commission is satisfied that principles of privacy do not require that the census be conducted on a sampling basis.

## Compulsion

### *Law and Practice*

21. Members of the public are required by law to answer questions asked in a census. The only exception is the question on religion.<sup>13</sup> Section 11, Census and Statistics Act 1905, imposes on the occupier of a dwelling the duty to complete the census form. He must supply all the particulars specified, sign the form and deliver it to the authorised collector. Under s. 14, a person must answer all questions put to him by a collector which are necessary for completing a census form. Sub-section 15(2) requires a person to furnish a collector with particulars concerning individuals who were not abiding in a dwelling on the night of census day. In each case, the obligation is to provide the relevant information to the best of the person's knowledge and belief. Some critics of the 1976 census felt that questions of a particularly intrusive nature, at least, ought only to have been asked on a voluntary basis. The social benefits flowing from a census do not justify compelling people to provide sensitive personal information unless compulsion is necessary to attain the aims of the collection. The issue, then, is whether compulsion is required to ensure the statistical validity of the information which is gathered in a census. The Australian census, unlike those in the United Kingdom and New Zealand<sup>14</sup>, is rather less compulsory in practice than it is in theory. Some 1500 individuals persisted in their refusal to complete census forms in the 1976 census. Despite the provisions of the Census and Statistics Act 1905, there was not a single prosecution. In newspaper articles before the 1976 census, wide publicity was given to the fact that no one had previously been prosecuted and that the Bureau was anxious to obtain voluntary co-operation rather than rely upon strict legal powers. Even so, the Bureau believes that the compulsion of law is essential to minimise the level of error to which census statistics are subject.

### *Non-response Rates*

22. Statistical error may arise in a number of ways. A collector may fail to find a dwelling or wrongly infer that it is unoccupied. An individual may refuse to co-operate in the census or deliberately provide false information about himself or others. A major source of error lies in the failure of respondents to answer all the questions in the form. The non-response rates for a selected group of questions asked in the 1976 census are set out in Table 1 which also provides comparable figures from the 1971 census.

### *Special Factors*

23. These figures must be interpreted with caution. Special factors may explain certain of the higher non-response rates. For example, the Bureau believes that the high non-response rate in 1976 in respect of the question dealing with the period of residence in Australia is to be attributed to defective design of the census form, rather than to objections to the question itself. While the non-response rate for the (presumably sensitive) *voluntary* question on religion was lower than that for the (presumably less sensitive) *compulsory* question on educational

13. Census and Statistics Act 1905, s. 21.

14. Approximately 400 prosecutions resulted from refusal to complete census forms in the United Kingdom census in 1971: *Third Report of the Parliamentary Commissioner For Administration* (1971-72), 7. In New Zealand, roughly 20 individuals are prosecuted after each census: information supplied by the Government Statistician (N.Z.).



**Table 1 Non-response Rates, 1971 and 1976 Censuses**

<i>Question Topic</i>	<i>Non-response rates</i>	
	<i>1971</i>	<i>1976</i>
	%	%
Usual residence	1.8	1.5
Usual residence 5 years ago	1.9	Negligible
Religion	6.1	11.8
Racial origin	(a)	8.4
Educational institution	1.6	14.7
Income	(b)	7.5
Duration of marriage	6.9	4.6
Total issue from all marriages	6.5	6.8
Occupation	4.6	5.5
Industry/employment	4.1	6.8
Hours worked	5.4	7.7
Period of residence in Australia	6.5	36.5(c)
Bedrooms	1.2	2.3
Sewage disposal	1.1	3.6
Motor vehicle	1.8	3.6
Nature of occupancy	1.9	2.5
Rent paid	7.7	6.2
Source of mortgage	(b)	1.0
Mortgage repayments	(b)	7.2

(a) Not available.

(b) Not asked in 1971.

(c) Attributed by the Bureau to form layout.

Note: Some of the differences in non-response rates between 1971 and 1976 may be attributed, in part, to a change in the definition of non-response. The 1971 figures were reduced by imputation of answers to certain questions, particularly the question dealing with educational institutions.

institutions, special reasons may also account for this fact. The Bureau received a number of complaints that the voluntary nature of the question on religion was not drawn sufficiently to public attention. Moreover, the question on education imposed an unusual burden on the respondent, requiring both the name and the address of educational institutions attended by each member of the household. Whatever the reason may be for variations in response rates between different questions, it is clear that, even with the support of statutory compulsion, the census is subject to significant non-response rates. For the numerous users of census statistics who require small area cross-tabulations, any addition in the level of error in those statistics would be a serious disadvantage.

### *Conclusion*

24. It is impossible to predict with confidence the effect on response rates that a change to a voluntary census would have. So far as the Commission can ascertain, a census in which the questions have been asked on a voluntary basis has not been taken anywhere. Voluntary pilot test censuses in the United Kingdom in 1974 and 1977 produced refusal rates of 17% and 20%, respectively.<sup>15</sup> Much higher refusal rates have been experienced in a number of voluntary

15. A.B.S., *Submission*, 27 February 1979, Attachment A, 3.

government surveys in Australia.<sup>16</sup> Neither the figures relating to the pilot test censuses in the United Kingdom nor those concerned with voluntary surveys in Australia form a sound basis for predicting non-response rates in an actual census. Nonetheless, the levels of non-response in each case are disturbing. There can be little doubt that the level of non-response in a voluntary census would far exceed that in a compulsory one. Moreover, there is a distinct possibility of statistical bias within the responses to voluntary questions. A partial response only provides reliable information on relevant characteristics if the characteristics of the population which responds are the same as those of the population as a whole. If the census questions were voluntary, the group of persons who chose to respond might differ markedly from those who declined to do so. As the Bureau stated to the Commission:

... if relatively more high income people than low income people decline to answer a question on income, the resulting profile would be distorted. If, due to different treatment in the media, or for other reasons, degrees of response varied geographically, the problem of statistical bias mentioned would be aggravated ... The net outcome would be that the income profile would be distorted in a variety of unknown ways and, when broken down in cross classifications by regions, occupations, etc., the results would be unreliable.<sup>17</sup>

This view is supported by the users of censuses statistics.<sup>18</sup> The Commission is satisfied that the Bureau must be able to rely on legal compulsion. It notes that the penalty of \$20 applicable to refusal to co-operate in the census was laid down in 1905. Inflation over the last three-quarters of a century has rendered the penalty derisory. The penalty for a breach of ss. 11, 14 and 15(2), Census and Statistics Act 1905, should be increased.

## **Informing the Public**

### *The Purposes of the Collection*

25. An individual should be properly informed concerning the purposes of any collection of personal information from him. A notice concerning purposes serves a number of functions. It helps the individual to understand the nature of the relationship which is envisaged between himself and the record keeper. It also defines in a general way the uses to which the information which he supplies may properly be put. Where a collection has aims as important and valuable as those of the census, explanation of the uses to which the information may be put also assists in obtaining co-operation from those obliged to provide that information. Answers to census questions may reveal breaches of taxation, immigration<sup>19</sup>, social security, local government and other laws. Emphasis on the statistical nature of the information generated by the census alleviates fears concerning administrative uses to which census information might be put and presumably contributes to the maintenance of high response rates and to the accuracy of the information supplied.

### *Advertising and Publicity*

26. Attempts were made to explain the purposes of the 1976 census to the public, mainly by advance advertising. The Bureau's budget for this purpose was inadequate.<sup>20</sup> A brief statement of purposes was also contained in the 1976 census form. It stated:

16. Among the details provided to the Commission were those presented by the A.B.S., *Submission*, 27 February 1979, Attachment A, 4 f., and by the Queensland State Statistics Co-ordinating Committee, *Submission*, 1 June 1979, Attachment A.

17. A.B.S., *Submission*, 3 August 1976, 'Why the Population and Housing Census Has to be Compulsory', 7.

18. e.g. Queensland State Statistics Co-ordinating Committee, *Submission*, 1 June 1979, 3; State Statistical Co-ordination Unit (N.S.W. Treasury), *Submission*, 9 July 1979, 3-4; State Co-ordination Council (Vic.), *Submission*, 16 July 1979, 4-5.

19. Commissioner for Community Relations, *Submission*, 24 May 1979, 1.

20. Only \$50 000 was available for this purpose.

All the information you provide in this Schedule will be kept secret and seen only by sworn employees of the Australian Bureau of Statistics. It will be used only to produce statistics.

Privacy interests as well as statistical ones suggest that there should be a much more intensive advertising and publicity campaign to explain the 1981 and subsequent censuses and the measures taken to protect confidentiality. Every effort should be made to involve all sections of the media in a program of educating the public concerning the aims and value of the census. Unless the public is aware of the value of the census and accepts the Bureau's claims that confidentiality will be preserved, the accuracy of the information provided and of the statistics generated from it may be suspect.<sup>21</sup> A statement concerning the aims and value of the census should be delivered to each household on, or shortly before, census day. A simplified, shorter version of the *Information Paper, Topics*, which was published by the Bureau in 1976<sup>22</sup>, would assist in achieving the aim of informing members of the public of the purposes of the census and of the types of use to which census statistics may be put.

### *Misleading Warnings*

27. A person from whom information is collected is entitled to be told the consequences, if any, of refusal to provide the information which is sought. A statement of the obligation to answer questions other than that relating to religion was contained on the 1976 census form. Since the Census and Statistics Act 1905 provides penalties for failure to provide information, it is arguable that this fact, and the penalty prescribed, should be drawn to the attention of the householder when the census form is delivered. Information supplied by the United States Bureau of the Census suggests that there is a danger that a warning of that nature would be regarded as offensive by some of those to whom it was directed. It might even have an adverse effect upon responses. In Australia, such a warning would also be misleading since the only likely consequence of non-response is a further request for information. Even when individuals have persisted in refusal to supply the information sought, prosecutions have not been launched. Privacy interests can be adequately safeguarded without insisting that a statement concerning penalties be included on the census form. The relevant sections of the Census and Statistics Act 1905 should be amended to ensure that no offence is committed unless the refusal to supply information occurs after reasonable steps have been taken to warn the individual of the legal consequences attached to his refusal to supply information.<sup>23</sup> Such a warning could then be given not on the form but during the follow-up of those who have failed to provide information.

### *Voluntary and Compulsory Questions*

28. The fact that the question on religion is voluntary whereas all other questions are compulsory gives rise to a special problem. In the past, the fact that the question on religion is voluntary has been drawn to the attention of members of the public by a notice on the front of the census form. The Bureau intends to alter this procedure for the 1981 census and to place the relevant notice alongside the question on religion. This change is looked on with concern by some bodies with a special interest in statistical information derived from this question and used in connection with educational planning for non-government schools. The National Catholic

21. Commissioner for Community Relations, *Submission*, 24 May 1979, 1.

22. The paper was available only for limited distribution.

23. The United States Bureau of the Census takes the view that the Privacy Act does not require a statement on the Census form concerning legal penalties. A warning is to be given in the case of follow-up visits or mailing: information supplied by the United States Bureau of the Census. The Western Australian Law Reform Commission opposed the recommendation in the text on the basis that it creates an anomalous distinction between failure to provide information and providing false information: *Submission*, 18 July 1979, 1-2.

Education Commission<sup>24</sup> is particularly concerned that the additional emphasis on the voluntary nature of the question on religion may seriously affect the response rate. While acknowledging that members of the public are entitled to know that the question on religion is voluntary, the National Catholic Education Commission argues that a notice to that effect in the general directions to the person completing the form is sufficient.<sup>25</sup> As the Bureau's proposed change affects the manner in which information is given to members of the public concerning the collection of census information, it is a matter falling within the terms of reference. Privacy interests do not dictate the exact location of a notice concerning the voluntary question on religion. They do dictate that the notice be sufficiently prominent to ensure that individuals are aware of the difference between the voluntary question and all the other, compulsory ones. The decision how best this may be done without artificially affecting the response rate to the question on religion can be left to the Bureau.

### **The Information Sought**

#### **Sensitive Questions**

29. Highly sensitive information should not be sought from members of the public, particularly on a compulsory basis, unless there are compelling reasons for collecting it. There is no easy measure of the degree of public sensitivity in respect of particular topics or questions covered in a census. What is sensitive within one group or sub-group may not be sensitive or may be far less sensitive in another. Moreover, sensitivity may change from time to time within a single group or sub-group. Some information concerning Australian attitudes to privacy in relation to census questions is provided by the experience of bodies which received inquiries and complaints relating to the 1976 census. Information supplied by the Council for Civil Liberties (N.S.W.)<sup>26</sup> and by the New South Wales Privacy Committee<sup>27</sup> suggests that the requirement to provide names and addresses was more contentious than the obligation to answer specific questions. Further information on public attitudes to the census is contained in a report commissioned by the Bureau in 1975.<sup>28</sup> Table 2 sets out the results obtained from responses to the question: 'Some objections have been raised to the Census. Which questions do you consider people would object to?' Table 3 tabulates similar data in respect of the question: 'Are there any questions in the Census that you *personally* object to?'<sup>29</sup> Care should be taken in interpreting the results since some bias in favour of privacy may have been introduced by the phrasing of the questions and the respondents' attitudes towards what was expected of them.

#### **Names and Addresses**

30. The differences between Tables 2 and 3 suggest considerable reluctance on the part of respondents to be personally identified with certain objections. The tables indicate a general and marked difference between the responses of men and those of women, and less general and less marked differences between those of different occupational and age groups. They are consistent in demonstrating that the income question was a major source of concern. But the report also drew attention to the possibility, noted above, that the collection of names and

24. *Submission*, 14 May 1979.

25. The National Catholic Research Council, on the other hand, proposed that a response should be required to the question on religion but that the question should itself be designed to allow a person to decline to reveal religious denomination. *Submission*, 7 August 1979.

26. *Submission*, 15 February 1979.

27. Privacy Committee, *Submission*, B.P.32 (1977), Appendix III.

28. Masidan Research, *Public Attitudes towards the Census--its form and function* (1975).

29. *id.*, 226, 228.

**Table 2 Anticipated Objections to the Census Questions**

	<i>Males</i>	<i>Females</i>	<i>White Collar</i>	<i>Blue Collar</i>	<i>18-24</i>	<i>25-34</i>	<i>35+</i>	<i>Total</i>
Respondents	(132)	(79)	(79)	(78)	(43)	(92)	(76)	(211)
	%	%	%	%	%	%	%	%
Mortgages	8	13	15	5	14	13	9	10
Holidays	3	6	2	2	—	2	9	4
Racial origin	11	19	12	6	14	16	12	14
Religion	17	18	23	12	7	24	14	17
Children from marriages	12	43	22	32	30	26	28	28
Income	33	68	48	36	35	53	45	46
Employer	8	8	4	5	9	10	4	8
Marital status	22	28	20	25	38	26	24	24
Name and address	25	25	23	26	26	37	8	25

BASE: Total respondents in each group = 100%

**Table 3 Personal Objections to the Census Questions**

	<i>Males</i>	<i>Females</i>	<i>White Collar</i>	<i>Blue Collar</i>	<i>18-24</i>	<i>25-34</i>	<i>35+</i>	<i>Total</i>
Respondents	(132)	(79)	(79)	(78)	(43)	(92)	(76)	(211)
	%	%	%	%	%	%	%	%
No personal objections	64	67	61	53	74	55	72	65
Mortgages	5	7	11	3	5	5	8	6
Holidays	4	4	4	9	2	8	3	5
Income	8	20	11	15	9	12	16	13
Children and marriage	6	14	7	13	5	11	12	10
Employer	5	4	4	6	2	7	4	5
Marital status	8	14	9	13	5	10	12	11
Name and address	15	15	18	13	12	26	4	15

BASE: Total respondents in each group = 100%

addresses itself causes more public concern than the obligation to answer individual questions.<sup>30</sup> At the time of the 1976 census, suggestions were made that the census might be conducted anonymously. An alternative proposal was that name and address should be provided on a tear-off slip which could be handed back to the occupier when the collector was satisfied that a given form had been completed. Tests conducted by the Bureau suggest that, in an anonymous census, roughly 3% of forms would be returned completely blank. They also suggest that there would be a lower response rate to individual questions in those forms which were filled out.<sup>31</sup> Neither defect could be cured without knowing who had failed to respond. A further difficulty for both an anonymous census and the alternative involving use of a tear-off slip concerns post-enumeration surveys which are used to test the effectiveness of the census and to assess the statistical corrections which must be made to census information, notably the basic population count. These surveys are conducted shortly after the completion of the census. A

30. *ibid.*

31. As against these problems, there might be an improvement in the accuracy of information provided by those who object to providing names and addresses.

sample of the population is interviewed and the information elicited is compared with that supplied by the sample in the census. For comparisons to be made, the census returns of those included in the sample have to be identified. At the cost of considerable administrative difficulty and some decrease in reliability of post-enumeration surveys resulting from inability to match the survey records with census records, it might be possible to dispense with names. Without addresses, however, it would be impossible to conduct an effective post-enumeration survey.

### *Handicaps*

31. There are two reasons why the sensitivity of particular questions should be given full weight when the Bureau is considering what information is to be sought in the census. The first is based on privacy interests. It is essential that care be taken to avoid causing unnecessary embarrassment and concern among those persons who must supply the information. The second is based on statistical interests rather than privacy ones. All reasonable steps must be taken to minimise the danger that response rates and the quality of the information provided will be seriously affected by resistance to questions which prove unacceptable to the public. Nonetheless, care should be taken to ensure that decisions not to ask sensitive questions are only taken after full weight has been given not merely to privacy and statistical interests, but also to the interests of society in obtaining the information which those questions might elicit. It is sometimes the case that the more sensitive the information, the more valuable it is for social planning and decision making. For example, information about chronic illnesses may be vital in determining the siting of hospitals and health care facilities. A case in point is the subject of physical and mental handicaps, a topic which received considerable adverse publicity at the time of the last census. Although a question concerning handicaps may cause embarrassment and concern, the fact remains that there is an undeniable need for statistical information concerning the handicapped. This need was stressed by the National Committee of Inquiry into Compensation and Rehabilitation.<sup>32</sup> It has been reaffirmed by the National Advisory Council for the Handicapped<sup>33</sup>, by the Australian Association for the Mentally Retarded<sup>34</sup> and by the Handicapped Citizens Association (A.C.T.).<sup>35</sup> It has also been the subject of comment in a recent report of the Senate Standing Committee on Social Welfare.<sup>36</sup> That Committee noted that a theme running through the evidence put to it was that little was known of health and welfare needs in the Australian community. It singled out the handicapped as an area in respect of which the data were 'worse than poor'.<sup>37</sup> After noting that, despite frequent calls for the collection of information, there was still no register of handicapped, the Committee concluded that '[e]ven a proper research basis for data collection appears to be lacking'.<sup>38</sup>

### *Race and Religion*

32. Race and religion are also sensitive subjects. Being voluntary, the question on religion has caused little concern. But the question on race led to considerable controversy in 1976. Adverse publicity was a major factor in the Bureau's tentative decision<sup>39</sup> to restrict the question on race in 1981 to Aboriginals and Torres Strait Islanders. It is true that a question on race may give rise to fears of discrimination. Yet information on the general subject of ethnic structure is invaluable to bodies responsible for the development of appropriate welfare and educational

32. *Report* (1974), I, 234.

33. *Submissions*, 29 May and 6 August 1979.

34. *Submission*, 16 May 1979.

35. *Submission*, 1 June 1979.

