

8 July 2005

Mr Dennis Trewin  
Australian Statistician  
Australian Bureau of Statistics  
ABS House  
Locked Bag 10  
BELCONNEN ACT 2616

Dear Mr Trewin

**Census Enhancement Proposal  
Supplemental Comments on the Privacy Impact Assessment prepared for the ABS**

I refer to the email dated 27 June 2005 from Ms Rosalie Butler, Assistant Director of the Census Enhancement Project, notifying me of the release of the Privacy Impact Assessment (prepared on your behalf by Pacific Privacy Consulting) and the ABS's response to this document, and inviting additional comments. My comments follow and are supplemental to my Submission of 9 June 2005.

I note the consultant's comments (at pp 8 and 11) that the Privacy Impact Assessment (PIA) was conducted in a compressed timeframe and consequently could not incorporate wider input from privacy commissioners, data custodians and other interested third parties or have regard to overseas experience. The ABS has gone some way to address this by extending the consultation period and inviting comment on the PIA.

The PIA has usefully explored the privacy issues and concerns raised by the Census Enhancement Proposal. With the exception of two matters of significance (discussed at the end of this letter), I support and endorse many of the consultant's findings including:

- (at p. 3) the Census Enhancement Proposal would result in the creation of a significant and progressively more comprehensive profile of people's lives;
- (at p. 3) some will see the Proposal as a radical departure from the ABS's established practice in that it will create a data resource so rich and valuable for administrative purposes that the privacy and secrecy framework under which the ABS operates will come under great and possibly irresistible pressure, if not now, then in the future;
- (at p. 3) radical change to the ABS's authorising legislation would be required to address concerns about non-statistical administrative uses of the enhanced datasets;
- (at p. 10) the ABS's proposal to introduce a finer geographic unit ("mesh block"), separate from the Census Enhancement Proposal, is significant and relevant in that it will facilitate the

identifiability of individuals and of ethnic and other distinctive population sub-groups, creating an actual or perceived risk of harm – see paras 18-19 and 43 of my earlier Submission;

- (at pp 10-11) the ABS's intention, again independently from the Proposal, to digitise and store – for the first time – individuals' names and answers on the census forms will make it easier to profile individuals by matching particular individuals' responses to consecutive censuses. In the past, it would have been technologically challenging and very expensive to do this on an ad hoc basis. In my view, the digitisation of census datasets itself creates a risk similar to that posed by the establishment of a Statistical Longitudinal Census Dataset (SLCD) of putting the ABS's confidentiality framework under the risk of pressure by agencies seeking access for non-statistical administrative uses;
- (at p. 15) public trust in the ABS, while very high, could be easily damaged not only by actual breaches of confidence but even by perceptions that assurances given might not be "ironclad" – see paras 28-32 and 41-52 of my Submission;
- (at pp 18 & 21) compliance with the Information Privacy Principles under the *Privacy Act 1988 (Cth)* is a necessary, but not sufficient, condition of satisfying privacy concerns, and that the use and disclosure provisions of the federal privacy law are less restrictive than the census law;
- (at pp 27-28) use of birth and death registration information from state registries needs to comply with applicable privacy and other legislation that permit the registrars to supply, or to continue to supply, the information for use in the ways the ABS proposes. Custodians of Victorian datasets will need to consider whether a (continued) disclosure of large datasets of identifiable data to the ABS for use in the ways proposed has been and will continue to be authorised – whether under the legislation establishing the register or otherwise in accordance with the Use and Disclosure principle in the Victorian *Information Privacy Act 2000*;
- (at pp 28-31) the creation of an SLCD could form the basis of a comprehensive population register containing data about all Australians; the exclusion of names and address from the SLCD may put a barrier in the way of associating data with particular individuals but does not prevent it; the ABS should not put too great a reliance on the limited use of names and addresses when the important issue is really about the ability for data to be associated with a particular individual; and the creation of an SLCD record number could fuel concerns about a unique identifier being created for all Australians – see paras 3-7 of my Submission;
- (at pp 32-33) the privacy concerns with the SLCD are exacerbated by the inclusion of sensitive data (eg relating to race and ethnicity), which has the potential to be associated with particular individuals – see paras 25-27 of my Submission.

