



Submission 057
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**PUBLIC TRUSTEE
FOR THE AUSTRALIAN CAPITAL TERRITORY**

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The Secretary
Commonwealth Parliamentary Joint Standing
Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Secretary

**INQUIRY INTO 2013 FEDERAL ELECTION AND RELATED MATTERS
- ACCESS TO THE AUSTRALIAN ELECTORAL ROLL**

I am writing on behalf of Public/State Trustees in all Australian states/territories. Public/State Trustees have been established under state/territory legislation to provide traditional trustee services to the Australian community. Public/State Trustees that are party to this submission are listed at Schedule A of this submission.

Our services include -

- Will services (as executor)
- Enduring Powers of Attorney services (as attorney)
- Estate Administration (as executor or administrator)
- Trust Administration
- Financial Management for persons with a decision-making disability
- Funds administration/investment for government and non-government trusts
- Asset management under state/territory Proceeds of Crime legislation.
- Examination/audit of accounts prepared by private financial managers.

Our submission to the Committee's inquiry is in relation to our role in providing Estate Administration services to the Australian community. Public/State Trustees collectively administer between 8,000-10,000 deceased estates each year either as executor or under Letters of Administration.

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ISSUES

1. Estate and trust responsibilities

In making this submission, we are mindful that it is a concern of the Commission to -

- minimise any possible infringement of privacy by only allowing access for purposes that would be permitted under the *Privacy Act/s* and the *Commonwealth Electoral Act 1918*; and,
- ensure that personal data is only provided to agencies where there is a clear public benefit, in order to preserve the integrity of the enrolment process. We appreciate the Commission's concern that, if the electoral roll is provided without sufficient public benefit, to an unnecessarily broad spectrum of agencies, there is a risk that citizens may refrain from enrolling to prevent their data being provided to those agencies.

In the exercise of their responsibilities, Public/State Trustees have significant use of information held in the Commonwealth Electoral Roll. The information is required to identify and discover the whereabouts of persons who may be the beneficiary/ies in estates administered and, more particularly, in the absence of a Will. Electoral information is also useful in the administration of trusts whether private or court appointed.

A failure to identify persons who are the rightful beneficiaries in estates may result in moneys being forfeited to government. The principle of providing appropriately for one's family in wills and estates underpins all state/territory Family Provisions legislation. It makes sense then to remove barriers that might stand in the way of family benefitting from estates.

A further consideration is the strong regime to fight money-laundering and to counter terrorism financing. Collectively, as managers of significant financial assets, Public Trustees are required to identify their clients under the "know your client" principles contained in the *Anti-Money-Laundering and Counter-Terrorism Financing Act 2006* (C'lth).

Similarly, the *Financial Transactions Reports Act 1988* (C'lth) provides for the reporting of certain financial transactions and transfers to the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the role of Public Trustees in that regard, under the "know your client" principles, assists the Commonwealth in preventing fraud or improper dealing.

REASONS FOR THE MAKING OF A REGULATION

1. Public Benefit

Public/State Trustees are not regulatory bodies, providing a purely beneficial service to government and the community. Public/State Trustees are the largest professional administrator of intestate estates in Australia. When a person dies, their assets are distributed to their next of kin in accordance with a formula set out in succession legislation. These laws require the establishment of next of kin to be proved by primary evidence which comprises Birth, Death, Marriage and Change of Name certificates. Often, location of next of kin can be problematic and an estate cannot be finalised and its assets distributed until next of kin are located and provision is made by satisfactory evidence showing them to be the person identified in the certificate evidence. One of the most effective means of locating next of kin in Australia is by searching the electoral roll and, once again, is significantly in the public interest.

2. Privacy

Public Trustees are privy to significant personal information in the exercise of their powers and have a heightened awareness of privacy principles. Public Trustees have been audited in accordance with their respective Privacy legislation, are compliant with the Information Privacy Principles and have established Privacy Collection Statements and Privacy Policies which shape their privacy responsibilities to the community.

We have examined our respective state/territory privacy legislation and are satisfied that access to the information contained in the electoral rolls would not offend the nature and intent of these principles. It is also submitted that the public benefit accrued in providing Public Trustees with electronic access would not contravene, but balance a person's right to privacy.

3. Nature of the Public Trustee

Public Trustees were established through the need for a trusted public official to be responsible for trust funds and to protect community assets including those belonging to vulnerable people. Public Trustees rely upon vital information from external sources to undertake their responsibilities which are of significant community benefit.