36. *Through a Glass, Darkly* (1979).

37. *id.*, 59.

38. *ibid.*

39. A.B.S., *Preliminary Views on the Nature and Content of the Census* (1979), 36.

policies in a multicultural society.<sup>40</sup> A reduction in the information gathered on the subject of race may make it harder to identify the problems of new settlers and to refute those in the community who create interracial hostility by inaccurate claims concerning changes in the racial composition of society. As one submission put it:

... with immigration from Asia steadily increasing and signs of race tension appearing in various localities, I fully expect the appearance of greatly exaggerated statistics for purposes of political agitation; in the absence of census statistics these will be difficult to counteract.<sup>41</sup>

The inclusion of a question on race may be important to minority groups themselves for another reason. It has been pointed out by one demographer that:

The old South Sea Islanders, for instance, descendants of the Kanaka labourers of the last century, are a proud people who want a chance to identify themselves in the census; being third, fourth or fifth generation Australians they are indistinguishable by birthplace, parentage or language and the race question has given them their only chance to identify themselves. That chance will now be denied them in the 1981 census.<sup>42</sup>

### *Conclusion*

33. It is not the Commission's function to substitute its own judgment for the Bureau's in recommending what subject-matters to include in the 1981 census. Nonetheless, in the context of privacy protection, the Commission must emphasise that the sensitivity of a subject-matter should not be taken as the sole criterion to be applied in making those decisions. Privacy interests require that compelling reasons exist for collecting sensitive personal information. But they do not forbid its collection altogether. While the danger of public reaction against sensitive questions must be recognised and given due weight, that type of reaction is less likely to occur if adequate explanation is given of the reasons for asking a sensitive question and of the uses to which the statistics will be put. It must also be remembered that the asking of a less sensitive question on a similar subject-matter may itself cause offence to some members of the community. A prime example is the 1976 limitation of the question on children born to a woman to those children born in wedlock. Some unmarried mothers objected to this limitation. Their numbers may well increase in the future. As one submission put it:

At the moment there is prevalent the opinion that it is an invasion of privacy to ask single women, or married women who may have had children before the current marriage, whether they have ever had any children; hence the census question is limited to children of current and/or previous marriages, much to the grief of demographers whose task is to assess population and fertility trends for the whole population. But there is a growing number of women who reject the whole institution of marriage and are not at all shy or embarrassed about declaring motherhood; indeed some become indignant with the present question as it denies them the chance to identify themselves as mothers on the census schedule.<sup>43</sup>

One suggestion put to the Commission was that the Bureau should have power to ask census questions on a voluntary basis when they are judged too sensitive to be asked on the basis of compulsion. Although privacy interests are less affected by voluntary questions than by compulsory ones, the suggestion raises a difficulty of another type. The Bureau fears that, if it were invested with such a power, pressure would be exerted on it to ask many census questions on a voluntary basis. This would erode both the compulsory nature of the census and the value

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40. The value of the information was stressed in a number of submissions, including those from the Commissioner for Community Relations, 24 May 1979; Prof. J. Zubrzycki, Chairman, Australian Ethnic Affairs Council, 23 May 1979; and Dr C. A. Price, Professorial Fellow, Department of Demography, A.N.U., 7 June 1979.

41. Dr C. A. Price, Department of Demography, A.N.U., *Submission*, 7 June 1979, 2.

42. *ibid.*

43. *id.*, 3.

of the statistics generated by it. Judgment on matters such as these should be left to the Bureau in consultation with the users of census information.

### Prescribing the Topics

#### *Variations*

34. Section 12, Census and Statistics Act 1905, specifies the particulars to be sought in a census:

- (a) the name, sex, age, condition as to, and duration of, marriage, relation to head of the household, profession or occupation, religion and birthplace and (where the person was born abroad) length of residence in Australia and nationality of every person abiding in the dwelling during the night of the Census day;
- (b) the material of the dwelling and the number of rooms contained therein;
- (c) any other prescribed matters.

The prescription of matters under paragraph 12(c) is the source of most of the variations between one census and another. The 1976 census contained many more questions than its 1971 counterpart. But several of the questions about which complaint was made in 1976 had forerunners in the nineteenth century or earlier in this century. For example, a question on income was included in the 1933 census and questions on particular handicaps (e.g. blindness, deaf mutism) were common in the nineteenth and early twentieth centuries. Moreover, some of the questions subjected to particular criticism in 1976, such as that relating to the number of children born to a marriage, appeared in several earlier censuses. Table 4 sets out a selected number of the topics prescribed under paragraph 12(c) for the 1976 census and indicates whether they were also asked in earlier censuses.

#### *The Constitution*

35. Paragraph 12(c), Census and Statistics Act 1905, imposes no substantive limits on the questions which may be asked in a census. Provided the procedures are observed, there is no statutory limit on the information which may be sought. In 1976, doubts were expressed concerning the validity of paragraph 12(c).<sup>44</sup> Professor Colin Howard suggested that startling consequences might follow if this paragraph were to be held a valid exercise of power:

You could be fined, or indeed, if Parliament saw fit to make the law stricter, imprisoned for refusing to give full details of your sex life or how much toilet paper you use.<sup>45</sup>

The view taken by Professor Howard is that it is possible that the High Court might limit paragraph 51(xi), Constitution, to authorising collections for the purpose of ss. 24 and 105, Constitution, and matters ancillary thereto. Even if paragraph 51(xi) were to be given a wider interpretation, the High Court might well limit it to collections of information relevant to the exercise of other heads of Commonwealth power. On this basis, the power would be ancillary to other Commonwealth powers, not cumulative upon them. As the heads of Commonwealth power are extensive ones, this interpretation would permit the collection of information on a wide range of matters. Nonetheless, it would inhibit collections in areas of exclusive State power and would render paragraph 12(c) invalid. In the absence of judicial authority supporting the suggested interpretation and in view of the fact that the paragraph has operated without challenge for many years, the Commission's view is that paragraph 51(xi) may be taken to authorise the enactment of paragraph 12(c), Census and Statistics Act 1905. It seems unlikely

44. There has been no judicial scrutiny of this matter, nor was the head of power subject to debate when it was adopted in the 1897-98 Convention.

45. *Age*, 28 May 1976, 9.



**Table 4 1976 Census Topics: Comparisons with Earlier Censuses**

<i>Topic</i>	<i>1911</i>	<i>1921</i>	<i>1933</i>	<i>1947</i>	<i>1954</i>	<i>1961</i>	<i>1966</i>	<i>1971</i>	<i>1976</i>
Racial origin	X	X	X	X	X	X	X	X	X
Children born to existing marriage	X	X		X	X	X	X	X	X
Children born to previous (or all) marriage(s)	X	X						X	X
Attending school, university	X	X	X					X	X
Industry	X	X	X	X	X	X	X	X	X
Hours worked							X	X	X
Income			X						X
Whether handicapped in daily life	X*	X*	X*						X
Whether holiday taken last year									X
Child day care arrangements									X
Languages regularly used									X
Bathroom (and whether shared)				X	X	X	X	X	X
Laundry				X					X
Piped water				X					X
Sewerage				X				X	X
Gas and electricity				X	X	X	X	X	X
Cooking facilities (and whether shared)				X					X
Means of cooking mostly used				X					X
Nature of occupancy	X	X	X	X	X	X	X	X	X
Rent paid	X	X	X	X	X	X	X	X	X
Mortgage payments, and type of lender									X

\* denotes question asked in more limited areas (blindness and deaf mutism)

that the power would be read down in either of the ways suggested. The Commission prefers the view that the grant of power with respect to 'census and statistics' authorises legislation enabling the collection of any information which is presumably required for statistical purposes. One of the aims behind the grant of power may have been to facilitate collections relevant to ss. 24 and 105, Constitution. But another aim seems to have been to enable the collection of Australia-wide information on matters regarded as relevant for statistical inquiry.<sup>46</sup> The suggested limitation has not been read into the equivalent grant of power in the United States Constitution, nor does it find an echo in Quick and Garran, who, after defining the object of the census as being:

to supply statistical information respecting number and conditions of the population, and respecting the resources and developments of the country,

46. Above, para. 4.

reported that it was intended that the census and statistical departments of the States be taken over by the Federal Government as soon as enabling legislation had been passed.<sup>47</sup> In relation to the census, this intention was effectuated by the Census and Statistics Act 1905. If any constitutional problem does exist, it could presumably be resolved by agreement between the Commonwealth and the States, particularly since the States have themselves shown close interest in the need to obtain extensive data from the Australian census.

### *The Procedures*

36. Before recommending the additional topics to be prescribed under paragraph 12(c), Census and Statistics Act 1905, the Bureau considers a large number of requests from the users of statistical information. In selecting the topics, the Bureau looks to the demand for their inclusion and the relationship which each topic may have with other topics to be included in the census.<sup>48</sup> Technical feasibility is also a relevant consideration, both in selecting topics and in designing questions. Once the topics have been selected, the Bureau's recommendations are considered by the Government, which puts forward its proposals in the form of regulations which are tabled in both Houses of Parliament.<sup>49</sup> As in the case of other regulations, they are subject to disallowance by either House within 15 sitting days. In 1975, the Senate referred the regulations to the Standing Committee on Regulations and Ordinances. That Committee took evidence from senior officials of the Bureau. In due course, it approved the topics. The regulations were subsequently examined by the then recently established New South Wales Privacy Committee. It stated that, in its view, any privacy issues raised by the regulations were not major ones. It undertook to study public reaction and complaints with respect to the 1976 census in order to be able to comment on the topics and procedures for the 1981 census. The findings and comments of the New South Wales Privacy Committee have been available to this Commission.

### *Matters and Questions*

37. The Commission has already noted that paragraph 12(c), Census and Statistics Act 1905, imposes no substantive limits on the matters or topics on which questions may be asked in the census. Nonetheless, the requirement that the matters for a particular census be prescribed in regulations made under the Act ensures that there is an opportunity to scrutinise the decisions made by the Government and to assess whether justification exists for collecting the information to be sought. Since paragraph 12(c) speaks of 'matters', the regulations do not specify the exact questions which it is intended to ask in the census. In the past, practical reasons have been put forward for not tabling the questions themselves. The design of census questions is subject to field testing which, as happened in the case of the 1976 census, may not be complete when the regulations are drawn up and tabled in Parliament. Even so, the tabling of the matters or topics on which questions are to be asked rather than the questions themselves has, in the past, given rise to misunderstandings and to unfounded concerns relating to privacy.

### *Ambiguities*

38. One example of ambiguity is provided by the topic in the 1976 census regulations which read:

in the case of a female who is or has been married – the number of her children

47. *The Annotated Constitution of the Australian Commonwealth* (1901), 572.

48. *Preliminary Views on the Nature and Content of the Census* (1979).

49. In at least one case, those procedures have resulted in removal of topics from the census. These concerned the coverage of wage rates and currency in circulation proposed for the 1911 Census. See Horner, 'The Evolution of the Census', Address to the Economic Society of Australia and New Zealand (N.S.W. Branch), 23 April 1954, 11.

This might have been taken to refer to children born within marriage. It might also have been taken to refer to children born outside marriage, presumably a matter of much greater sensitivity. The questions which were ultimately asked on this topic excluded all reference to extra-marital children. Another ambiguity in the regulations was noted during the inquiry of the Senate Standing Committee on Regulations and Ordinances in 1975. Senator Wright drew attention to the lack of specificity in the topic 'sources of mortgage'. The Bureau's intention was to ask a question concerned with the type of organisation holding a particular mortgage. The topic might equally have covered a more intrusive question requiring the name and address of the mortgagee. Faced with difficulties in assessing the topics without having before him the specific questions which were intended to be asked, Senator Wright asked:

Why would it not be more satisfactory to the legislature, the department and the public for the form of the questions to be prescribed? Do you use only one form for a census? If so, why should not the form and the questions be prescribed in a schedule to the regulations?<sup>50</sup>

### *Pre-clearance of Topics*

39. Where personal information is systematically collected on a compulsory basis, there are strong arguments in favour of some form of pre-clearance of the collection and of the information to be sought to enable them to be tested against established criteria for the protection of privacy. At the present time, a form of pre-clearance of the census is provided by Parliamentary scrutiny of the census regulations. It is the Commission's view that this procedure should be followed in future censuses. But the point made by Senator Wright in 1975 is a telling one. Pre-clearance of the general topics on which questions may be asked is inadequate. Whether a particular question will be objectionable on the ground of privacy cannot be determined merely by examining the general topic on which that question is to be asked. It is said that the field testing of census questions may not be complete when the regulations are laid before Parliament. Cases may even occur where a delay in tabling until final settling of questions would prejudice a census. If the regulations, or part of them, were disallowed by one of the Houses of Parliament, there might not be sufficient time to redesign the forms, redraw the regulations and retable them before Parliament. But the administrative difficulties associated with tabling the questions can easily be exaggerated. In the United Kingdom, the Government was able to publish in 1978 a White Paper setting out not only the topics for the 1981 census, but also detailed explanations concerning the precise information to be sought under each heading.<sup>51</sup> When regulations are drafted under the Census Act 1920 (U.K.) they incorporate the precise questions which are to be asked in the census. Similar openness is displayed in the United States where both the forms and explanations of topics and questions are available well in advance of census day.<sup>52</sup>

### *Pre-clearance of Questions*

40. Only minor changes are made to the census form in Australia after the topics have been approved. Save for these changes, the questions to be asked under each topic are practically settled when the regulations are tabled. The Commission recommends that the tabling of the

50. Senate Standing Committee on Regulations and Ordinances, *Transcript of Evidence on Census Regulations*, 17 April 1975, 17-18.

51. *1981 Census of Population*, Cmnd. 7146 (1978), 5-9.

52. Pre-clearance of either topics or questions is not required by law in the United States, in Canada or New Zealand. There has been recent pressure for a change in this regard in the United States. See Barabba, 'The Right of Privacy and the Need to Understand', *Symposium on Personal Integrity and Data Protection Research* (Stockholm, 1976), 20. Extensive hearings were held before the 1970 census by the Subcommittee on Census and Population of the House Committee on Post Office and Civil Service.

regulations should be delayed until the questions have been finally determined. The form should be available to Members of Parliament and to the public when the regulations are laid before both Houses of Parliament. The Bureau has now indicated that it intends to follow this procedure for the 1981 census. Paragraph 12(c), Census and Statistics Act 1905, should be amended to require that 'particulars' be prescribed in the regulations, as in the United Kingdom, rather than simply 'matters', as under the present paragraph. The Commission would not expect Parliament to reject particular wordings without first taking the advice of the Bureau. Members of Parliament should have available to them advice on the privacy implications of the projected census questions from official bodies constituted for the purpose of protecting general privacy interests.<sup>53</sup>

### **Personal Collection**

#### **The 1976 Procedures**

41. The procedures followed in 1976 were in accordance with the Census and Statistics Act 1905 and regulations made under that Act. Census forms were left at every dwelling in the Commonwealth.<sup>54</sup> The forms were delivered within seven days of enumeration day to the person in charge of the dwelling or to a person apparently in charge of, or residing in, the dwelling.<sup>55</sup> If no one was at home, the form was left in a letter box, under a door or in some other conspicuous place. The primary obligation to complete the census form fell on the occupier. The persons enumerated by him were those who actually spent census night in the dwelling. The collectors collected the census forms as soon as possible after census day. They checked whether the forms were completed and sought answers for incomplete forms. If requested to do so, they were also required to assist people to fill in the forms.<sup>56</sup> The collectors delivered completed forms to group leaders of census subdivisions who performed certain quality control checks on the work of each census collector. All census forms and collectors' record books were packaged, sealed and transported from each group leader's address to processing centre offices in each capital city.

#### **Occupier, Householder, Household Head**

42. The term 'occupier', as applied to a private dwelling, is not defined in the Act. In 1976, the form itself was entitled 'householder's schedule' and specifically required the 'householder' to certify that the schedule was correctly filled in. Inside the form, on the other hand, prominence was given to the 'household head'. Where there was such a person, he or she was to be entered as 'person 1' for that dwelling and relationships were to be stated by reference to him or her. In designing the form for the 1981 census, care should be taken to avoid inconsistencies between the Act and the form. The fact that the Act places the obligation on the occupier gives rise to a theoretical problem. There may be more than one occupier of a single dwelling. Moreover, the occupier may be absent from the dwelling on the night of census day. The same objections would apply if the duty were to be imposed on the householder. The requirement has not given rise to difficulties in practice. The obligation should therefore continue to be placed on the occupier of a dwelling.

53. Whether such a body should be established at a Commonwealth level is a matter which cannot properly be resolved in the limited context of the census. It is left for consideration in our subsequent report on the general aspects of information privacy.

54. Census and Statistics Act 1905, s. 10.

55. Census Regulations 1975, Reg. 16.

56. Census and Statistics Act 1905, s. 13. That section also imposes on the collector a duty to satisfy himself by inquiry that forms are correctly filled in. The Bureau does not ask its collectors to check for accuracy. The duty has been deleted from the redrafted s. 13 in Appendix A.

## Personal Slips

43. The methods of collection of census information should always be such as to minimise the danger of individuals being required to disclose information to persons whom they know and to whom they would prefer not to reveal personal details. The procedures followed in 1976 risked contravention of this principle in two main ways. The first concerned the relationship between the occupier and other persons in the relevant household. Given the detailed personal information sought in a census, an individual, whether a member of the family or a guest in the dwelling, might not wish to provide certain information (e.g. that on income) to the occupier. In 1976, his interest in that regard was recognised by the 'personal slip' system.<sup>57</sup> Under that system, a person other than the occupier was entitled to request from the census collector a personal slip or form which, when completed by him, was sealed in an envelope and handed to the occupier.<sup>58</sup> The envelope was not to be opened by the occupier, but was to be handed by him to the collector for routine checking. With procedures of this type, the privacy of individual members of a household among themselves may be protected, provided that each such member is aware of his right to request and complete a personal form rather than provide information to the occupier. It is most unlikely that the existence of the personal slip system was brought to the attention of all adult persons<sup>59</sup> in 1976. Although the availability of a personal slip was mentioned on the census form, that form was in the control of the occupier. More general provision of information on the subject was limited to statements made by the Bureau in response to concerns expressed by members of the public and publicised by the media. If the personal slip system is to achieve its purpose, the individual's right to use slips should be drawn to his attention at the time he is asked to provide information to the occupier. The latter should himself be requested to inform each adult member of the household of the existence of the system at the time he asks them for information. He should also obtain a form for any member of the household who requests one or is, in his view, likely to do so. Collectors should be required to assist, on request, in the completion of personal slips.

## Special Envelopes

44. The principle stated in the preceding paragraph was put at risk in another way in 1976. Either the occupier himself or a member of the household may object to the census form being handed over to a collector charged with the duty of checking whether or not it has been filled out. Such an objection becomes unanswerable when, as sometimes happens, the collector is a neighbour of, or otherwise known to, a subject of the form in question. The Bureau has developed a 'special envelope' system to meet this type of objection. Any person who does not wish to have information about himself examined by the collector may ask for a special envelope. Once sealed within the envelope, the collector may not examine its contents but must leave to the group leader checking for completeness. The special envelope system bypasses the collector altogether. If such a system is to achieve its stated aim, its existence must be drawn to the attention of each adult person from whom personal information is sought in the census. Yet no mention of the system was contained in the 1976 census form and little was done to inform members of the public about it. The Bureau intends to make known the availability of special envelopes in the 1981 census.<sup>60</sup> From the viewpoint of privacy, it is important that proper efforts be made to ensure that members of the public are aware of the system. It should be briefly

57. Census Regulations 1975, Reg. 17. In New Zealand, personal information is, as a matter of course, provided separately by each individual.