There are two issues where my view departs from the PIA. The first relates to the adequacy of the current confidentiality and secrecy framework that applies to the ABS and the census. The second relates to the failure to consider less intrusive options for creating an SLCD, notably consent.

### **Adequacy of the confidentiality and secrecy provisions**

The PIA notes (at p. 17) that the ABS is not aware of any power under other legislation that could override the secrecy and confidentiality provisions in the *Census and Statistics Act 1905 (Cth)* and that, in the event that any attempt were made to use such powers, the ABS would defend its secrecy provisions in the courts. Such a commitment, while illustrative of the ABS's commitment to safeguard data, may not provide sufficient (and certainly not "ironclad") protection against compelled disclosure for non-statistical administrative purposes. A number of agencies have strong powers to compel information be handed over. These include the Australian Taxation Office (see *Income Tax Assessment Act 1936 (Cth)*, ss 264), the Commonwealth Department of

Immigration and Multicultural and Indigenous Affairs (see *Migration Act 1958 (Cth)*, s. 18), and the Australian Security Intelligence Organisation (see *Australian Security Intelligence Organisation Act 1979 (Cth)*, s. 34G).

The strongest safeguard is, of course, destruction. The ABS cannot be forced to disclose what it does not hold. But even this will not provide sufficient protection during that period of time when names and addresses are held during census processing (said in the PIA to last for 15 months). The current legislative protection for the 2001 Census goes some way to empowering the ABS to avoid disclosure of documents to a court, but does not avoid disclosure to other agencies who exercise powers to compulsorily acquire information and documents.

Consideration should be given to amending the census law to give the ABS more explicit powers to avoid disclosure of identifiable information held by the ABS, perhaps along the lines of the disclosure avoidance powers that safeguard the US Census data (referred to at endnote iv of my Submission). In my view, the current legislation governing the census and the ABS does not, as is suggested in the PIA (at p. 42) already go as far as possible to ensure that information cannot be used in ways that threaten the interests of individuals. Greater legislative protection is required.

### **Creating the SLCD by compulsion or by consent?**

The PIA refers to two ways in which longitudinal studies might be conducted without relying on compulsory inclusion of the whole population: first, the use of sampling by the UK Office of National Statistics (pp 11-12); and secondly, the possibility of individuals “opting-out” of providing information in the first place (p. 33). The PIA discounts the second option on the basis that it would compromise the value of the census for public policy and planning purposes, and for allocating funding. However, consideration is not given to providing individuals with the option of consenting to the inclusion of their data in a SLCD (“opt-in”). The 2001 Time Capsule experience, where half of the population agreed to their names being retained for release in 99 years, indicates the potential for consent to provide a substantial sample of the population’s data without resorting to the compulsory inclusion of the entire population’s data in an SLCD.

Consent is an ethical touchstone in the conduct of research involving human beings. Compelling every person in Australia, under pain of penalty by law, to participate in a longitudinal study that results in an increasingly rich and identifiable profile of their personal circumstances, family background and life transitions is disproportionate and overly intrusive. The ABS has not discharged the onus of establishing that the SLCD proposal is the least intrusive and proportionate means of achieving the aim of providing a longitudinal view of population trends and transitions.

I trust these comments will assist in your deliberations and would be pleased to provide further comment or clarify any questions.

Yours sincerely,

PAUL CHADWICK  
Victorian Privacy Commissioner

cc      Karen Curtis, Federal Privacy Commissioner  
          John Dickie, Acting Privacy Commissioner, New South Wales  
          Peter Shoyer, Information Commissioner, Northern Territory