Relevant responsibilities include -

Executorial responsibilities -

Public/State Trustees collectively draft in excess of 50,000 Wills each year and act as executor in the administration of estates under Will. In this capacity their role is to prove the Will, collect in estate assets and pay debts and distribute assets to beneficiaries. Upon a person's death, their Will is invariably several years old and the whereabouts of both the person and their beneficiaries is crucial to this function. It is of significant public benefit that Public/State Trustees be able to locate these people to ensure that testamentary wishes are put into effect and also to assist in mitigating Will fraud.

Administrator

As administrator, Public/State Trustees deal with estate assets where there has been a failure to make a Will or a failure to make a valid and effective Will. If a person dies without a Will they are said to have died intestate. The administrator has much the same role as executor and must locate, and prove the entitlement of, the next of kin. The use of genealogy and family trees in this process is very much dependent upon information available to Public/State Trustees including electoral roll information.

Manager (Financial and Property) and Trust administrator

As Financial Manager/Administrator, Public/State Trustees have Community Service Obligations and trust responsibilities to assist people who, through accident, illness, age or disability, lack capacity and require assistance in the administration of their financial/property affairs. Qualities of independence, professionalism, expertise, governance, accountability and transparency make Public/State Trustees ideally qualified to safeguard the community in respect to trust activities and indeed the security of information in the rolls.

Reporting Entity under the *Financial Transactions Reports Act 1988* and the *Anti-Money-Laundering and Counter-Terrorism Financing Act 2006*

Public Trustees collectively administer some \$8,000,000,000 in funds under management. It is critical for Public Trustees as financial managers to know their customers very well. As reporting entities, Public Trustees are required to have a proper understanding of their customers to satisfy their respective "know your client" obligations.

Under the *Financial Transactions Reports Act 1988* "know your client" relates to the understanding of a client's financial position.

Under the *Anti-Money-Laundering and Counter-Terrorism Financing Act 2006*, the "know your client" policy refers to documentation which sets out an organisation's approach to ensuring that it can effectively identify, verify and monitor its customers and the financial transactions in which they engage, relative to the risks of money laundering and terrorism financing. Information contained in the rolls is vital to such identity checks.

Administration of Proceeds of Crime legislation

Several Public/State Trustees have responsibilities to receive and administer proceeds of crime under State/Territory legislation. In doing so, they work closely with the DPP and Police in each state/territory in schemes designed to verify the identity of, or location of, persons of interest in relation to property ownership matters.

4. Existing Access by Public Trustees to other Registers

Public Trustees in some states/territories currently enjoy access to a number of other registers including -

- Australian Taxation Office (in connection with preparing income tax returns for clients);
- Department of Human Services (Centrelink - as nominee for a person under PRACT's care)
- Land Title Registers - (in many cases online in connection with conveyancing and property management for clients).
- Births, Deaths and Marriages Registers (Public Trustees are permitted access to BDM Registers upon providing evidence of their authority/appointment as representative on each occasion).
- Public/State Trustees are in discussion with government concerning access to information in connection with their nominee role in the rollout of the NDIS.

Access by Public/State Trustees to these registers, which contain significant personal information, has been provided in recognition that the data is vital to the conduct of their statutory role, the highly beneficial nature of Public/State Trustee services in the community and the level of public trust in the Office of Public/State Trustee.

5. Public/State Trustees work closely with the Australian Federal Police and the Department of Foreign Affairs and Trade

Public/State Trustees have close links with the AFP and the Department of Foreign Affairs in the issue and enforcement of PACE alerts and to assist in the circumstances of Australian citizens who have become unwell whilst overseas and who, in their ill health, have a decision making disability either permanent or temporary. That is, they are unable to consent on their own behalf to necessary treatment and actions for repatriation to Australia. On occasions, some individuals are opposed to the intervention required to treat and or return them to Australia thus placing them at significant risk in the host country. The proper identification of these persons and of their state/territory of residence is fundamental to the determination of jurisdiction.

6. Application to Australian Electoral Commissioners on a State/Territory basis impractical

Application for access to the rolls has been made by some Public/State Trustees to the Electoral Commissioner in their respective states/territories. We note that electoral legislation varies from one jurisdiction to another, with significant differences in the provisions around authority and access. Experience shows that application by Public/State Trustees to Commissioners in their jurisdictions has produced inconsistent and non-uniform results. Public/State Trustees need to identify persons throughout Australia and most have provisions in the enabling legislation that allow them to act as agents for one another. Your agreement to support this submission by granting Public/State Trustees access to the Commonwealth electoral roll would be a significantly less circuitous path.