58. In the case of public dwellings (e.g. hotels), individuals were automatically provided with personal slips.

59. The regulations spoke of 'a person'. Some limitation is clearly necessary, the most obvious being that stated in the text.

60. A.B.S., *Preliminary Views on the Nature and Content of the Census* (1979), 5.

described in the census form or in an accompanying notice, and the occupier should be requested to draw it to the attention of each adult member of the household from whom he is to collect information, including any member of the household who has requested a personal slip.

### Recruitment of Collectors

45. To minimise the risk that collectors may be known to the subjects of the census, those officers should, as far as possible, be recruited from districts other than those in which they are to fulfil their census functions. This is already the policy of the Bureau, but the size of the undertaking, involving the appointment of some 25 000 collectors, involves departure from that policy in individual cases. In 1971, Nominees of the Royal Statistical Society were appointed to advise on the United Kingdom census security arrangements. They proposed that census collectors should, as a general rule, operate at least 5 miles away from their home addresses and their places of work.<sup>61</sup> Their proposal was rejected by the Government, largely for reasons of cost and because of difficulties in recruitment of collectors under the proposed rule.<sup>62</sup> While those factors may be equally relevant in Australia, the Bureau should increase its efforts to appoint collectors to census subdivisions outside their immediate neighbourhoods. The Commission received several complaints about persons being confronted by collectors whom they knew and having their forms checked by them. There is no doubt that this was deeply resented by some people. A collector who recognises the occupier of a dwelling should provide him with a special envelope as a matter of course.

### Alternative Return Routes

46. The collection procedures used in 1976 also risked unwarranted disclosure to third parties. In cases where no one was at home when the collection call was made, the collector was instructed to leave a notice in the following terms:

Dear Householder,

I have been unsuccessful in finding you at home to collect your Census Schedule. I shall call again on ..... at ..... If you will again not be at home, would you kindly leave a note to let me know when I can obtain the form from you.

Alternatively, if you have no objections, you could leave the Schedule—

- (i) in your meter box ☐
- (ii) in your letter box ☐
- (iii) ..... ☐

My name is:

My phone no. is:

Thank you,  
Census Collector

This procedure was the cause of several complaints in 1976. Any system involving the personal collection of census forms must allow for departure from that procedure in the event of absence at the time of the collector's calls. But no departure should be permitted which unnecessarily risks disclosure of census information to third parties. Nor should it be such as to indicate that a particular dwelling is unoccupied at a certain time, since this may increase the risk of crime.<sup>63</sup> If the personal collection system is ineffective in a particular case, the occupier should be required to mail the form to the group leader or to the chief census officer for the State in which he lives.

61. *Security of the Census of Population*, Cmnd. 5365 (1973), 13.

62. *id.*, 20. See also Privacy Committee, *Submission*, B.P.32, 2.1.

63. E. Brewin, *Public Hearings* (Perth), 39 f.

## Collection by Mail

### North American Censuses

47. In the preceding paragraphs the Commission has discussed three of the privacy problems to which the collector system adopted in Australia gives rise. It has proposed changes to the procedures which were adopted in 1976. In each case, its proposals are designed to make proper allowance for special cases while leaving the basic collector system intact. That system is not unique to Australia. It is also used in New Zealand and in the United Kingdom. In the United States, however, the mail was used for both the delivery and the return of the majority of census forms in the 1970 census. Extended use is expected to be made of it in the 1980 census.<sup>64</sup> The mail is also used for the return of census forms in Canada. The question arises whether a mail census should be introduced into this country. Use of the mail would avoid those privacy problems which arise from the use of collectors. If employed for the delivery of forms as well as their return, the mail would require the establishment of a universal directory system, the creation of which might itself be seen as a serious threat to privacy.<sup>65</sup> A mail-back census would be free from that objection, but might be resisted on other grounds not based on privacy. These include the relative effectiveness and cost of a mail-back census.

### Effectiveness of a Mail-back Census

48. Two points must be made under this heading. First, collectors provide valuable assistance to some persons in the completion of their forms. Omissions are also rectified on the spot.<sup>66</sup> A system might be devised under which those who were unable to complete forms unaided might be helped to do so, while those who required no such assistance could avail themselves of mailing procedures. The problem of omissions would remain. Second, assuming adequate follow-up, there is no reason why a mail-back census should be any less effective than one conducted under the present system. The United States Bureau of the Census believes that the information which it obtains by mail is more reliable than that obtained in personal interviews by collectors.<sup>67</sup> It has determined through research and testing that 'self-enumeration, which is a natural result of the mail technique, reduces enumerator variance and bias in reporting'.<sup>68</sup> As the Australian collector system already relies on self-enumeration, the United States improvement in effectiveness resulting from the adoption of mail techniques might not be duplicated here. The Bureau has given another reason for doubting the validity of the United States analogy. It claims that its own collector system is more reliable than the one which is now being replaced by the mail in the United States. It asserts that American collectors were less well trained for their particular tasks than are the Bureau's, partly because there were so many of them (250 000 as against 25 000) and partly because, in many cases, political patronage governed their appointment.<sup>69</sup> The Commission is unable to make an assessment of the Bureau's assertions on these matters.

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64. Information supplied by the United States Bureau of the Census.

65. It might also add significantly to the costs of the census. Appropriate directories are more readily available in the United States than they are in Australia.

66. Census Tests in the United Kingdom revealed that in 3% of cases, collectors helped to fill in the whole form. In 21% of cases they gave assistance with part of the form. O.P.C.S., *Submission*, 20 June 1979, 4.

67. United States Bureau of the Census, 1970 Census of Population and Housing, *Results and Analysis of the Experimental Mail Extension Test* (1973), 8-9.

68. *Submission*, 6 July 1979, 2.

69. *Submission*, 28 June 1979, 1.

## Costs of a Mail-back Census

### *Relevant Factors*

49. Collection costs other than postage would be incurred if a mail-back census were to be conducted. These would include the costs of purchasing roughly five million envelopes, of printing them with appropriate Bureau addresses and of opening the envelopes on their return to check whether the forms had been filled in. In the case of those persons who need assistance to complete the form or otherwise require follow-up, additional costs would be incurred. It is impossible to predict with accuracy the proportion of households which would require this type of follow-up. Some relevant information was obtained by the Bureau in tests which suggested that a census in which envelopes were given to all occupiers would result in the return of blank forms in 3% of cases. The Bureau believes that the figure would be many times higher if the envelopes were to be mailed rather than handed to a collector. Given appropriate safeguards, much of the follow-up could be conducted by telephone, as is done in the United States and Canada. As telephones are not as widely available in Australia<sup>70</sup>, the follow-up costs would obviously be higher per capita in this country than they are in North America.

### *Comparative Costs*

50. In the United States, it was originally hoped that there would be significant cost savings in a mail-out and mail-back census. This hope appears not to have been fulfilled.<sup>71</sup> Nonetheless, an assessment of comparative costs in a test conducted by the United States Bureau of the Census after the 1970 census concluded that a mail census was no more expensive than one conducted on an interviewing collector system.<sup>72</sup> Whether the same would be true of a mail-back census in Australia is not clear. The Bureau assisted the Commission by producing for it an estimate of the costs which would have been incurred if a mail-back census had been conducted in 1976. The following is an extract from that assessment:

In 1970 (US) the mail-back system was used for 62% of forms only, with enumerators calling for the remaining 38%. About 14% of the short forms required follow-up and 56% of the long forms did also . . . That is, in the U.S.A. experience, enumerators were used for 38% of forms, with follow-up required for a further 14%. Mail only system was thus used for less than 50% of forms . . . If a mail-back system only was to be considered, with experience similar to the U.S. coverage, expected costs would be of the order of:

	<i>Collector Delivery &amp; Mail-back</i>	<i>Actual Cost of the 1976 Census</i>
Training of collectors and delivery of forms	3.2	
Postage (return envelopes)	1.3	
Envelopes	0.15	
Non-mail areas of 38%	3.0	
Follow-up of 25% (of 62%)	1.0	
<b>Total</b>	<b>\$8.65m</b>	<b>\$7.7m<sup>73</sup></b>

70. Roughly 65% of private dwellings are connected to the telephone in Australia.

71. Comptroller-General of the United States, Letter to Chairman, Subcommittee on Census and Population, House Committee on Post Office and Civil Service, 9 November 1978; Subcommittee on Census and Population of the House Committee on Post Office and Civil Service, *Hearings on H.R.8871* (1977), 1.

72. United States Bureau of the Census, 1970 Census of Population and Housing, *Results and Analysis of the Experimental Mail Extension Test* (1973), 10 f., 22.

73. A.B.S., *Submissions*, 31 May 1979, Attachment 2; 24 July 1979.



The Bureau has rightly emphasised the preliminary nature of its assessment. The 1976 figure itself requires some modification, since the Bureau is committed to publicising the availability of special envelopes in future censuses. This will presumably lead to an increase in their use and in the costs of follow-up in respect of incomplete forms.<sup>74</sup> Moreover, the figures provided by the Bureau are necessarily based on certain assumptions, including the assumption that the United States experience would be duplicated in Australia, which are themselves open to question.

## Mail Tests in the United Kingdom

### *Voluntary Test Census*

51. Although the Bureau has not itself undertaken an investigation of the use of the mail for the return of census forms, the Office of Population Censuses and Surveys in the United Kingdom (O.P.C.S.) has made a number of inquiries on this subject. In its 1968 voluntary test census, O.P.C.S. tried postal collection in a number of districts. Of the 12 200 householders who accepted a form, 61% returned them by post. Of those returned, 49% were incomplete. O.P.C.S. commented:

The 61 per cent return by mail was encouragingly high in view of the voluntary nature of the test and the lack of publicity reminding people to post (a feature of the North American systems). The deterrent to further testing of mail-back procedures was the 49 per cent of forms not fully completed, though it has to be said that this result was due partly to a controversial question on income. Moreover although enumerators (collectors) were encouraged to use the telephone to deal with queries and missing items of information rather than visit, only 1.5 per cent of cases were dealt with in this way.<sup>75</sup>

A more recent test of mail return of forms was conducted by O.P.C.S. in London in April 1979. Of 1008 forms received by post, only 31% were properly completed.

### *Rejection of the Mail*

52. Having conducted these tests and having examined the use of mail collection procedures in Canada on several occasions, O.P.C.S. has concluded that collection by post is inadvisable as a general method in the present circumstances. It gives the following reasons for this conclusion:

- (a) Our census form is too complicated to be completed unaided by a significant proportion of householders. A great many householders welcome the presence, and help, of a friendly collector.
- (b) We aim to get a very high level of response to all questions and are less ready than a number of other countries to accept omissions.
- (c) Our level of telephone possession (about 60 per cent of households have it) would entail a sufficiently high number of visits (to deal with queries or non-receipt of the form) to approach, in cost, the effort needed for collection by hand. This cost would be in addition to the costs of postal collection.

The submission emphasised that the conclusions on mail-back were based mainly on factors of cost and quality of response:

Our conclusions on mail-back have been based mainly on factors of cost and quality of response. Objections from members of the public to the part played in the census process by collectors, in particular worries about confidentiality, have not been sufficiently widespread to justify making a change of method which would increase costs and lower quality.<sup>76</sup>

74. See e.g., K. M. Archer, former Statistician, *Public Hearings* (Canberra), 2775.

75. O.P.C.S., *Submission*, 20 June 1979, 3. Voluntary postal surveys in Australia have produced much lower response rates than ones conducted in person: CSIRO, Division of Building Research, *Submission*, 20 June 1979; Ministry of Transport (Vic.), *Submission*, 4 July 1979.

76. O.P.C.S., *Submission*, 20 June 1979, 4-5.

## Conclusion

53. The use of the mail for the return of census forms would serve valid privacy interests. These have to be balanced against the possibility of increased costs and reduced effectiveness of a mail census. The questions of costs and effectiveness are interrelated. If the costs were to be higher, there would be pressures to reduce the follow-up of incomplete forms. A significant decrease in the reliability of census statistics would be too high a price to pay for adopting a new procedure in order to reduce such privacy concerns as there are with the present collector system. But the evidence on the costs and effectiveness of a mail-back census is inconclusive. After investigating some aspects of these matters, the O.P.C.S. has concluded that it would not be advisable to introduce a mail-back census in the United Kingdom. Neither that conclusion nor contrary ones reached in North America can be simply transferred to Australian conditions. As the O.P.C.S. itself pointed out, one of the reasons for the divergence in views between the United Kingdom and Canada lies in a difference of judgment concerning the acceptable level of non-response to census questions.<sup>77</sup> What is required is a full and impartial investigation of the costs and effectiveness of mail procedures in North America and of the likely costs and effectiveness of a mail-back census in Australia. Particular attention should be paid to questions relating to the necessity for follow-up on mailed returns and to the extent to which follow-up could be conducted by telephone. The investigation itself should be conducted by an appropriate Parliamentary Committee. That Committee should be assisted by available expertise, including that of the Bureau. The Bureau should be responsible for conducting any field tests which might be judged necessary. The detailed results of the investigation should be made public.<sup>78</sup>

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77. *id.*, 5.

78. The Commission recognises that it would not be possible for the results of that investigation to be available in time for implementation in the 1981 census.

### 3. Release of Census Information

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#### **Release to the Subject**

##### **The Principle of Access**

54. The Commission endorses the basic principle that an individual should normally be allowed to have access to, and to challenge, a record of personal information about him. This principle is based on two main considerations. First, a personal record affects the way in which an individual is perceived by others. It creates the image which the individual has for the record keeper and for other persons who use the record. Secondly, access provides a unique means for monitoring the record keeper's compliance with the standards applicable to the collection and use of information. It provides an opportunity for correcting errors affecting the individual's interest. The principle of access is a central aspect of privacy legislation and proposals in both Europe and North America. But it does not follow from this principle that an individual should have a right of access to census information about him. In the first place, there is a practical difficulty. At present, census information is only held in a personally identifiable form for a limited time. Once deidentified information has been transferred to magnetic tape, the census forms and all records of names and addresses are destroyed. Given that practice, access would only be possible for a limited period after census day. Secondly, there is an issue of principle. Access is usually claimed in relation to personal information held by the government or by commercial or other organisations for the purpose of making administrative decisions directly affecting an individual's rights, benefits or privileges. In such cases, the individual has a clear interest in the accuracy and relevance of personal information held about him. Personal information collected in a census, on the other hand, is not used for administrative purposes of this type. Its sole 'administrative' use is by officials of the Bureau in connection with the conduct of the census itself, mainly in following up incomplete responses and in checking the information obtained in the census against subsequent responses in the post-enumeration sample survey. In all other respects, the census is strictly a collection for statistical purposes.

##### **Access to Statistical Records**

55. The claim to have access to information which, like census information, is collected for statistical purposes is much weaker than the claim to have access to information collected for administrative purposes. In 1977, the United Kingdom Committee on Data Protection was established to inquire into certain aspects of privacy protection. In its report, the Committee took the view that there is no need to grant rights of access to information of the former type:

If information is to be used only for statistical purposes, and the safeguards to prevent identification are sufficient, we see no need for data subjects to be given access. Great efforts should, of course, be devoted by those responsible to ensuring the accuracy of statistical data, but we accept that it is not always essential, and often not cost-effective for statistical purposes, to attempt to ensure absolute accuracy. In consequence, we see no need for individuals to have a general right to correct errors in data held about them for statistical purposes alone. It is difficult to see how an individual can be harmed by the use of inaccurate data about him in a statistical analysis in which he cannot be identified.<sup>1</sup>

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1. Committee on Data Protection, *Report*, Cmnd. 7341 (1978), 234.

It must be remembered, however, that the census is not a direct collection of information from each census subject. The occupier is required to provide information not only about himself but also about other persons who spend census night in that household. Even if an individual knows that the information supplied by the occupier will not be used to his detriment, he may wish to see and, if necessary, to challenge and correct the information which has been recorded about him. Moreover, census information is not always used solely for statistical purposes. In some countries other than Australia, it is used subsequently for genealogical and historical research which may ultimately involve disclosure of information provided in a census. If census forms were to be retained for these purposes in Australia, the argument in favour of access by an individual to census information about him would be very much stronger. The census collection would still be used for purposes other than administrative ones. But an individual would have a clear interest in having access to, and in being able to challenge, information about him which might subsequently affect the perceptions that others, including his descendants, might have of him.

### A Limited Proposal

56. In other countries, access is not always denied in respect of information collected for statistical purposes. Under some American State laws, rights of access extend to information collected for statistical purposes as well as that collected for administrative ones.<sup>2</sup> Under the United States Privacy Act 1974, on the other hand, the head of a federal agency may exempt records maintained solely for statistical purposes from the general requirement of access.<sup>3</sup> In Canada, an individual has no right of access to personal information held for statistical purposes, but only to information held for administrative ones.<sup>4</sup> Even so, access by the subject to census information is allowed in each country where good reason exists. Since 1935, some 10 million individuals have obtained access to United States census information. In some cases, access has been allowed to assist in proof of age, citizenship and other characteristics relevant to entitlement to claims and benefits; in others, to enable relatives to obtain information about family members who have consented or are deceased.<sup>5</sup> Since Australian records of births, deaths and marriages do not suffer from the defects which exist in such records in some parts of North America, it is not likely that many claims would be made on the former basis in this country. The Commission believes that, while the present practice of early destruction of Australian census forms is maintained<sup>6</sup>, a general right of access by the subject to census information need not be established.<sup>7</sup> Nonetheless, while the information remains in identifiable form, the Statistician should be required to grant access to an individual who is able to demonstrate that he has a reasonable ground (e.g. to establish age or relationship in making a legal claim) for seeking access to census information and that his need for that information could not reasonably be met in other ways. Mere curiosity or a desire to check the accuracy of information which is to be used solely for statistical purposes should not constitute a reasonable ground for this purpose. In a subsequent section of this report, a provisional view is stated that

2. See, e.g., Information Practices Act 1975 (Ark.), s. 6(e); Fair Information Practices Act 1975 (Mass.), s. 2(i); Personal Data Act 1976 (Conn.), s. 4(g); cf. Privacy Protection Act 1976 (Virg.), s. 2:1-379; Information Practices Act 1977 (Cal.), Article 2.

3. 5 USC, s. 552a(k) (4).

4. Canadian Human Rights Act 1977, s. 52(1) (a).

5. Subcommittee on Census and Population of the House Committee on Post Office and Civil Service, *Hearings on H.R. 10686* (1975), 31. In Canada, 25 000 requests are made each year for the former purpose: information supplied by Statistics Canada.

6. This matter is discussed below, para. 66 f.

7. The right of access contained in the Freedom of Information Bill 1978 (Cwlth) extends to statistical records. However, Clause 5 permits exemption by regulation of documents relating to specified functions of a prescribed agency. Such a provision might well be used to exempt census records.

census information should be preserved in an identifiable form for later research purposes. If that recommendation is adopted, a general right should be granted to census subjects to have access to, and to challenge, census information after it has been transferred to Archives. There should be a system of administrative review of decisions made with respect to such rights of access as may eventually be established. The Commission leaves to its final report on information privacy the question of the appropriate body to make this type of review.

## **Release to Third Parties**

### **Confidentiality**

57. The Commission accepts the basic principle that personal information which has been collected from the subject of a record should not normally be disclosed without his authorisation. This principle is based mainly on the individual's reasonable expectation of confidentiality. There can be no doubt that members of the public expect confidentiality to be maintained in respect of census information. But the confidentiality of that information is not in issue if, at the time of the collection or subsequently, the individual authorises the relevant disclosure. Moreover, since confidentiality is not an absolute value, the principle of non-disclosure may be overridden, even in respect of census information, when greater social values are at stake or when the disclosure is made subject to safeguards which adequately protect the individual from being identified as the subject of particular information. These exceptions fall under three main heads. Disclosure without the authorisation of the individual affected is normally proper:

- when it is required by law (e.g. the mandatory reporting of infectious disease) or by legal process (e.g. in response to a subpoena);
- if it is made for overriding social reasons (e.g. to protect the individual affected from serious harm or to prevent the commission of a serious crime);
- when, given appropriate safeguards, it is made for audit, statistical, research or archival purposes.

### **Legal Provisions**

58. The guarantee of confidentiality which is given in respect of each census is reinforced by s. 24, Census and Statistics Act 1905, by which not only the Statistician and his officers, but also the occupier of a dwelling are prohibited from disclosing the contents of a return. Every officer who discharges duties in respect of the census is required to sign an undertaking of fidelity and secrecy. That undertaking includes a promise not to divulge the contents of any form or any information furnished in relation to the census. Those census officials who are Commonwealth officers are also subject to s. 70, Crimes Act 1914, which forbids disclosure of any fact or document which comes to an officer's knowledge or into his possession by virtue of his office and which it is his duty not to disclose. The Commission is informed that neither of these provisions has ever been used to prosecute an individual for disclosure of census information.<sup>8</sup> The Bureau appears to have an unblemished record with respect to the maintenance of confidentiality. No information given to the Commission during its inquiry suggests otherwise.

### **Legislative Defects**

59. While the provisions noted in the preceding paragraph recognise and enforce the principle of confidentiality, they do not do so in an entirely satisfactory manner. The existence of dual

8. Prosecutions are apparently rare elsewhere. In the United Kingdom, one prosecution is recorded in respect of the 1971 Census. See *Security of the Census of Population*, Cmnd. 5365 (1973), 12.

provisions is unnecessary. The inconsistencies to which it gives rise might be avoided if s. 24, Census and Statistics Act 1905, were amended to apply to disclosure of census information to the exclusion of s. 70, Crimes Act 1914. The Crimes Act is an inappropriate vehicle for controlling the many census officials who are engaged for a short period at census time and who are not members of the Australian Public Service. But s. 24, Census and Statistics Act 1905, is itself seriously defective. Given the temporary nature of the employment of census collectors, in particular, the lack of a definition in the Act of 'officer' is a matter of some concern. That term should be defined to include those persons who are appointed by, or under delegation from, the Statistician and who have any powers or duties in respect of the taking of the census or the compilation of census statistics. Section 24 is also defective in that it does not apply to persons who have ceased to be officers of the Bureau.<sup>9</sup> As the vast majority of collectors are recruited on a temporary basis, the scope of s. 24 should be extended to ensure that the obligation to maintain confidentiality is not limited to their tenure of office. Moreover, a penalty of \$100 for a breach of s. 24 hardly seems appropriate either as a deterrent or as an affirmation of the importance of the principle of confidentiality as applied to census information. The penalty should be increased.

#### *Other Anomalies*

60. In one respect, the confidentiality requirement in the Census and Statistics Act 1905 imposes unnecessary restrictions on the disclosure of identified census information. The duty of non-disclosure imposed by the fidelity and secrecy undertaking and by the prohibition contained in the Act is framed in absolute terms. Apparently secrecy would have to be maintained even if the subject of the information were to request or consent to its release. In such a case, the principle of confidentiality is simply not at risk. The cases in which a subject of the information requested or consented to its release might be extremely rare, particularly while the present practice of destroying identified census information is maintained. Nonetheless, the Census and Statistics Act 1905 should be amended to allow disclosure to be made with the authorisation of the person to whom the information relates. This liberty should be available to the Statistician, but not to any of his officers without his consent. It should also be available to the person in a household who recorded the relevant information about another member of that household in accordance with the obligation laid down in s. 11, Census and Statistics Act 1905.

### Release of Unidentified Census Information

#### *Sample Information*

61. Section 24 also prevents the Bureau from releasing to users of census information samples of processed census records from which personal identifiers have been removed. Releases of this type of information are common in some other countries. Their purpose is to enable users of census data to generate valuable statistical information which the responsible body might itself be unable to produce for them. Costs and priorities limit the cross-tabulations which the Bureau can produce. Moreover, the Bureau cannot be aware of all cross-tabulations which users may require, particularly as the need for certain of them may only appear during the course of the use of official statistics generated from the census.<sup>10</sup> The Bureau and many users of census statistics have expressed support for releases of information from which personal identifiers have been removed. No submissions have argued against these releases. The Commission recommends that the Act specifically authorise them, subject to the fulfilment of certain conditions set out below.

9. cf. s. 70, Crimes Act 1914, applying both to present and past Commonwealth employees.

10. T. R. L. Thoresen, Australian Road Research Board, *Public Hearings* (Melbourne), 2699a.

### Reidentification

62. Once names and addresses have been removed and certain other specific information has been recorded in a more general form<sup>11</sup>, the danger of disclosure of personal information in breach of the guaranteed confidence is only slight. The magnetic tape on which census information is stored contains the number of each form, identifying it as falling within a particular collection district. Collection districts vary in size, but average 150–200 households. As a census form contains a great deal of information concerning each member of a household, it may be possible in certain circumstances to cross-tabulate that data with other information to reidentify the persons whose names and addresses have been deleted from the record. A hypothetical example was given at the public hearings in Adelaide:

Suppose a respondent answered that he was 44 years of age, he was born in Yugoslavia and also that his mother was divorced . . . If we knew a particular person lived in that collector's district, who was 44 years of age and he was Yugoslavian, then if that was the only record in that geographic area of that 44 year old Yugoslavian, we would be able to infer that his mother was divorced.<sup>12</sup>

### Safeguards

63. In providing users with samples of deidentified census information, care must be taken to ensure the security of that information. Although the risk of reidentification is only slight, the Statistician should satisfy himself that all reasonable steps have been taken to eliminate that risk. Moreover, the recipient should be required to agree in advance and on a prescribed form:

- to use the data only for statistical purposes;
- not to attempt to identify any specific census subject;
- not to release the data to any other party;
- not to release tabulations or other information that would make it possible for others to identify specific individuals;
- to return the data when the statistical purposes have been achieved.<sup>13</sup>

It should be an offence to break any of these conditions. With the advice of the Australian Statistics Advisory Council, the Statistician should be required to draw up guidelines concerning the circumstances in which the Bureau should provide samples of census data, paying particular attention to the degree of specificity required by the users of such data, and the dangers of reidentification through manipulation of those data or correlation with other data available to the recipient.

## Release of Identified Census Information: Legal Process

### The Problem

64. In its discussion paper, the Commission referred to the question of the extent to which census information should be disclosed to courts, Royal Commissions and administrative bodies with powers to require information to be provided to them. It pointed out that, while

11. e.g., instead of the name of a particular educational institution, the category of that institution may be recorded.

12. W. Sulda, *Public Hearings* (Adelaide), 26. Reidentification is sometimes possible even from statistical data. See Barabba, 'The Right of Privacy and the Need to Understand', *Symposium on Personal Integrity and Data Protection Research* (Stockholm 1976), 20. Miller, *The Assault on Privacy* (1971), 136, citing Hirsch, 'The Punchcard Snoopers', *The Nation*, 16 October 1967, 369, alleges that such a case occurred in 1963 when the United States Bureau of the Census supplied the American Medical Association with a 'statistical' list of doctors residing in Illinois. However, Dalenius, 'Towards a methodology for statistical disclosure control', [1977] *Sartryck ur Statistik Tidskrift* 5, n. 5, reports that investigations by statisticians have been unable to confirm the allegation.

13. cf. American Statistical Association, 'Report of Ad Hoc Committee on Privacy and Confidentiality', (1977) 31 *The American Statistician* 59, 75. See also Committee on Data Protection, *Report*, Cmnd. 7341 (1978), 234 f.; Dalenius, 'Towards a methodology for statistical disclosure control', [1977] *Sartryck ur Statistik Tidskrift* 5.

disclosure by the Statistician to his legal advisers and to a court in a prosecution for an offence under the Census and Statistics Act 1905 was unexceptionable, different principles applied in respect of the use of census information for legal and related purposes not themselves directly connected with the conduct of the census. It is not clear whether, under the present law, census forms are subject to subpoena by a court or by another body with equivalent powers to compel the production of documents. The present practice of destroying identified census information as soon as it has been processed decreases the chances of such an issue arising in practice. The information supplied in a census form may reveal infringements against taxation and social security laws, particularly if questions are asked about relationships and income. If it were possible for that information to be made available to courts and to other bodies with power to make decisions adverse to the interests of a census subject, two main objections would arise. First, privacy interests suggest that members of the public should be warned in advance of this possibility. Such a warning might well affect the validity of the information supplied by some persons in response to certain questions. Secondly, it might be thought wrong in principle to require that, in answering census questions, a person incriminate himself in respect of offences committed by him. There is, therefore, a clear public interest against disclosure of census information in response to subpoena and similar procedures. But there is an equally clear public interest in the due administration of justice which would favour disclosure in response to those requirements.

#### *Reserving the Commission's Position*

65. While there has been no judicial discussion in Australia of the power of courts and similar bodies to order the production of census information, the High Court has recently reviewed the power of courts to order the production of documents of State, notwithstanding claims to Crown privilege.<sup>14</sup> The court rejected the view that there was a class of documents, including Cabinet Papers, which were absolutely protected from production. It was the duty and function of the court to determine in a particular case whether the need for the due administration of justice outweighed the alleged injury to the public interest. If the due administration of justice may require the production of Cabinet Papers and other documents of State, why may it not also require the production of census information? One answer may lie in the fact that people are compelled by law to provide answers to census questions, even when those answers may be self-incriminating. But this fact cannot support a rule of total exemption for census information. The public interest in exempting that information is based on two factors: the prejudice caused to the census by disclosures made in breach of confidence; and the principle that no one should be forced to incriminate himself. Each of these factors is irrelevant when a subpoena is sought by, or with the authorisation of, the subject of the information. Moreover, there may be other cases when disclosure should be permitted or even required. Neither prejudice to the census nor self-incrimination is relevant when disclosure is sought *not* for the purpose of establishing an offence revealed in a census return, but for the purpose of establishing a defence or other relevant fact<sup>15</sup> (e.g. alibi) raised in a trial for a serious criminal offence. In its discussion paper, the Commission expressed a tentative view that census information should generally be exempt from subpoena and similar requirements<sup>16</sup>, but that this exemption should not apply where the information was sought in connection with the trial of an individual for a serious criminal offence against the person or against property. Some opposition was expressed to this exemption, mainly on the ground that it would weaken the

14. *Sankey v. Whitlam and Ors* (1978) 53 ALJR 11.

15. Always assuming that the information would itself be admissible for that purpose.

16. It suggested that the exemption should extend to a copy of the census form filled out by a head of household. cf. *Sr Regis Paper Company v. U.S.* 368 US 208 (1961). Congress subsequently reversed the principle on which that decision was based; 13 USC s. 9(a).



guarantee of confidentiality of census information. The Committee of the Law Council of Australia went further, opposing disclosure even in response to a subpoena authorised by the subject of the information.<sup>17</sup> Since the issue has not so far arisen in practice, resolution of this matter is not urgent. The question of disclosure of information in response to a subpoena is of general significance to the wider aspects of the privacy reference. Consequently, the Commission has decided to reserve the issue to its final report on information privacy.

## Release of Identified Information: Research

### *Destruction of Identified Census Information*

66. The destruction of personal information which has served the purposes for which it was collected is often regarded as a desirable procedure for protecting individual privacy. But some collections of personal information may be extremely valuable for research purposes. The census is certainly a collection of that type. Some colonial censuses have been preserved<sup>18</sup> and are an important research source for genealogists and historians, in particular. But Commonwealth censuses have not been preserved. Until 1971, the forms were retained for a substantial, but limited, period.<sup>19</sup> The main reason for their retention lay in the possibility that a need for new cross-tabulations might appear after the initial analysis had been completed. In 1971, apparently in response to privacy concerns with the forthcoming census, the Treasurer ordered the destruction of all census forms then held by the Bureau of Census and Statistics.<sup>20</sup> He also directed that the census forms for the forthcoming census be destroyed as soon as the information contained in them had been transferred to magnetic tape. Names and addresses on the census forms were not transferred to the tape. Certain other information which might help to identify individuals (e.g. name and address of employer) was reduced to a non-identifiable form (e.g. industry of employer) before transfer to the tape. Census information was stored in an anonymous form. The 1971 forms and collectors' books (which themselves contained names and addresses) were destroyed by the end of September 1972. Those for 1976 were destroyed in stages, commencing in November 1977 and ending in April 1978.

### *Possible Research Uses*

67. The Australian practice of destroying census forms and all records of names and addresses is unusual, if not unique. In Canada, the United States and the United Kingdom, all census forms are preserved. In New Zealand, every second census is now retained indefinitely.<sup>21</sup> The fact that census subjects and their survivors are allowed access to their forms in North America and the United Kingdom has already been noted.<sup>22</sup> In the United States and the United Kingdom, census forms are also made available to other parties for historical, genealogical, sociological and other research after the lapse of 72 years and 100 years, respectively.<sup>23</sup> If census

17. *Submission*, 24 May 1979, 2.

18. According to information supplied by State Archivists and by the Society of Australian Genealogists, the following returns have survived: N.S.W.: musters 1811, 1814, 1819; censuses 1828, 1841 (in part), 1891; Vic.: 1836, 1838 and 1841; Qld: nil; S.A.: 1841; W.A.: 1832, 1837 (in part), 1843, 1849 and 1859 (restricted areas); Tas.: musters 1811, 1818, 1819, 1820, 1821 (some in restricted areas); censuses 1842, 1848, 1851 and 1857 (roughly 75% of returns extant); also, a police census of the New Town district in 1837.

19. Only the prior two censuses were retained at any given time.

20. Commonwealth Treasury, Press Release No. 28, 'Destruction of Census Forms', 1 June 1971.

21. See below, para. 76.

22. Above, para. 56.

23. No such release is permitted in Canada. A call for release was made by Flaherty, 'Access to Historical Census Data in Canada: A Comparative Analysis', (1977) 20 *Canadian Public Administration*, 481. In Sweden, census data is protected by confidentiality regulations for only 20 years. However, a draft Official Secrets Bill would have the effect of increasing the period to 50 years: information supplied by The National Central Bureau of Statistics, Sweden.

information were preserved, similar research use might be made of it in this country. At an early stage in our research into privacy, the Society of Australian Genealogists submitted to the Commission that identified census information should not be destroyed, but should be kept for subsequent research, with restriction on access set at 100 years.<sup>24</sup> Genealogical interests might not be thought sufficient to alter the practice of destroying identifiable census information. But the Society's submission was not based on those interests alone. It pointed to the great value of those colonial censuses which have been preserved<sup>25</sup> and emphasised the future historical value of present census information, notably in longitudinal studies dealing with morbidity and mobility of families and occupational groups. The Society's submission was subsequently supported by the Federation of Australian Historical Societies<sup>26</sup> and by the Royal Australian Historical Society.<sup>27</sup> Further support for the retention of identified census information was expressed both at the Public Hearings and in written submissions.

#### *Recent Developments: United States*

68. In its discussion paper, the Commission reached no conclusion on this matter. It did, however, draw attention to the use which might be made of identified census information in medical research.<sup>28</sup> The Commission noted two developments of importance. The first was the debate on this issue which took place in the United States in 1975. In that year, a Bill<sup>29</sup> was introduced into the House of Representatives which sought to enact into law the agreement which at an earlier date had been made between the Bureau of the Census and the National Archives and under which census returns become available for legitimate research use after 72 years. The Bill provided for the transfer of census records to the National Archives no later than 50 years after the census date and for the availability of those records to qualified researchers after 75 years. The Bill was considered by the House Committee on Post Office and Civil Service. Hearings were conducted in 1975 by the Subcommittee on Census and Population and a report was published in 1976. The evidence examined by the House Committee included examples of the medical research uses to which census information might be put. A simple example is provided by the difficulties associated with proper location of cancer concentrations ('hot spots') in the United States:

For some 'hot spots', the explanation is widespread pollution by industry; for others, direct hazards on the job. Other 'hot spots' are difficult to interpret for several reasons. One reason that demonstrates the need for census data relates to the extreme mobility of the U.S. people. The latent period for cancer is known to be long; that is, in man, ten to thirty years may pass from the time cancer is induced by an agent to the time it appears clinically. If a twenty-year-old man had lived for years under the carcinogenic plume of a smelter, then moved to Los Angeles and, five years later, died of lung cancer, Los Angeles would be credited with a case of lung cancer. Under present regulations, his earlier residence—the one more relevant to the cause of his cancer—would be unknown. Census data may help resolve this difficulty.<sup>30</sup>

In a similar manner, identified census information might supply crucial information in the study of the relationship between cancer, on the one hand, and occupational hazards and

24. *Submission*, 21 December 1976; see also *Submission*, 19 February 1979. A similar submission was received from the Australian Institute of Genealogical Studies (29 May 1979).

25. Above, n. 18.

26. *Submission*, 26 February 1979.

27. *Submission*, 10 May 1979.

28. Census statistics have long been used in medical research. See, e.g., Lancaster, 'Deafness as an Epidemic Disease in Australia: A Note on Census and Institutional Data', [1951] 2 *Brit. MJ* 1429. See also Subcommittee on Census and Population of the House Committee on Post Office and Civil Service, *Hearings on H.R. 10686* (1975), 10 f.

29. H.R. 10686.

30. Subcommittee on Census and Population of the House Committee on Post Office and Civil Service, *Hearings on H.R. 10686* (1975), 9.

hereditary factors, on the other. One prominent cancer specialist went so far as to say that 'it is only by relating medical information on individuals to census information that proper epidemiological studies can be undertaken'.<sup>31</sup> Notwithstanding objection by the United States Bureau of the Census based on considerations of confidentiality and rates of response, the Committee ultimately approved the Bill in principle, proposing an amendment under which census records would become available after only 50 years for medical research purposes:

The hearing record contains testimony regarding the new uses for census data, linking health data with other information which can be derived from census records. The committee believes that the potentially favourable development which might come from full use of available information warrants access for medical research at an earlier time [than] that for access for historical or genealogical research purposes.<sup>32</sup>

The Bill was passed by the House in its original form but lapsed in the Senate. Census forms remain available for research, including medical research, after a period of 72 years.