7. ACT Public Trustee appointed as prescribed person by ACT Attorney-General

The ACT Attorney-General has responded in June 2013 to a similar request by the Public Trustee for the ACT (PRACT) by making a Regulation under the ACT Electoral Regulation by Electoral Amendment as per Schedule B attached. The Regulation prescribes the Public Trustee as a prescribed authority to have access to the roll for the purposes of the administration of deceased estates. The ACT Electoral Commissioner provides the ACT Electoral Roll in

electronic form (including date of birth and address) each month. The Regulation may be accessed online at - <http://www.legislation.act.gov.au/sl/1993-24/current/pdf/1993-24.pdf>

RECOMMENDATION

We respectfully submit that the making of a Regulation that names Public/State Trustees as prescribed authorities to access the Commonwealth Electoral Roll -

- is wholly within the public interest;
- would not infringe a public right to privacy; and
- would not act to deter a person from enrolling as a voter.

We recommend that the Committee gives favourable consideration to our submission.

For the purposes of this submission, Public/State Trustees ask that you communicate with the undersigned, Mr Andrew Taylor, Public Trustee for the ACT on their behalf.

Yours faithfully

.....
Andrew Taylor
Public Trustee for the Australian Capital Territory;
18 February 2014

SCHEDULE A

The following entities are party to this submission:

Andrew Taylor
Public Trustee for the Australian Capital Territory

Imelda Dodds
New South Wales Trustee and Guardian

Peter Carne
Public Trustee of Queensland

Debra Contala
Public Trustee of South Australia

Craig Dent
State Trustees Limited (the successor entity to the Public Trustee of Victoria)

Brian Roche
Public Trustee of Western Australia

David Lisson
Public Trustee for the Northern Territory

Peter Maloney
Public Trustee/Chief Executive - Public Trustee of Tasmania.

SCHEDULE B

ACT ELECTORAL REGULATION 1993

4AA Use of roll information—deceased estates—Act, S.65

- (1) The public trustee is a prescribed authority.
- (2) Administration of deceased estates is a prescribed purpose.
- (3) The public trustee may give roll information to another person or entity if the only use of the information authorised by the public trustee is to administer a deceased estate.
- (4) A person or entity given roll information under subsection (3) may only use the information for a prescribed purpose under this section.

PROPOSAL SUMMARY

Australian Public/State Trustees respectfully submit that it is significantly in the public interest that they be provided with access to the Commonwealth electoral roll. We submit that there is no perceived detriment identified in the provision of such access and that the Australian public is unlikely to be dissuaded from enrolling as electors in the knowledge that such access is provided.

We note that S.90B(4) of the *Commonwealth Electoral Act 1918* (the Act) provides a means by which a person/organisation may be prescribed by Regulation made under the *Electoral and Referendum Regulations 1940* as a person/organisation to whom the Electoral Commissioner may give information in relation to the rolls. Public/State Trustees do not presently fall within the meaning of prescribed authority at S.4(1) of the Act as they are not Commonwealth agencies. We respectfully seek that S.4(1) be broadened to accommodate access by Public/State Trustees and that Public/State Trustees be added to Schedule 1 of the Regulations.

BACKGROUND

Public Trustees are trusted public officials responsible under rigorous statutory and non-statutory governance principles. We have existed in Australia for over 100 years. We were established with a clear public interest mandate, which is to meet the needs of people who are socially or financially disadvantaged and could not otherwise access private services to meet their needs, in particular through the making of wills, administration of deceased estates, trusts and finances where a person has lost capacity.

Therefore Public Trustees have a major role managing the money and assets of clients and beneficiaries. In doing so we discharge a significant duty of care. Intrinsic to that role is the identification of persons associated with -

- the administration of deceased estates (particularly intestate estates) under State/Territory succession laws.
- the *Financial Transactions Reports Act 1988* (Clth);
- the *Anti-Money-Laundering and Counter-Terrorism Financing Act 2006* (Clth); and

Public Trustees may also have roles under state/territory Proceeds of Crime legislation.

Public/State Trustees currently access information published in the Commonwealth Electoral Roll by attending the offices of the Electoral Commissioner in each state/territory. Accessibility to one single Commonwealth Electoral Roll including date of birth information by Public/State Trustees would be of significant value to the Australian community in identifying people who may be beneficiaries in estate administration.

Public/State Trustees have approached government seeking access to the rolls on a number of previous occasions -

- The Public Trustee NSW wrote on our behalf on 16 December 2008. The Commonwealth Electoral Commissioner replied on 16 November 2013.
- The Public Trustee for the ACT wrote on our behalf on 26 September 2013. The Chief of Staff, Office of Senator the Hon. Michael Ronaldson, Special Minister of State wrote on 31 January 2014 inviting Public/State Trustees to make a submission to the Commonwealth Parliament's Joint Standing Committee on Electoral Matters "inquiry into the 2013 Federal Election".
- A number of Public/State Trustees have separately made approaches to their state/territory governments seeking access to the Commonwealth Electoral Roll.