### *Recent Developments: United Kingdom*

69. The second development noted in the discussion paper concerns the medical research uses to which identified census information is now put in the United Kingdom. The Office of Population Censuses and Surveys (O.P.C.S.) has in its possession a far wider range of information than that available to the Bureau in Australia. This information includes registration of births and deaths, internal migration (compiled from registrations with new doctors under the National Health Service), overseas migration and notification of cancer (both recorded in the National Health Service Central Register), as well as of census. In 1973, O.P.C.S. reported that a system had been developed in which, for a 1% sample of the population, data held by O.P.C.S. about separate events could be related together in longitudinal fashion, linking events occurring at different times to a group of individuals with certain common characteristics.<sup>33</sup> O.P.C.S. predicted that an important advance in the quality and scope of medical statistics would be achieved by this study of a nationwide sample of individuals:

By this method characteristics of persons in the sample, as recorded at Census of Population, can be related to their health experience so far as recorded in the study—in particular, deaths and diseases recorded at death registration. No other kind of study could achieve comparable gains in our knowledge about the relation between, on the one hand, mortality and, on the other hand, migration, education, occupation, housing conditions, family structure and ownership of a car. The resulting statistics will contribute directly to a number of areas of medical research.<sup>34</sup>

Despite the linking of different sets of information, linkage is conducted entirely within O.P.C.S. Special procedures have been laid down to protect confidentiality in the conduct of the project.

### *Medical Research in Australia*

70. *Identification and Counselling:* Further information on the research uses to which identified census information might be put was made available to the Commission at its public

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31. *id.*, 4.

32. *Report on H.R. 10686* (1976), 4.

33. Office of Population Censuses and Surveys, *Cohort Studies: New Developments; Studies on Medical and Population Subjects No. 25* (1973).

34. *id.*, 5. The Cohort Study also refers to other medical projects in the United Kingdom involving longitudinal methods.

hearings.<sup>35</sup> Several of the witnesses subsequently produced valuable written submissions. In the area of medical research, both the Society of Australian Genealogists and Dr E. M. Nicholls, of the Human Genetic Society of New South Wales<sup>36</sup>, prepared papers dealing with the value of census information for genetic studies. The paper by the Society of Australian Genealogists pointed to two genealogical studies using early Australian census returns which have assisted doctors in the treatment of descendants of early settlers with genetic disorders.<sup>37</sup> Dr Nicholls's paper<sup>38</sup> emphasised the growing realisation of the importance of genetic factors in human disease and the value to genetic research of identified census information. Apart from research leading to the identification of genetic factors in disease, the paper also gave prominence to research aimed at identifying persons at risk from genetic disease. It saw genetic counselling as one of the most important functions of medical practice in the future. It pointed to the value of genealogical studies in tracing the ethnic origins of families, particularly in a country like Australia with a large immigrant population. It also noted the importance of population mobility in the tracing of genetic disease. The paper explained that in many cases there are different modes of inheritance for the one disease. Genetic counselling is dependent on identification of the mode and pattern of inheritance. To sort out the mode of inheritance in some families is often very easy; on other occasions, it is exceedingly difficult, requiring extensive family investigations and with no certainty of success. The tracing of a remote relative, perhaps made possible by consulting census records, could lead to the elucidation of the whole relevant family tree and the linking together of remote relatives suffering from the condition in a recognisable pattern of inheritance. Such a successful study could provide information on the risk of getting or transmitting the disease applicable to dozens of individuals.<sup>39</sup>

71. *Family History*: Family history may be a critical factor in protecting members of the public in other ways as well. Possibly the most remarkable example comes from South Africa:

A Dutch settler (or his wife) in South Africa in the late 17th Century had the dominant gene for a disease now referred to as the South African type of porphyria (porphyria variegata). The disease is usually relatively harmless, although it can become a fatal disease in a person to whom barbiturate drugs have been administered. Due to great fertility, plentiful food, and an unrestricted opportunity for the population to expand in the colonial environment, the original couple now have enough living descendants to account for an estimated 8,000 cases of porphyria in South Africa. The significance of this estimate can be appreciated when one considers the frequency of use of barbiturate drugs in modern medicine.<sup>40</sup>

We are informed that the tracing of the original Dutch couple has led to the identification of numerous descendants at risk from porphyria, and to the establishment of a register of those persons to minimise the risk of their being treated with barbiturate drugs. While it is understood that census information may not have been relied upon in the study in question, its potential value in cases such as this is incalculable:

35. Dr B. K. Armstrong, Director of Health Research and Planning, Public Health Department (W.A.), *Public Hearings* (Perth) 14 f.; Dr D. DeBats, Department of Social Sciences, Flinders U., *Public Hearings* (Adelaide), 46 f.; N. J. Vine Hall, Director, Society of Australian Genealogists, and Dr E. M. Nicholls, Immediate Past Chairman, Human Genetic Society of Australia (N.S.W. Branch), *Public Hearings* (Sydney), 96 f.; Dr A. H. King, Senior Vice-President, Royal Australian Historical Society, id., 117 f.

36. The paper was endorsed by the Society.

37. *Submission*, 15 June 1979.

38. *Submission*, 18 June 1979. J. Mathews, Research Fellow, Department of Medicine, University of Melbourne, also emphasised the research value of identified census information: *Submission*, 3 May 1977, 4-5.

39. *Submission*, 18 June 1979, 4.

40. id., 2.

The methods and science of human genetics tell us that, if a gene is rare enough, once a relationship has been established hypotheses of transmission can be valid even when there is little other detailed information. The compiling of genealogies is the most critical activity and no original data should be wilfully destroyed which might make such studies possible. Much of the application of Census data to the study of population and family structures can continue prospectively by the analysis of new data coming to hand at each Census. However, nobody can put on record all of the information which might be obtained from an original Census record, nor can anyone predict with certainty what original data may be valuable in 50 or 100 years' time.<sup>41</sup>

The list of known genetic disorders exceeds two thousand. There may be many more where a genetic base is as yet undiscovered. The present practice of destroying identified census information prevents the formation of a vital data base in identifying and combating genetic disorders. If the conclusion were subsequently to be reached that such a data base was vital for important medical research, it could not be reconstructed. Medical research in Australia would have to be conducted on a basis which was defective compared with that in other comparable countries.

### *Historical and Sociological Research*

72. The medical research uses to which census information might be put have been emphasised because the immediate benefits to the community which might result from this type of research are obvious and should be widely appreciated. Less immediate but very great benefits might result from historical and sociological research using identified census information. A number of historians gave evidence on this subject at the Commission's public hearings.<sup>42</sup> One of them, Dr D. DeBats<sup>43</sup>, subsequently provided the Commission with a written survey of the use which has been made of identified census information in the United States.<sup>44</sup> He noted that census information has been a major factor in the development of a new school of history in that country:

The attractiveness of the census, amongst the most egalitarian of historical sources, lies in the fact that as a snapshot of everyone in a community from the same perspective, it avoids the bias of more conventional records. In the normal course of events, it is the old families and the significant institutions which, recognising their centrality, preserve records for historical use. The new history, in part responding to a contemporary concern for the causes of social unrest and crisis, would focus instead on the anonymous and inarticulate who in official documents, of which the census is perhaps the most comprehensive example, left the only records of their lives. The development of computer technology, permitting the economic processing of thousands of individual records, was the final element in the convergence of factors associated with the ascendancy of a 'new history'—a history 'from below'.<sup>45</sup>

Some of the work done on census records, particularly in the production of social profiles of particular groups, would have been possible without individually identified information. However, the most important uses of census information have been of two varieties, each requiring identification by name.

41. *ibid.* The paper noted the key use of census information by one of the best known medical geneticists in the world, Professor V. McKusick of the Johns Hopkins School of Medicine in Baltimore, Maryland: McKusick and Rapaport, 'History of Classical Haemophilia in a New England Family', (1962) *Arch. Int. Medicine*, 110, 144–9; McKusick, 'Haemophilia in Early New England', (1962) *J. Hist. Med. & Allied Sci.* 17, 342–65.

42. e.g. Dr A. H. King, Senior Vice President, Royal Australian Historical Society, *Public Hearings* (Sydney), 117 f.; F. B. Smith, Professorial Fellow, Research School of Social Sciences, A.N.U., President, Australian Historical Association, *Public Hearings* (Canberra), 2809 f.; C. Cunneen, Research Fellow, Research School of Social Services, A.N.U., *id.*, 2803 f.; N. Phillips, Research Assistant, Research School of Social Sciences, A.N.U., *id.*, 2814 f.

43. Department of Social Sciences, Flinders U.

44. 'The Right to Know: A Case for the Preservation of the Australian Census', *Submission*, 5 June 1979.

45. *id.*, 14.

73. *Group and Longitudinal Studies*: The first of these involves the study of a group whose identity is not itself recorded in the census. Examples include public leaders, office holders, church members and signatories of petitions. The second variety involves analysis of individuals over a period of time. It is the use of the census in this type of 'longitudinal' study which demonstrates most clearly the value of census records for historical and sociological writing and understanding. In the late 1950s and early 1960s, there were great advances in this field in the United States. One of the most important studies was by Stephen Thernstrom. He sought to assess the openness of American class structures by the degree and reality of social mobility in that country. This involved following through time the lives of unexceptional people who rose to owning houses or small businesses or who moved from an unskilled to a skilled occupation. Information about such relatively anonymous people was hard to come by. Census schedules were acknowledged by Thernstrom as his main data base:

Starting in 1850, when a new method of census taking was initiated, manuscript census schedules provide the historian with a primitive social survey of the entire population of a community; occupation, place of birth, property holdings, literacy, and other useful information about every inhabitant is listed. These skeletal facts, supplemented by data from contemporary newspapers and other sources, make it possible to fix the social position of the unskilled laboring families . . .<sup>46</sup>

74. *The Anonymous Multitude*: Thernstrom's work and other recent longitudinal studies have established a whole new category of historical study which seeks to tell the story of ordinary people who left no record beyond entries in city directories, tax lists and census schedules. These studies significantly altered the understanding of American social life, particularly urban social life, in the nineteenth century:

In place of a myth of unlimited mobility we have detailed and comparative studies of the rates of mobility among various social groups; similarly, careful studies of residential patterns of social differentiation have replaced earlier notions of an unstructured urban past. These new studies have permitted scholars to see as never before the degree to which urban poverty has been less a function of pre-urban experiences than of the social and economic forces at work within the city itself.<sup>47</sup>

Numerous examples might be provided of the use made of census information for historical research in the United States. Among the most significant are those concerned with creating a new understanding of family history. Many recent studies of nineteenth century family structures are based primarily on the analysis of census schedules. Similarly, important work has been done on such matters as the effect of migration on black families, the difference in reaction to city life of urban and rural families, differences in life cycles and family structures among various ethnic and native-born groups. Census records have also proved vital in creating new perceptions of the role of women in American society. Studies using census information:

. . . have told us a great deal about women not only as heads of households, but as wives who took in boarders to supplement family income, and as agents either of acculturation or the maintenance of traditional family patterns. Fertility patterns are perhaps most readily studied in the census schedules and there now exists a body of literature reporting on general changes in fertility over time as well as between various social groups. As longitudinal analysis comes into usage as a feature of work on the family and women, identifiable census records will become even more crucial.<sup>48</sup>

These records have provided a key source for social profiles and longitudinal analyses which are essential to an informed understanding of the history of the American nation.

75. *Value to Australia*: It would be wrong simply to assume that equivalent use would be made of identified census information in Australia. But interest in this type of information is by no means unique to the United States. Considerable historical use is also made of census forms in

46. Thernstrom, *Poverty and Progress: Social Mobility in a 19th Century City* (1964), 5.

47. DeBats, *Submission*, 5 June 1979, 19.

48. id., 22. DeBats also pointed to the use of census forms by geographers and political scientists.

the United Kingdom. The Royal Australian Historical Society, the Federation of Australian Historical Societies and a number of individual Australian historians<sup>49</sup> have stressed to the Commission the great value which identified census information would have in historical study and understanding. That type of study and the perceptions which flow from it may be indispensable in the development of the self-awareness and identity of the Australian people. If the source were available in Australia, further research interest would certainly be stimulated. New perceptions and deeper insights into diverse aspects of the nation would then become possible:

... it would be unfortunate if Australia continued unreflectingly to destroy the one source which has been so central to the emergence of new histories and new social understandings in other lands. Australia appears unique in insisting on the irrevocable destruction of this record; it is not a practice to lightly continue.<sup>50</sup>

*Retention: Effect on Response and Validity*

76. *Burden of Proof*: The arguments in favour of retention of census information for subsequent research uses are strong ones. But several arguments are ranged against them.<sup>51</sup> The first is that, given the long-standing practice of destroying identified census information in this country, a strong case must be made out if that information is to be retained in future. It is true that such a practice has been followed since the Commonwealth assumed responsibility for the census. But that practice appears to have been based on administrative convenience and was originally followed in apparent ignorance of the research value which census information might subsequently possess. Insofar as it is based on privacy considerations, the practice appears to have commenced in 1971 as a result of a Ministerial direction and without detailed inquiry or informed public debate. In New Zealand, identified census information was also formerly systematically destroyed. But that practice was reversed in 1966. Commencing with the 1966 census and for each second census thereafter (1976, 1986 etc.) all personal and dwelling questionnaires are to be kept as archival documents. They will be available for research after 100 years. Though originally resulting from a decision of the Government Statistician, the retention of census forms in New Zealand has now been approved by Parliament.<sup>52</sup> The fact that the post-1971 Australian practice has no counterpart in closely comparable countries might itself suggest that the burden of proof is on those who wish to destroy, rather than those who wish to retain, identified census information.

77. *Confidentiality*: Two other arguments in favour of destruction emphasise the dangers associated with the retention of identified census information. First, both the Bureau and other bodies have argued that disclosure, even for limited research purposes, is inconsistent with the guarantee of confidentiality which is essential to the success of the census. This may be a special problem with members of the migrant population, including those whose residence in Australia is not in accordance with legal requirement and those who, as a result of overseas experience,

49. There were several written submissions to this effect. Professor J. N. Molony, Department of History, A.N.U., described census returns as 'a source of enormous potential value' (*Submission*, 15 June 1979). The same point was made by N. Phillips, Research School of Social Sciences, A.N.U. (*Submission*, 13 June 1979) and Dr C. V. Baldock and Dr E. Harman, Department of Social Enquiry, Murdoch U.) (*Submission*, 5 June 1979).

50. DeBats, *Submission*, 5 June 1979, 22.

51. Arguments against retention were put by the Bureau and by a number of users of census statistics. Retention was also opposed by W. J. Orme, Executive Member, Privacy Committee (N.S.W.), *Public Hearings* (Sydney), 144 f.; by the Australian Consumers' Association, *Submission*, 22 May 1979, and by Councils for Civil Liberties; see, e.g., M. A. Kent and J. Tomlinson, Council for Civil Liberties (N.T.), *Public Hearings* (Darwin), 2404, 2410, 2414; J. T. Bennett, Council for Civil Liberties (Vic.), *Public Hearings* (Melbourne), 2656 f.; B. G. Tennant and K. M. Shah, Council for Civil Liberties (W.A.), *Public Hearings* (Perth), 47 f.; J. G. Mackinolty, Council for Civil Liberties (N.S.W.), *Public Hearings* (Sydney), 88 f.

52. Statistics Act 1975, s. 37(5)(c).

have little confidence in governmental guarantees and are fearful of the administrative use which might be made of census information. According to the Commissioner for Community Relations, destruction:

is a vital consideration in view of the fact that the suspicion exists that use could be made of the information against the interests of those who gave it.

To allay these fears, the Commissioner urged that there should be the widest possible community education program prior to the census:

Above all it should be stressed that complete privacy will be preserved and the original forms destroyed forthwith.<sup>53</sup>

The Commission doubts whether guarantees of confidentiality would have great effect on many of these persons, particularly those whose mere inclusion in the census might be thought to expose them to the possibility of deportation. Moreover, a satisfactory level of confidentiality can be preserved, and be seen to be preserved, without destroying the forms and the means of identifying the information stored by the Bureau on magnetic tape. If census information were to become available for subsequent research uses, this fact would have to be drawn to the attention of those who provide census information. The Bureau feels that any qualification of the present guarantee of absolute confidentiality would seriously affect responses and would diminish the reliability of census data. There is scant empirical evidence concerning the relationship between guarantees of confidentiality and the reliability of information provided for statistical purposes. One study<sup>54</sup> supports the view that guarantees of confidentiality do affect response rates, particularly on sensitive questions, but there is little evidence concerning the effects on response rates of guarantees of differing degrees of confidentiality. The United States Bureau of the Census has commissioned the National Academy of Sciences to undertake a research project on this subject. The preliminary report on this project<sup>55</sup> did not answer the question whether a guarantee of less than total confidentiality affects the validity of responses. The final report is still unavailable at the time of this report. There is no empirical support for the proposition that a qualification of the guarantee of confidentiality which referred to disclosure for limited research purposes after a stated lapse period would seriously affect the validity of responses. Accordingly, the Commission is inclined to the view that the argument should be discounted.<sup>56</sup> In the words of the United States House Committee on Post Office and Civil Service, the contention is 'purely speculative'.<sup>57</sup>

### *Retention: Misuse of Information*

78. *Cases in Point:* The second argument against retention of identified census information is more persuasive. It concerns the possible abuses of that information at a later date by an over-zealous, even mischievous, government. Instances exist in other countries of attempts to use census information for strictly administrative purposes in breach of guarantees of confidentiality. In the United States, one such attempt appears to have succeeded:

This occurred in 1918, during World War One. Congress had passed a War Powers Act, and presumably this was the basis for such an extreme use of census data. Information about individuals

53. *Submission*, 24 May 1979, 2.

54. Singer, 'Informed Consent: Consequences for Response Rate and Response Quality in Social Surveys', (1978) 43 *Am. Sociological R.* 144.

55. Goldfield, Turner, Cowan & Scott, 'Privacy and Confidentiality as Factors in Survey Response', Paper Presented to 137th Annual Meeting, American Statistical Association (August 1977).

56. There has been no observable change in response rates resulting from New Zealand's change from a policy of destruction to one of retention. However, the case is not an exact analogy since little publicity was given to the 1966 decision either at that time or in 1975 when the new practice was confirmed by the Statistics Act (N.Z.), s. 37(5)(c): information supplied by the Government Statistician (N.Z.).

57. *Report on H.R. 10686* (1976), 4.



was given to the Department of Justice for use as evidence in prosecuting young men who claimed they were too young to register for the draft. While we do not know the exact circumstances surrounding the release, we do know that personal information for at least several hundred young men was released to courts, draft boards, and the Justice Department.<sup>58</sup>

Although this type of release was soon discontinued, two further attempts have been made to utilise identified census information in the United States, the first in 1941:

... with World War Two underway, there was near hysteria about the Japanese-Americans living on the West Coast—emotion which led to one of the most embarrassing moments in U.S. history, the internment of large numbers of these loyal Americans. At the height of this feeling, the Secretary of War requested that the Census Bureau supply the names, addresses, and ages of all persons of Japanese extraction living on the West Coast. This time—in spite of the national emergency—the Bureau held to its position of confidentiality of individual records and refused.<sup>59</sup>

Again, in 1947, during rising concern about communist infiltration and sabotage, the Attorney-General, on behalf of the F.B.I., requested information about certain individuals which was contained on census records. As in 1941, the request was refused.

79. *Other Means Available:* The fact that the Bureau of the Census was able to decline to co-operate with over-zealous governments in both these cases is no guarantee for the future. The risk remains that an executive may make demands or that a future legislature may change the law in order to obtain access to census information. Those who emphasise this risk are concerned that a government might use census information to discriminate on racial, religious or other grounds. It was suggested to the Commission that past census records were used in this manner to facilitate the deportation of Dutch Jews to concentration camps during the Second World War. This suggestion appears to be mistaken. The occupying regime required Jews to register and used that register as one basis for subsequent deportations.<sup>60</sup> But even if the suggested example is not apt, the possibility remains that general census information might subsequently be used for evil purposes. The census is a universal, compulsory collection within the central government system. The information which it contains is computerised and is readily retrievable. But the central government has available to it vast amounts of information in other collections, including taxation, immigration and social security.<sup>61</sup> Cross-linkage between these systems would supply personal information comparable with and, in certain respects, more detailed than that obtained from the census. Moreover, a government bent on pursuing discriminatory policies could readily collect additional information at short notice. In the Commission's view, the protection of individuals in society against massive misuse of information of this type lies in the Constitution, in the political system and in shared social values, not in the destruction of census records in a futile attempt to deprive an aberrant government of the means of discrimination.

80. *Costs:* A final argument against retaining identified census information is concerned with costs. Written cost estimates were provided to the Commission by the Bureau. These estimates were based on different assumptions concerning the method by which identified information might be preserved. They included:

- Punching up name and address and record number to provide a cross-reference to other data held on computer — \$750 000
- Punching up name and address and adding it to the main file — \$780 000<sup>62</sup>

58. Barabba, 'The Right of Privacy and the Need to Know', (1974) *Proceedings of the Social Statistics Section, American Statistical Association* 33, 36.

59. *ibid.*

60. Presser, *Ashes in the Wind, The Destruction of Dutch Jewry* (1965), 334.

61. Social Security alone has information concerning more than 8 million people: Commonwealth Department of Social Security, *Annual Report* (1977-78), 6 f.

62. *Submission*, 25 June 1979.

These costs might possibly be reduced. The Bureau itself stressed that its estimates were rough and were:

based upon untested assumptions as to average length of name and address, number of keystrokes achievable each hour in punching the data and the most efficient operational approach.<sup>63</sup>

To the costs of preservation would have to be added the cost of storage and the cost of providing access for research purposes after an appropriate lapse period. These might be more apparent than real, since they would be absorbed in Archives' annual budget, within which they would, presumably, be given priority over some other possible sources of information. Against these costs there would have to be set off the significant savings which would result to many types of research from the availability of a comprehensive and conveniently accessible data bank of identified census information. The social benefits which might accrue from preserving a vast amount of census information are certainly worth the relatively small sums suggested by the official Bureau estimates.

### *Provisional View*

81. The destruction of information is a matter of general significance for the Commission's work on information privacy. In this report, the Commission expresses a provisional view on this matter. It may be subject to review in the final report on the wider aspects of the handling of personal information. In reaching its view, the Commission has had close regard to the need to protect individual privacy. Against that it has had to weigh the great benefits which might result from the availability of identified census information for medical, historical and sociological research. The Commission's provisional view is that identified census information should be retained. The Australian practice of destroying the means of subsequent identification of all census information is not adopted by any closely comparable country.<sup>64</sup> It has resulted from considerations of administrative convenience and from a decision made in 1971 in response to pressures relating to privacy. Until publication of the Commission's discussion paper, it had not been the subject of informed public debate. From that debate there has emerged important evidence concerning the value which identified census information has for the nation. While destruction of this information serves valid privacy interests, those interests might adequately be protected in other ways, particularly by imposing a period of rigorously enforced confidentiality on census information. The right to information concerning the past and the social advantages which might flow from retention require that an alternative be found to the present practice of destruction. This alternative must be one which adequately protects the public interest and individual privacy.<sup>65</sup>

82. *The Archives:* An alternative which fulfils this requirement may be found in the transfer of identified census information to the Australian Archives. The Commonwealth Archives Office was set up within the Prime Minister's Department in 1961. It replaced the Archives Division of the Commonwealth National Library which, from 1952, had been the sole archival authority

63. *Submission*, 28 June 1979, 2. At the public hearings in Sydney, an officer of the Bureau suggested that the question of capitalisation should be considered when determining the costs of preservation. Subsequent inquiries made by the Commission suggest that capitalisation would not normally be taken into account in such a context.

64. Some Asian and African nations (e.g. Japan and Bangladesh) destroy census returns, though not necessarily for reasons of privacy: A.B.S., *Submission*, 3 August 1979, 4.

65. A compromise suggestion put to the Commission was that only part of the form (including limited personal information) should be retained. But personal information is more sensitive than dwelling information. Moreover, each may be useful for particular research purposes. The question of the extent of information retained should be left to the decision of Archives.

for the Commonwealth. In 1974, the Commonwealth Archives Office was renamed the Australian Archives. The Archives Bill 1978 seeks to establish the Australian Archives as an organisation within the relevant government department.<sup>66</sup> The functions of the Archives include the conservation and preservation of existing and future archival resources. Clause 24 of the Bill forbids the destruction of Commonwealth records except in the cases enumerated in sub-clause (2). One of the exceptions is destruction which is in accordance with normal administrative practice, save where that practice has been disapproved by Archives. In a submission to the Commission, the Australian Archives indicated its view that identified census information should be retained for subsequent research use. If the Archives Bill becomes law, the Australian Archives will be able to ensure the preservation of that information by disapproving the present practice of destruction. Should the Archives Bill not become law, the practice of destruction should be halted by Ministerial direction. Retention of the forms themselves might be excessively costly. If so, the information which is recorded by the Bureau on magnetic tape might be coded to allow subsequent reidentification of the anonymised information. Alternatively, a separate microfilm of identified information might be produced for Archives. The choice between these alternatives should be made after detailed cost estimates have been prepared. Coded identifiers and identified census information should be transferred to Archives at the earliest available opportunity.

83. *Archival Release:* To protect confidentiality, Archives should forbid access to identified census information within 75 years of its collection. To this rule there should be one exception. Medical research programs may require access within the 75-year period. Dr Nicholls<sup>67</sup> suggested a 50- or 75-year period. The House Committee on Post Office and Civil Service recommended a 50-year period in the United States.<sup>68</sup> But there are special reasons why environmental medical research might require much earlier access. At the Public Hearings in Perth, it was stated that:

... one could select a sample of people who were ... asbestos miners in a particular period of time and then some 20 or 30 years hence ... attach that information to the death certificate information and so ascertain the mortality from various causes.

...

To undertake that sort of study one normally needs about a 10 to 20 year lapse of time depending on the number of people in the sample exposed to the agent. However, one would want to do such a study at the earliest possible time because the reason for doing it is simply so that other people can be warned against the exposure and appropriate control measures taken, and if one had built into the system an absolute bar on use of that information for, say, 50 or 70 years, then although it might be useful for other purposes it is doubtful whether it would be of great value for environmental monitoring purposes.<sup>69</sup>

The Commission recommends that the Director-General of Archives should be given discretion to allow access for approved medical research within the 75-year period. In all cases, access should be subject to such terms and conditions as to use and disclosure of the information as the Director-General lays down. In the case of access within the lapse period, unauthorised disclosure to third parties should be totally prohibited. A breach of the conditions laid down by the Director-General should be punishable as a serious offence, in the same manner as unauthorised disclosure of census information by an officer of the Bureau. In this manner, the confidentiality of identified census information should be ensured.

66. Cl.5. At present, it is attached to the Department of Home Affairs.

67. *Submission*, 18 June 1979, 3.

68. *Report on H.R. 10686* (1976), 4.

69. B. K. Armstrong, *Public Hearings* (Perth), 15.

### A Different View

84. One member of the Commission<sup>70</sup> takes a different view. The practice of destroying Commonwealth census forms has been a long-standing one. That practice appears to have commenced principally for reasons of administrative convenience rather than privacy protection. Since 1971, however, its public justification has been based squarely on the protection of individual privacy. Destruction of census forms is not the only means of protecting that interest. Retention of census information is not in itself inconsistent with privacy protection, provided that the retention of that information is subject to adequate safeguards, such as those set out in paragraphs 82 and 83. The social benefits which might flow from subsequent research uses of census information provide a strong argument in favour of the alternative to destruction which is set out in those paragraphs. Nonetheless, given the decision made by the Commonwealth Treasurer as recently as 1971, the member believes that on this issue the proper functions of the Law Reform Commission have been discharged by the statement of the arguments for and against destruction of the census and illustrations of the alternative ways in which individual privacy could be policed if identified census material were kept. The choice, on this view, is then properly one for the Government and the Parliament.

## 4. Minority Groups and the Census

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### Migrant Groups

#### Initiatives in 1976

85. In the previous sections of this report the Commission has given prime attention to census procedures as they affect the whole population. It now turns to two additional problems which the census may pose for certain minority groups in Australia. The first of these is the difficulty faced by people who are not fluent in the English language. For them, the compulsory completion of census forms is a matter of special burden. This burden can be relieved to some extent if proper procedures are adopted to ensure that interpreting facilities<sup>1</sup> are, and are known to be, readily available to those who need them. The provision of this type of assistance serves important privacy interests, since neither explanations of the aims of a census nor guarantees of confidentiality in respect of census information are of much value to those who are unable to understand them. In the 1976 census, a number of initiatives were taken to assist persons who had difficulty in comprehending and completing census forms. These included:

- a telephone inquiry service operated by the Bureau in all capital cities and Darwin;
- a telephone interpreter service operated and augmented for the census by the Department of Immigration and Ethnic Affairs;
- distribution by the census field staff of multi-language statements;
- assistance offered by the Good Neighbour Council;
- assistance offered by the Migrant Advisory Services of various banks;
- the employment, where possible, of multilingual census collectors;
- the use, to a limited extent, of qualified interpreters.

#### Increased Co-operation

86. Despite these initiatives, the need for greater communication with migrant groups is a pressing one. The Commissioner for Community Relations has drawn attention to the suspicions of post-war settlers, in particular, concerning government officers seeking information from them. Many of these people fear that the information which they provide will not remain confidential but may be used to their detriment by government departments, including those dealing with taxation and pensions. A special concern in this regard is that of the estimated 60 000 persons whose residence status in this country is not in order. It is hardly surprising that these persons should be apprehensive at the prospect of providing information which they believe might be used in order to deport them. Every effort should be made to communicate to migrant groups the confidential nature of the census and the value to these groups of the statistics generated from it. As one submission noted:

... [It] is important to stress that if the school system, the social service system, the legal system and the health system—indeed the whole system of public administration at federal, State and local government levels—is to be changed and adapted to meet the need of a population reflecting 140

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1. The use of interpreters may, of course, create further problems in the disclosure of personal information to third parties.

different ethnic backgrounds, then the Census information is a vital base to enable planning to proceed.<sup>2</sup>

The Australian Ethnic Affairs Council has urged on the Commission the need for close co-operation between the Bureau and ethnic organisations and the ethnic media.<sup>3</sup> Initiatives of this type would assist people in completing census forms. They would presumably contribute to the reliability of census statistics. They would also advance privacy interests in ensuring that the collection of information from such people is conducted on a properly informed basis.

## Aboriginals

87. In 1976, the Bureau also attempted to deal with the special problems which many Aboriginals have with the census. Variations were made to the standard collection system for some Aboriginals. A Committee of the officers of the Department of Aboriginal Affairs and the Australian Bureau of Statistics designed special arrangements for the enumeration of Aboriginals and Torres Strait Islanders in inner city areas, urban fringe camps and many predominantly Aboriginal communities and localities. The enumeration of urban fringe-dwelling Aboriginals was in many cases conducted by Aboriginals themselves. With the assistance of State and Federal departments charged with responsibility for Aboriginal affairs, officers of the Bureau devised special collection arrangements for missions and government-controlled reserves. Special allowance was made in the Northern Territory even in respect of the timing of the census. As the Statistician for the Northern Territory reported:

At several communities, Census activities were halted because of significant occurrences within them. These were at times of sacred ceremonies and the death of elders. When ceremonies concluded and mourning periods ended, enumeration recommenced.<sup>4</sup>

## Some Problems

### *Queensland*

88. One problem was created in 1976 when the Queensland Department of Aboriginal and Islander Affairs made it clear that it would strongly object to officials appointed by the Bureau entering State government settlements and missions. It is understood that the relevant State department indicated that access to those settlements and missions would be denied unless the officials were nominated by itself. The Bureau agreed to this arrangement, which apparently worked well. A State's asserted right to control access to State Aboriginal settlements and missions seems not to extend to restricting access to the Bureau's properly appointed census collectors. The matter is drawn to the attention of the Parliament in this report because it is the Bureau's responsibility to ensure that privacy is protected and confidentiality is maintained in a census. It cannot adequately discharge that responsibility if it does not have control over the appointment of its staff. Moreover, a legal argument at census time could prejudice the conduct of the census. Steps should be taken in advance to ensure the full co-operation of State Governments in these matters. The appointment and training of census collectors should remain a matter for the Bureau. The co-operation which the Bureau receives should be kept under review by the Parliament. It may ultimately prove necessary to confer wider powers on Bureau personnel in respect of future censuses.

2. *Submission*, 24 May 1979, 2.

3. *Submission*, 23 May 1979, 2-3.

4. *Enumeration of Aboriginal Communities*, 15 May 1979, 2.

### *Western Australia*

89. A second and more important problem has been brought to the Commission's attention by the Western Australian Regional Office of the Department of Aboriginal Affairs. The Office has expressed deep concern at the discrepancy between the census figures for 1976 (showing the Aboriginal population for Western Australia as 26 126) and those prepared by the Aboriginal Affairs Planning Authority (showing that population as 34 331). As the Office noted, without reliable base data, the planning of service delivery, the development of projects and the projection of future needs can only be deficient.<sup>5</sup> At our public hearings in Perth, the Public Health Department of Western Australia was also critical of the census of Aboriginals:

We have various counts of Aborigines in Western Australia and the census to date has never agreed with any of them. Quite apart from the fact that the availability of census figures is withheld for one reason or another until they are almost useless from the point of view of planning, when they do come to light they are always under-stated, and we are capable of proving that with hard data.

...

[Census figures concerning Aboriginals] are so inaccurate that we believe they are not only useless but harmful. The recent Standing Committee of the Senate investigating health and welfare compared Western Australia and the Northern Territory on certain rates based on information which we supplied and they did not in fact use the rates we gave them. They referred the enumerators back to the census denominator and this produced figures which were quite erroneous and in fact did not agree with our point of view at all.

...

... our own record system in regard to health does enumerate a greater number of Aborigines than appeared in the last census and since we have personal contact with most of these people we know for a fact that they exist, and we also know that we do not have them all on our own records, so that the census is a long way out.<sup>6</sup>

Under-enumeration of this type is a serious defect in a census on which so many decisions of importance to the community must depend.

### *European Bias*

90. A particular difficulty for some Aboriginals arises from the fact that censuses are based on European concepts which may not be readily translatable into Aboriginal terms. The problem of communication is exacerbated by the existence of fundamentally different family structures at both a general (e.g. extended kinship) and a particular (e.g. relationship by initiation) level. It is further complicated by the possibility that the provision of certain information (e.g. naming an 'exiled'<sup>7</sup> individual) may be taboo and in breach of traditional law. Questions dealing with marital status may not cater for 'bush' marriages not celebrated in accordance with the civil law. A question concerning religion may ignore the possibility of dual religious practices, both Christian and traditional. Questions concerning education and trade or occupation allow little room for Aboriginal learning and tribal roles. A European bias may be essential for most users of census information. But, as the Commission pointed out in its discussion paper<sup>8</sup>, some census questions might be formulated to make allowance for Aboriginal concepts and values. Alternatively, Aboriginals living in traditional ways might be formally exempted from the requirement of answering certain questions in the form.<sup>9</sup>

5. *Submission*, 17 May 1979.

6. *Public Hearings*, Perth, 17.

7. In either a geographical or conceptual sense.

8. DP8, para. 57.

9. It is essential, of course, that they be included in the strict enumeration.

*The Department's View*

91. The Department of Aboriginal Affairs was particularly critical of the second of those suggestions. Its submission pointed out that that suggestion cut across the main use to which census information about Aboriginals is put, namely, to compare the circumstances of Aboriginal and non-Aboriginal Australians with a view to assisting Aboriginals and agencies working on their behalf to put to the Government their case for special assistance. If this use is to be maintained, it is necessary that the same questions be asked of Aboriginals as of the rest of the population. The submission also noted other problems with the Commission's suggestion:

The prospect of a different schedule also implies pre-identification of the Aboriginal population, or pre-specification of communities in which the different schedule would be used. It is not considered that it would be possible to identify the entire Aboriginal population in advance and hand a special schedule to all Aboriginals. Using a special schedule only in certain communities would imply an artificial division between Aboriginals in these places and other Aboriginal people. Although it might be possible to categorise some Aboriginal communities as tradition-oriented, therefore in scope for the separate schedule, and others as acculturated, in scope for the normal schedule, any such division would be at an artificial point along what is really a continuum (if it can be seen one-dimensionally at all).<sup>10</sup>

Despite the views expressed by the Department of Aboriginal Affairs, some of the questions asked in a census are clearly irrelevant to Aboriginals living in traditional ways. In the case of identifiable communities living apart from the general population, the census might be regarded as an opportunity to gather other information of direct relevance both to the communities themselves and to the government and non-government bodies which are concerned with their well-being. Indeed, the Western Australian Regional Office of the Department of Aboriginal Affairs has already explored tentatively with the Bureau the possibility of a separate schedule, the problem of Aboriginal identification, the logistical problems of data collection, the kind of information that would be useful and the issues involved in framing the questions given the different culture of Aboriginals and structural variations within it.<sup>11</sup>

*Modifications in 1976*

92. The usual census form was, in fact, dispensed with in some areas in 1976. In the Northern Territory, for example, a special interim schedule was used for Aboriginals who had no written English and could not complete the self-enumeration form.<sup>12</sup> This modification was intended to serve two purposes: to simplify wordings; and to eliminate questions which clearly did not apply to the particular Aboriginal community. The schedule used is set out below. It reveals that the Aboriginals for whom it was used were asked roughly one-quarter the number of questions asked of the rest of the community.

**Conclusion**

93. Given the special problems which the census poses for Aboriginal and migrant groups, it appears likely that under-enumeration of these groups has occurred in prior censuses. That is a serious matter. It diminishes such claims as they may have to government and non-government assistance. It may even distort legislative representation and the funding of the States.<sup>13</sup> The Bureau recognises that census taking from migrants and Aboriginals raises problems which

10. *Submission*, 18 July 1979.

11. *Submission*, 17 May 1979.

12. A.B.S., *Submission*, 25 June 1979.

13. Above, para. 8.



1. *NAME*.....
2. *SEX*:      **MALE**  
                 **FEMALE**
3. *AGE*.....
4. *MARITAL STATUS*      **SINGLE**      **SEPARATED**  
                                 **MARRIED**      **WIDOW**
5. *RELATIONSHIP*    Household Head/Wife/Husband/Son/Daughter/Friend/.....
6. *UMBAKUMBA*    How long?      Whole life      Other than whole life .....
7. *ILLNESS*      **NO**      **YES**.....
8. *LANGUAGE*    **ENGLISH**      **ANDILIAUGUA** .....
9. *EDUCATION*    Age left school ..... Still at school  
                 Did not go to school      Qualifications:  
   None  
   Yes.....
10. *LICENSES*      None      Car
11. *PENSIONS*      Aged      Invalid      Widows/Supporting Mothers  
                         Unemployment      None
12. *MARRIED WOMEN*    How long?.....  
                 Babies this marriage.....living.....died  
                 Babies previous marriage.....living.....died
13. *EMPLOYMENT*      did not work last week/not looking for work.  
                 did not work last week/looking for work.  
                 usually works but not last week.  
                 working last week.
14. *INCOME*    None  
                 Yes    How much.....    How many hours.....  
   Occupation.....  
                 Employer's Name.....  
                 Address.....  
                 Industry.....  
How did you get to work—Walk  
                 —Car  
                 —Bus

have yet to be solved. These problems are unlikely to be solved without the advice and assistance of Aboriginal and ethnic communities themselves. The Commission recommends that a detailed investigation be undertaken by the Statistician into the problems raised in the preceding paragraphs. He should obtain advice and comment from the Australian Statistics Advisory Council, from the Departments of Aboriginal Affairs and Immigration and Ethnic Affairs, from the Australian Ethnic Affairs Council and the Commissioner for Community Relations. He should also seek assistance from persons with special knowledge of Aboriginal and ethnic cultures and traditions and from Aboriginal and ethnic communities themselves. The detailed results of his investigation should be presented in his Annual Report to the Minister and should be examined by an appropriate Parliamentary Committee.



# Appendix A

## CENSUS AND STATISTICS (AMENDMENT) BILL

### A BILL FOR AN ACT

To amend the *Census and Statistics Act* 1905.

Be it enacted etc. as follows:

1. (1) This Act may be cited as the *Census and Statistics (Amendment) Act* 1979. Short title.

(2) The *Census and Statistics Act* 1905 is in this Act referred to as the Principal Act.

2. Section 3 of the Principal Act is amended—

Definitions.

(a) by inserting after the definition of “Factory” the following definitions:—  
“ ‘Form’ includes a Householder’s Schedule referred to in section 10;”

“ ‘Former officer’ means a person who has at any time been an officer, including a State officer who was at any time deemed, under sub-section 6(1), to be an officer under this Act;” and

(b) by inserting after the definition of “Occupier” the following definition:—  
“ ‘Officer’ means a person appointed by the Statistician, or by a person under delegation from the Statistician, and having any power or duty in respect of the taking or collection of a census or the collection of statistics under this Act and includes—

(a) a State officer who is deemed, under sub-section 6(1), to be an officer under this Act; and

(b) a person who, by arrangement with the Statistician, or with a person under delegation from the Statistician, performs any functions in respect of the taking or collection of a census or the collection of statistics under this Act.”

3. Section 7 of the Principal Act is amended by omitting the words “Every officer executing any power or duty conferred or imposed on any officer under this Act or the regulations” and substituting “An officer”.

Undertaking of fidelity and secrecy.

4. Section 10 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:—

Forms to be left at dwellings.

“(1A) The person leaving a Householder’s Schedule at a dwelling shall, if the person with whom it is left so requests

(a) furnish to that person an addressed envelope in which the completed form may be sent by post; or

(b) furnish to that person such number as that person requests of forms, called Personal Census Forms, and addressed envelopes in which those forms, when completed, may be sent by post,

or both.”

5. Section 11 of the Principal Act is repealed and the following section substituted:—

Completion of Householders’ Schedules.

“11. An occupier of a dwelling with or for whom a Householder’s Schedule has been left shall, to the best of his knowledge and belief, fill up and supply in the form, in accordance with the instructions contained in or accompanying the form, all the particulars specified in the form, shall sign his name on the form in the place provided for the purpose and shall

(a) deliver the form so filled up and signed to the Collector authorized to receive it; or

(b) send it by post in an envelope furnished as provided by sub-section 10(1A).

Penalty:

Particulars in  
Schedule.

6. Section 12 of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:—

“(c) such other particulars (if any) as are prescribed.”.

[The penalty for breach of s. 14 should be increased: see para. 24]

Collectors to  
assist in  
filling up  
forms.

7. Section 13 of the Principal Act is repealed and the following section substituted:—

“13. It is the duty of a Collector, if requested, to assist a person in filling up correctly a Householder’s Schedule or a Personal Census Form.”.

Personal  
Census  
Forms.

8. After section 14 of the Principal Act the following sections are inserted:—

“14A(1) A person abiding in a dwelling during the night of Census Day who does not furnish information to the person required to complete the Householder’s Schedule in respect of the dwelling so as to enable the second-mentioned person to complete the Householder’s Schedule shall obtain from the second-mentioned person or an officer a Personal Census Form for completion by him together with an addressed envelope in which the completed form may be sent by post.

“(2) A person obtaining a Personal Census Form and envelope shall, to the best of his knowledge and belief, fill up and supply in the form, in accordance with the instructions contained in or accompanying the form, all the particulars contained in the form and shall sign the form in the place provided for the purpose.

“(3) The person shall enclose the form so filled up and signed in the envelope provided, seal the envelope and deliver it to the person required to complete the Householder’s Schedule.

“(4) That person shall deliver the envelope unopened to the Collector but if the envelope has not been delivered to the Collector within 14 days after the Census day the occupier shall post the envelope unopened.

“(5) The person who filled up and signed the form may, instead of delivering it as provided by sub-section (3), deliver the envelope to the Collector or send it by post.

Penalty:

Collectors  
not to open  
envelopes.

“14B. A collector shall not open an envelope in which a Householder’s Schedule or a Personal Census Form is delivered to him.

Penalty:

Certain persons  
not to be  
prejudiced.

“14C. A person shall not prejudice another person in any way by reason only that the second-mentioned person sought to obtain from the first-mentioned person or from a Collector a Personal Census Form.

Penalty:

[The penalty for breach of s. 15(2) should be increased: para. 24]

No offence  
without  
warning.

9. After section 15A of the Principal Act the following section is inserted in Part III:—

“15B. It is not an offence under this Part unless the contravention occurred after reasonable steps were taken to warn the person concerned that he was obliged by law to comply with the relevant provisions of this Part and of the consequences of his failure to comply, including the penalties provided by this Act in respect of failure to comply.”.

Preservation  
of secrecy.

10. Section 24 of the Principal Act is repealed and the following sections substituted:—

“24. (1) The Statistician, an officer or former officer shall not, except as provided by this Act, divulge the contents of any form filled up or any information furnished—

- (a) in pursuance of this Act; or
- (b) at the request of the Statistician, for statistical purposes.

Penalty:

“(2) Sub-section (1) applies to the exclusion of section 70 of the *Crimes Act* 1914.

“(3) A person filling up a Householder’s Schedule shall not divulge any of the contents of the form that relate to some other person.

Penalty:

**11.** After section 24 of the Principal Act the following section is inserted:—

“**24A** (1) Subject to sub-section (2), section 24 does not prevent the Statistician from disclosing information furnished in pursuance of Part III if he is satisfied that the manner in which the information is disclosed is such that the person by whom the information was furnished or a person to whom the information relates is not identified and is not readily identifiable.

Certain information may be disclosed.

“(2) The Statistician shall not disclose information under sub-section (1) unless the person to whom the information is disclosed has furnished to the Statistician an undertaking in a prescribed form to the effect that he—

- (a) will use the information for statistical purposes only;
- (b) will not attempt to identify any person to whom the information relates;
- (c) will not disclose any of the information to another person, not being his employee or a person associated with him in the use of the information;
- (d) will not make known to another person, not being his employee or a person associated with him in the use of the information, any information that would enable the person to whom the information relates to be identified; and
- (e) will return to the Statistician, not later than a date specified by the Statistician—
  - (i) any paper, film, tape, disc or other article or thing on or in which the Statistician furnished the information; and
  - (ii) any copy of, or any reproduction of or from, any such paper, film, tape, disc or other article or thing, being a copy or reproduction made by him, by his employee or by a person associated with him in the use of the information.

“(3) A person who has given an undertaking mentioned in sub-section (2) shall not commit any breach of the undertaking.

“(4) A person who has received information, as provided by sub-section (2) shall not do any act that, if done by his employer or former employer, or by a person with whom he was associated in the use of the information, would constitute a breach of that sub-section.

“(5) Section 24 does not prevent the Statistician or the person filling up a Householder’s Schedule from disclosing information with the consent in writing of the person by whom the information was furnished and, if the information relates to a person other than the person by whom the information was furnished, with the consent in writing of that other person.

Penalty:

## MEMORANDUM

showing the relevant provisions of the *Census and Statistics Act* 1905 as proposed to be amended by the foregoing Bill.

Words printed in italic type are proposed to be omitted.

Words printed in heavy type are proposed to be inserted.

## DEFINITIONS

3. In this Act, unless the contrary intention appears—

\* \* \* \* \*

**“Form” includes a Householder’s Schedule referred to in section 10;**

**“Former officer” means a person who has at any time been an officer, including a State officer who was at any time deemed, under sub-section 6(1), to be an officer under this Act;**

\* \* \* \* \*

**“Officer” means a person appointed by the Statistician, or by a person under delegation from the Statistician, and having any power or duty in respect of the taking or collection of a census or the collection of statistics under this Act and includes—**

- (a) **A State officer who is deemed, under sub-section 6(1), to be an officer under this Act; and**
- (b) **a person who, by arrangement with the Statistician, or with a person under delegation from the Statistician, performs any functions in respect of the taking or collection of a census or the collection of statistics under this Act.**

## UNDERTAKING OF FIDELITY AND SECRECY

7. *Every officer executing any power or duty conferred or imposed on any officer under this Act or the regulations* **An officer** shall, before entering upon his duties or exercising any power under this Act, sign, in the presence of a witness, an undertaking of fidelity and secrecy in accordance with the prescribed form.

## FORMS TO BE LEFT AT DWELLINGS

10. (1) For the purpose of taking the Census, a form called the Householder’s Schedule shall be prepared, and left, in accordance with the regulations, at every dwelling throughout the Commonwealth.

**(1A) The person leaving a Householder’s Schedule at a dwelling shall, if the person with whom it is left so requests—**

- (a) **furnish to that person an addressed envelope in which the completed form may be sent by post; or**
- (b) **furnish to that person such number as that person requests of forms, called Personal Census Forms, and addressed envelopes in which those forms, when completed, may be sent by post,**

**or both.**

(2) Where a building is let, sublet, or held in different apartments and occupied by different persons or families, each part so let, sublet, or held and used for the purpose of human habitation shall be deemed a dwelling.

## COMPLETION OF HOUSEHOLDERS’ SCHEDULES

11. *Every occupier of a dwelling, with or for whom a Householder’s Schedule has been left, shall, to the best of his knowledge and belief, fill up and supply therein, in accordance with the instructions contained in or accompanying the Schedule, all*

*the particulars specified therein, and shall sign his name thereto and shall deliver the Schedule so filled up and signed to the Collector authorized to receive it.*

*Penalty: Twenty dollars.*

**11. An occupier of a dwelling with or for whom a Householder's Schedule has been left shall, to the best of his knowledge and belief, fill up and supply in the form, in accordance with the instructions contained in or accompanying the form, all the particulars specified in the form, shall sign his name on the form in the place provided for the purpose and shall—**

- (a) deliver the form so filled up and signed to the Collector authorized to receive it; or**
- (b) send it by post in an envelope furnished as provided by sub-section 10(1A).**

**Penalty:**

## PARTICULARS IN SCHEDULE

**12. The particulars to be specified in the Householder's Schedule shall include the particulars following:—**

- (a) the name, sex, age, condition as to, and duration of, marriage, relation to head of the household, profession or occupation, religion and birthplace, and (where the person was born abroad) length of residence in Australia and nationality of every person abiding in the dwelling during the night of the Census Day;**
- (b) the material of the dwelling and the number of rooms contained therein;**
- (c) any other prescribed matters.**
- (c) such other particulars (if any) as are prescribed.**

## COLLECTORS TO ASSIST IN FILLING UP FORMS

**13. It shall be the duty of each Collector if requested to assist occupiers of dwellings in filling up the Householder's Schedule, and to satisfy himself by inquiries from occupiers of dwellings or other persons that the Householder's Schedule has been correctly filled up.**

**13. It is the duty of a Collector, if requested, to assist a person in filling up correctly a Householder's Schedule or a Personal Census Form.**

## PERSONAL CENSUS FORMS

**14A. (1) A person abiding in a dwelling during the night of Census Day who does not furnish information to the person required to complete the Householder's Schedule in respect of the dwelling so as to enable the second-mentioned person to complete the Householder's Schedule shall obtain from the second-mentioned person or an officer a Personal Census Form for completion by him together with an addressed envelope in which the completed form may be sent by post.**

**(2) A person obtaining a Personal Census Form and envelope shall, to the best of his knowledge and belief, fill up and supply in the form, in accordance with the instructions contained in or accompanying the form, all the particulars contained in the form and shall sign the form in the place provided for the purpose.**

**(3) The person shall enclose the form so filled up and signed in the envelope**

provided, seal the envelope and deliver it to the person required to complete the Householder's Schedule.

(4) That person shall deliver the envelope unopened to the Collector but if the envelope has not been delivered to the Collector within 14 days after the Census day the occupier shall post the envelope unopened.

(5) The person who filled up and signed the form may, instead of delivering it as provided by sub-section (3), deliver the envelope to the Collector or send it by post.  
Penalty:

#### COLLECTORS NOT TO OPEN ENVELOPES

14B. A collector shall not open an envelope in which a Householder's Schedule or a Personal Census Form is delivered to him.

Penalty:

#### CERTAIN PERSONS NOT TO BE PREJUDICED

14C. A person shall not prejudice another person in any way by reason only that the second-mentioned person sought to obtain from the first-mentioned person or from a Collector a Personal Census Form.

Penalty:

#### NO OFFENCE WITHOUT WARNING

15B. It is not an offence under this Part unless the contravention occurred after reasonable steps were taken to warn the person concerned that he was obliged by law to comply with the relevant provisions of this Part and of the consequences of his failure to comply, including the penalties provided by this Act in respect of failure to comply.

#### PRESERVATION OF SECRECY

24. *The Statistician, an officer, or the occupier of a dwelling, shall not, except as allowed by this Act, divulge the contents of any form filled up, or any information furnished—*

*(a) in pursuance of this Act; or*

*(b) at the request of the Statistician, for statistical purposes.*

*Penalty: One hundred dollars.*

24. (1) The Statistician, an officer or a former officer shall not, except as provided by this Act, divulge the contents of any form filled up or any information furnished—

(a) in pursuance of this Act; or

(b) at the request of the Statistician, for statistical purposes.

Penalty:

(2) Sub-section (1) applies to the exclusion of section 70 of the Crimes Act 1914.

(3) A person filling up a Householder's Schedule shall not divulge any of the contents of the form that relate to some other person.

Penalty:



## CERTAIN INFORMATION MAY BE DISCLOSED

24A. (1) Subject to sub-section (2), section 24 does not prevent the Statistician from disclosing information furnished in pursuance of Part III if he is satisfied that the manner in which the information is disclosed is such that the person by whom the information was furnished or a person to whom the information relates is not identified and is not readily identifiable.

(2) The Statistician shall not disclose information under sub-section (1) unless the person to whom the information is disclosed has furnished to the Statistician an undertaking in a prescribed form to the effect that he—

- (a) will use the information for statistical purposes only;
- (b) will not attempt to identify any person to whom the information relates;
- (c) will not disclose any of the information to another person, not being his employee or a person associated with him in the use of the information;
- (d) will not make known to another person, not being his employee or a person associated with him in the use of the information, any information that would enable the person to whom the information relates to be identified; and
- (e) will return to the Statistician, not later than a date specified by the Statistician—
  - (i) any paper, film, tape, disc or other article or thing on or in which the Statistician furnished the information; and
  - (ii) any copy of, or any reproduction of or from, any such paper, film, tape, disc or other article or thing, being a copy or reproduction made by him, by his employee or by a person associated with him in the use of the information.

(3) A person who has given an undertaking mentioned in sub-section (2) shall not commit any breach of the undertaking.

(4) A person who has received information as provided by sub-section (2) shall not do any act that, if done by his employer or former employer, or by a person with whom he was associated in the use of the information, would constitute a breach of that sub-section.

(5) Section 24 does not prevent the Statistician or the person filling up a Householder's Schedule from disclosing information with the consent in writing of the person by whom the information was furnished and, if the information relates to a person other than the person by whom the information was furnished, with the consent in writing of that other person.

Penalty:

# Appendix B

## SCHEDULE OF ORGANISATIONS AND PERSONS WHO MADE SUBMISSIONS

### ORAL SUBMISSIONS

*Adelaide 4 May 1979*

Baker, Steven J.

DeBats, (Dr) Donald A., Senior Lecturer in Politics and American Studies, Flinders University

Forster, Clive A., Senior Lecturer in Geography, Flinders University, representing the Centre for Applied Social and Survey Research at Flinders University

Glover, John, South Australian Council for Educational Planning and Research

Kriven, Franz K., State Education Department of South Australia

Sulda, Wence, Computer Programmer, University of Adelaide

Ward, Brian, Researcher

Watson, Keith S., Assistant Statistician, Australian Bureau of Statistics

*Sydney 14 May 1979*

Benjamin, Donald J., Experimental Officer, CSIRO

Dalton, Barbara, Sociologist, New South Wales Planning and Environment Commission

Doust, Russell F., State Librarian, State Library of New South Wales

Doyle, Brian, Australian Bureau of Statistics

Gordon, Neville C., Senior Marketing Analyst, Comalco Limited

Hall, Nicholas J. V., Director of the Society of Australian Genealogists

Hart, Anthony L., State Statistical Co-ordinator for the New South Wales Government

Helmreich-Marsilien, Jacqueline

Ivison, Carol, Demographer, New South Wales Planning and Environment Commission

King, Alice H., Royal Australian Historical Society

Krouk, Anthony R., Officer of the Privacy Committee, New South Wales

Lewis, Graham P., Actuary

Mackinolty, John G., Academic Lawyer, Council of Civil Liberties of New South Wales

Nicholls, (Dr) Edwin M., Lecturer in Genetics and Community Medicine, University of New South Wales

Orme, William J., Executive Member of the Privacy Committee, New South Wales

Watson, Keith S., Assistant Statistician, Australian Bureau of Statistics

Wilson, William D., Society for the Protection of Privacy of Individuals

*Brisbane 15 May 1979*

Allen, Jean, Executive Member, Queensland State Council of Women

Bain, Yvonne J., Treasurer, National Council of Women of Queensland

Cottee, Madelaine, Honorary Secretary, Queensland State Council of Women

Krosch, Allen, Acting Highway Planning Engineer, Main Roads Department, Queensland

Potter, Trever, Planning Officer, Main Roads Department, Queensland

Sparkes, Alonzo C. W., Department of Philosophy, University of Newcastle

Taylor, Albert R.

Turner, Peter M., Transport Analyst, Metropolitan Transit Authority, Queensland

Van Den Bos, Paul, Transport Analyst, Metropolitan Transit Authority, Queensland

Waller, Peter

Watson, Keith S., Assistant Statistician, Australian Bureau of Statistics  
Young, Donald G., Deputy Chairman, Queensland State Statistics Co-ordinating Committee

*Darwin 15 May 1979*

Anonymous person, Northern Territory Council for Civil Liberties  
Fuller, Donald E., Executive Officer, Northern Territory Treasury  
Kelly, Tony  
Kent, Miss, Northern Territory Council for Civil Liberties  
Mitchell, Walter, Australian Bureau of Statistics  
Parsons, Frank, Australian Bureau of Statistics  
Price, W. H., Senior Executive Officer, Department of the Chief Minister, Northern Territory  
Scott, Michael, Australian Bureau of Statistics  
Tomlinson, John, Northern Territory Council for Civil Liberties

*Melbourne 16 May 1979*

Bayley, John M., Assistant Director of Transport, Ministry of Transport  
Bennett, John T., Victorian Council for Civil Liberties  
Bromilow, Francis J., CSIRO, Division of Building Research  
Cornwell, Allison, Community Residents' Association  
Dalton, Tony B., Commonwealth Department of Housing and Construction  
Ellis, Robert B., Market Research Manager, A.C.I. Fibreglass  
Glass, Robert E., Supervising Planner, Town and County Planning Board  
Heathcote, Elizabeth A., Statistician, Ministry of Transport  
Hermans, Bruno, Systems Analyst, Catholic Education Office  
Houghton-Bruce, Ruth  
Maher, Christopher A., Senior Lecturer in Geography, Monash University  
Powers, Neil C., Research Officer, Health Commission of Victoria  
Schmideg, Stephen, Market Researcher  
Stevens, Steve, Economist, State Co-ordination Council of Victoria  
Thoresen, Thorolf R. L., Economist, Australian Road Research Board  
Watson, Keith S., Assistant Statistician, Australian Bureau of Statistics

*Canberra 17 May 1979*

Archer, Keith M., Former Australian Statistician 1962 to 1970  
Brewer, Kenneth R. W., Director, Survey Research Centre, Australian National University  
Caldwell, John C., Department of Demography, Australian National University  
Cunneen, Christopher, Research Fellow, Australian Dictionary of Biography, Research School of Social Sciences, Australian National University  
Donovan, John W., Senior Medical Adviser in Epidemiology, Commonwealth Department of Health  
Doyle, Brian, Australian Bureau of Statistics  
Graham, Jan, A.C.T. Council on the Ageing  
Inglis, G. G., Executive Officer, Master Builders Federation of Australia  
Loosemore, Fred, Assistant Director, Rehabilitation and Projects Section, Commonwealth Department of Social Security  
Mumme, Austin W., First Assistant Commissioner, Industries Assistance Commission  
McGuire, Kevin, Executive Officer, Australian Association for the Mentally Retarded

Phillips, Nancy, Research Assistant, Australian Dictionary of Biography, Research School of Social Sciences, Australian National University  
Smith, Francis B., Department of History, Research School of Social Sciences, Australian National University  
Smith, Leonard R., Demographer and Research Fellow Health Research Group, Australian National University

*Perth 17 May 1979*

Armstrong, (Dr) Bruce K., Director of Health Research and Planning, Public Health Western Australia  
Boundy, Clive A. P., Research Consultant, Office of Regional Administration and the Office of the North-West  
Brewin, Elaine  
Carr, (Dr) David, Town Planning Commissioner  
Cook, John  
Griffiths, Alan W., Corporate Planning Officer of the State Housing Commission  
Hagen, Case  
Hobbs, (Dr) Michael S. T., Associate Professor in Social and Preventative Medicine, Department of Medicine, University of Western Australia  
Holman, (Dr) Lawson J., Director-General of Public Health and Deputy Commissioner of Public Health  
Kaesehagen, Russell L., Advanced Planning Engineer, Main Roads Department, Western Australia  
Kins, Imants, Research Officer, Department of Industrial Development  
Rutherford, Kevin R., Executive Officer, Government Statistical Co-ordination Committee  
Shaddock, Ernest P., Chairman, Government Statistical Co-ordination Committee  
Shah, Kishor M., Council for Civil Liberties  
Tennant, Brian G., Council for Civil Liberties  
Van Der Kuil, Peter, Research Officer, Town Planning Department  
Watson, Keith S., Assistant Statistician, Australian Bureau of Statistics

*Hobart 4 June 1979*

Gelling, Michael J., Department of Main Roads, Tasmania  
James, John, Senior Research Officer, Department of Planning and Development, Tasmania  
Leonard, John R., Australian Electoral Officer for Tasmania and State Field Supervisor for the Census  
Lock, John B., Department of Main Roads, Tasmania  
McKean, John M., Management and Marketing Consultant  
Watson, Keith S., Assistant Statistician, Australian Bureau of Statistics

## WRITTEN SUBMISSIONS

### *Australia*

Archives and Intermediate Record Repository (Queensland)  
Archives Office of New South Wales  
Archives Office of Tasmania  
Australian Archives  
Australian Association for the Mentally Retarded  
Australian Bureau of Statistics  
Australian Consumers' Association  
Australian Council of Social Service  
Australian Ethnic Affairs Council, Professor J. Zubrzycki, Chairman  
Australian Institute of Genealogical Studies  
Australian Road Research Board  
Australian Statistics Advisory Council, Sir John Phillips, Chairman  
Baldock, (Dr) Cora., Senior Lecturer in Social and Political Theory, Murdoch University  
Bendeich, Fred  
Blaxland, G.  
Brisbane City Council  
Bruen, Elaine  
CSIRO, Division of Building Research  
Cameron, D. M. (M.P.) House of Representatives, Member for Fadden  
Charge Card Services Ltd.  
Computer Sciences of Australia Pty Ltd  
Council for Civil Liberties, New South Wales  
Council on the Ageing (A.C.T.), Mrs K. A. Bourke, Chairman  
Crain, R. L.  
Department of Aboriginal Affairs  
Department of Aboriginal Affairs (Western Australian Regional Office)  
Department of Education (Commonwealth)  
Department of Education (Queensland)  
Department of Employment and Youth Affairs (Commonwealth)  
Department of Housing and Construction (Commonwealth)  
Department of Science and the Environment (Commonwealth)  
Department of Transport (Queensland)  
Division of National Mapping, Department of National Development (Commonwealth)  
Dunstan, M., Educational Testing Centre, University of N.S.W.  
DeBats, (Dr) Donald A., Senior Lecturer in Politics and American Studies, Flinders  
University of South Australia  
Federation of Australian Historical Societies, The Hon. Mr Justice R. Else-Mitchell,  
President  
Finighan, William R.  
Fraser, R.  
Grassby, (The Hon.) A. J., Commissioner for Community Relations  
Hambley, J. R.  
Handicapped Citizens' Association (Australian Capital Territory)  
Harman, (Dr) Elizabeth, Lecturer in Social and Political Theory, Murdoch University  
Helmreich-Marsilien, J.  
Howard, (Prof.) Colin, Law School, University of Melbourne  
Joy, L.  
Keeran, F. M.

Law Council of Australia, Privacy Law Committee  
Law Reform Commission of Western Australia  
Library Board of Western Australia, Deputy State Archivist  
Main Roads Department (Queensland)  
Market Research Society of Australia, Victorian Division  
Mathews, J., Research Fellow, Department of Medicine, University of Melbourne  
Melbourne and Metropolitan Board of Works  
Ministry of Transport (Victoria)  
Molony, (Prof.) John N., Department of History, Faculty of Arts, Australian National University  
McMullan, John D.  
National Advisory Council for the Handicapped, The Hon. Mr Justice C. L. D. Meares, Chairman  
National Capital Development Commission (Commonwealth)  
National Catholic Education Commission  
National Catholic Research Council  
Neep, J. A.  
Nicholls, (Dr) E. M., Lecturer in Genetics and Community Medicine, University of New South Wales  
Neutz, S. M., Urban Research Unit, Research School of Social Sciences, Australian National University  
Paddy  
Perry, Mr & Mrs L.  
Phillips, Nancy, Research Assistant, Australian Dictionary of Biography, Australian National University  
Premier's Department (South Australia)  
Price, (Dr) C. A., Department of Demography, Research School of Social Sciences, Australian National University  
Privacy Committee of N.S.W.  
Public Records Office of Victoria  
Queensland State Statistics Co-ordinating Committee  
Royal Australian Historical Society  
Serbian Orthodox Association  
Siva Cat  
Social Welfare Policy Secretariat Department of Social Security (Commonwealth)  
Society of Australian Genealogists  
State Archives of New South Wales  
State Co-ordination Council (Victoria)  
State Housing Commission, (Western Australia)  
State Library of South Australia  
State Library of Victoria  
State Statistical Co-ordination Unit, The Treasury (New South Wales)  
Sunshine Coast Tourism and Development Board (Queensland)  
Tasmanian Group of The Australian Institute of Genealogical Studies  
Taylor, A. R. (J. P.)  
The Treasury (Western Australia)  
Town and Country Planning Board (Victoria)  
Urban Research Unit, Research School of Social Sciences Australian National University  
Ware, H.

*Canada*

Statistics Canada, R. A. Wallace, Assistant Chief Statistician

*New Zealand*

Department of Statistics, E. A. Harris, Government Statistician

*United Kingdom*

Office of Population Censuses and Surveys, P. Redfern, Deputy Director

*United States*

Bureau of The Census, Vincent P. Barabba, Director; Paul T. Zeisset, Data User Services Division; Daniel B. Levine, Acting Director; Harold Nisselson, Associate Director Goldfield, (Dr) E. D., Executive Director, Committee on National Statistics, National Research Council  
National Archives and Records, James B. Rhoads, Archivist of the United States

*Italy*

Istituto Centrale Di Statistica (Roma)

# Appendix C

## Table of Legislation

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### *Paragraph*

#### **Australia**

Constitution	8, 35
s. 24	4, 35
s. 51(xi)	8, 35
s. 105	

#### *Commonwealth*

Australian Bureau of Statistics Act 1975	
s. 18(1)	5
s. 19(3)	5
s. 24	16

Census and Statistics Act 1905	4, 29, 35, 44, 60, 64
s. 10	41
s. 11	21, 24, 60
s. 12	34
s. 12(c)	34, 35, 36, 37
s. 13	4
s. 14	21, 24
s. 15(2)	21, 24
s. 21	21
s. 24	58, 59

Census Regulations 1975	
r. 13	41
r. 16	41
r. 17	43

Crimes Act 1914	
s. 70	9, 58, 59

Public Service Act 1922	5
-------------------------	---

Representation Act 1905	
s. 8	8

Representation Amendment Act 1977	
s. 4	8

States (Personal Income Tax Sharing) Act 1978	
s. 7	8

#### *New South Wales*

Census Act 1828	4
Privacy Committee Act 1975	12



*Victoria*

Credit Reporting Act 1978 9

Evidence Act 1958  
s. 28 9*Queensland*

Invasion of Privacy Act 1971 9

*South Australia*

Fair Credit Reports Act 1974 9

*Tasmania*Evidence Act 1910  
s. 96 9**Other***Austria*

Data Protection Act 1978 11

*Canada*Human Rights Act  
s. 52(1)(a) 12*Denmark*

Public Authorities Registers Act 1978 11

Private Registers Act 1978 11

*France*

Data Processing, Data Files and Individual Liberties Act 1978 11

*Germany*

Federal Data Protection Act 1977 11

*Luxembourg*

Data Protection Act 1979 11

*New Zealand*Statistics Act 1975  
s. 37(5)(c) 76, 77*Norway*

Personal Data Registers Act 1978 11

*Sweden*

Data Protection Act 1973	11
--------------------------	----

*United Kingdom*

Census Act 1920	39
-----------------	----

*United States of America*

Fair Information Practices Act 1975 (Massachusetts) s. 2(i)	56
Information Practices Act 1975 (Arkansas) s. 6(e)	56
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# Index

- Aboriginal Affairs Planning Authority, 89  
Aboriginals, 19, 40, 87f.  
    collection in Queensland, 88  
    need for inquiry, 93  
    relevance of census to, 90  
    special schedule in Northern Territory, 92  
    under enumeration in Western Australia, 89  
Access, 54f.  
    *see also* United States, United Kingdom, Canada  
    administrative and statistical collections, 54f.  
    administrative use, 54  
    destruction of forms, 54  
    research use, 55  
Administrative and statistical collections, 2, 14, 25, 54f.  
Anonymity, 30  
    name and address, 30  
    post-enumeration surveys, 30  
    tests by Australian Bureau of Statistics, 30  
Archives Bill 1978, 82  
Australian Archives, 82f.  
Australian Association for the Mentally Retarded Inc., 31  
Australian Ethnic Affairs Council, 86, 93  
Australian Statistics Advisory Council  
    establishment, 5  
    public use samples, 63  
    special inquiry, 16  
    special problems, 93  
Authorisation, 57  
  
Canada  
    access, 56  
    Human Rights Commission, 12  
    mail, 47, 49, 53  
    origin and development of census, 3  
    retention of census forms, 67  
    sampling, 16  
Collection procedures, 41f.  
    alternative procedure, 46  
    personal slips, 43  
    special envelopes, 44  
    statutory requirements, 41  
Collectors  
    *see also* United Kingdom  
    cost, 49  
    recruitment, 45  
    role, 41, 48  
Compulsion  
    *see also* United Kingdom  
    prosecutions, 27  
    rate of response, 23  
    religion, 21, 23  
    statutory requirement, 21, 79  
    voluntary questions, 23f.  
Confidentiality  
    *see also* Privacy principles  
    archival release of census information, 83  
    guarantee of, 14, 26, 77, 88  
    penalty for breach of, 59  
    public expectation of, 57  
    statutory requirements, 58f.  
Council for Civil Liberties (N.S.W.), 29  
  
DeBats. (Dr) Donald A., 72f.  
Department of Aboriginal Affairs, 87, 91, 93  
Department of Aboriginal Affairs (Western Australian Regional Office), 89, 91  
Department of Aboriginal and Islander Affairs (Queensland), 88  
Department of Immigration and Ethnic Affairs, 85, 93  
Destruction/retention of forms, 66f., 84  
    *see also* United States, Canada, New Zealand and United Kingdom, rate of response, quality of response  
    access, 55f.  
    cost of retention, 80  
    family history, 71  
    historical research, 72  
    medical research, 70  
    misuse of information, 78  
    research use, 67f.  
    sociological research, 72f.  
  
Educational institutions, 23  
European countries, 11  
  
Federation of Australian Historical Societies, 67, 75  
Function and purpose, 6f.  
    *see also* administrative collections  
    federal elections, 8  
    money grants to States, 8  
    notification of, 25f.  
  
Grassby. (The Hon.) A. J., Commissioner for Community Relations, 77, 89, 93  
  
Handicapped Citizens Association (A.C.T.), 31  
Handicaps, 7, 31, 34  
Head of household, 42  
Historical Research, 55, 72f.  
    *see also* United States and United Kingdom  
Howard. (Prof.) Colin, 35  
  
Immigration Records, 79  
Income, 30  
Interpreting facilities, 88  
Issue of marriage, 33, 34, 39  
  
Joint Select Committee on the Privacy Bill, Tasmania, 12  
  
Law Council of Australia, Privacy Law Committee, 65  
Linkage of record systems, 79  
  
Mail, 47f.  
    *see also* United States, United Kingdom and Canada  
    cost, 49  
    need for inquiry, 53  
    quality of response, 48, 53  
    rate of response, 48, 49  
Medical Research, 68f.  
    *see also* United States and United Kingdom  
    archival release, 83  
Migrants, 40, 77, 85f.  
    need for inquiry, 93  
Misuse of census information, 78f.

*(References are to paragraphs in the report)*

- Names and addresses, 29f.
- National Advisory Council for the Handicapped, 31
- National Catholic Education Commission, 28
- National Library of Australia, 82
- New South Wales Privacy Committee
  - complaints, 29
  - establishment, 12
  - scrutiny of topics, 36
- New Zealand
  - destruction/retention of forms, 67, 76
  - personal collectors, 47
- Nicholls, (Dr) E. M., 70, 83
- Notification, 25f.
  - see also* United States, function and purpose, penalties
    - advertising and publicity, 26
    - destruction/retention of forms, 77
    - migrants, 85
    - misleading warnings, 27f.
    - personal slips, 43
    - quality of response, 27
    - rate of response, 27
    - religion, 28
    - special envelopes, 44
- O.E.C.D., 13
- Occupier, 42
- Origin and development of census, 3f.
  - see also* United States, United Kingdom and Canada
- Penalties
  - breach of confidentiality, 59, 83
  - failure to supply information, 24
  - notification of penalty, 27f.
- Period of residence, 23
- Personal slips, 43
- Post-enumeration surveys, 30, 54
  - see also* quality of response
- Prescribing topics
  - Constitution, 35
  - issue of marriage, 38
  - procedures, 36
  - sources of mortgage, 38
  - statutory requirements, 34
- Prime Minister's Department, 82
- Privacy Principles
  - access, 54
  - collection of information, 15
  - confidentiality, 57
  - generally, 9f.
  - notification, 25
  - preclearance, 39
- Public Attitudes, 29f.
- Public Health Department (Western Australia), 89
- Public use samples, 61
- Quality of response, 19f.
  - see also* sampling, notification, mail
  - destruction/retention of forms, 77
  - post-enumeration surveys, 30
- Race, 32
- Rate of response
  - see also* United Kingdom, notification, mail
  - 1971 Census, 22
  - 1976 Census, 22f.
  - compulsion, 23f.
  - destruction/retention of forms, 77
  - effect of anonymity, 30
  - religion, 28
  - voluntary census tests, 24
- Reidentification of census information, 62f.
- Religion, 21, 23, 28, 32
- Royal Australian Historical Society, 67, 75
- Sampling, 16f.
  - see also* United States, United Kingdom and Canada
  - designing a sample, 20
  - quality of response, 20
  - sample errors, 20
  - views of Australian Bureau of Statistics on, 19
  - views of users on, 20
- Senate Standing Committee on Social Welfare Report, 31
- Society of Australian Genealogists, 67, 70
- Social Security records, 79
- Sociological research, 73f.
  - see also* United States
- Sources of mortgage, 38
- Standing Committee on Regulations and Ordinances, 36, 38
- State Statistical Co-ordination Unit of the New South Wales Treasury, 20
- Statistician (Northern Territory), 87
- Statute Law Revision Committee of Victoria, 12
- Subpoena, 57, 64f.
- Tabling census regulations in Australian Parliament, 36, 39, 40
- Tax records, 79
- Tear-off slips, 30
- Thernstrom, Stephen, 73f.
- Transfer to Archives, 56, 82f.
  - see also* United States, release from Archives, 83
- United Kingdom
  - access, 55
  - census regulations, 39, 40
  - collectors, 47
  - Committee on Data Protection, 55
  - compulsion, 21
  - destruction/retention of forms, 67
  - historical research, 75
  - Lindop Committee, 55
  - mail tests, 51f.
  - medical research, 69
  - National Health Service Central Office of Population Censuses and surveys, 51f., 69
  - origin and development of census, 3
  - rate of response to voluntary census tests, 24
  - Register, 69
  - Royal Statistical Society, 45
  - sampling, 18
  - White Paper 1978, 39

- United States
  - access, 56
  - archival release, 83
  - Bureau of the Census, 27, 48f., 77, 79
  - cost of mail census, 50
  - destruction/retention of forms, 67
  - Federal Bureau of Investigation, 78
  - historical research, 72f., 76
  - House Committee on Post Office and Civil Service, 68, 77, 83
  - mail, 47
  - medical research, 68
  - misuse of census data, 78f.
  - National Academy of Sciences, 77
  - notification of penalty, 27
  - origin and development of census, 3
  - preclearance, 39
  - Privacy Act 1974, 12, 56
  - Privacy Protection Study Commission, 12
  - sampling, 17
  - sociological research, 73f.
  - study on confidentiality, 77
- Western Australian Law Reform Commission, 12
- Woodhouse Committee, 31
- Wright, R. C. (Senator), 38