

19 September 2016

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

### **Submission for Consideration – Inquiry into Census 2016**

This submission relates to the following item in the Committee's Terms of Reference

j. any related matters.

Section 14 of The Census and Statistics Act 1905 provides for a fine of one penalty unit (currently \$180) *in respect of each day until a person complies* with a Notice of Direction served under Section 10(4) or 11(2) of the Act. Because the ABS must give a person 14 days in which to comply, fines will accumulate 14 days from when a *Notice of Direction* is served.

For a fine to be imposed, the ABS must refer the matter to the Director of Public Prosecutions who must then arrange for a prosecution before a Magistrate. There is no requirement for the ABS or the Director of Public Prosecutions to seek speedy resolution of a matter. But, in a classic example of *justice delayed is justice denied* the final penalty imposed on a person will be compounded for each day of delay in the administrative processes prior to a court hearing.

This provides the opportunity for vindictive bureaucrats to delay processing prosecutions to add to the burden of punishment on recalcitrant citizens as retribution for those citizens who may have defied their demands, criticised the ABS in the media or made a critical submission to a Senate Committee Enquiry. It also provides the means by which a prosecutor could enhance the collective volume of fines returned from his/her prosecutions in a given period of time – for example the time prior to annual performance reviews being conducted within the bureaucracy.

The penalty provided for in Section 14 of the Act is not punishment for a misdemeanour or negligence. It does not involve an “*on the spot*” fine although the ABS implies that when wielding it at people. It is a draconian bureaucratic weapon designed to bludgeon people into submission so that the ABS can get, play with, and sell, the personal information demanded.

The penalty in its current form is archaic and draconian. The original Census and Statistics Act was passed in 1905 at a time when judicial corporal punishment (the lash) was routinely administered in adult and juvenile gaols and the penalty for murder was execution by hanging. This penalty reflects the social attitudes and authoritarian attitude to punishment of that time more than a century ago. The Census and other periodic statistical collections are not vital to national security and do not warrant the despotic legal status which the ABS applies to them. The penalty as it stands, the purpose for which it exists and the manner in which it is used by the ABS has no place in a democratic 21<sup>st</sup> century society.

While there appear to have been relatively few prosecutions for this offence, its existence is, and has been used by the ABS to intimidate, threaten and coerce reluctant respondents.

The ABS is inflexible, authoritarian, dogmatic and obstinate in its use of the Statistician's power to direct a person to fill up a form or answer a question. It is extremely rare that a periodic survey or a question in a survey or the Census has been declared to be to be voluntary. In fact, the ABS had to be directed by the Parliament in the case of the religion question in the Census.

The ABS has never provided a satisfactory and sound reason for its obsession with requiring 100% response rates to its surveys. This is supported by the following extract from a speech by Senator Paterson in the [Senate on Monday, 28 November 1988 \(Hansard Page: 3033\)](#)

Despite the help of the Parliamentary Library-which provides a service acknowledged too little in this place-a search of the psychological, sociological, and market research literature drew a blank. None of the articles provided, dating back to 1937, lent support to the Bureau's argument. There were a number of articles on signed versus unsigned questionnaires, on surveys where people were asked to put their names and where people were not asked to put their names, and on the lack of surveillance. But there were no studies on compulsory versus voluntary surveys. The Bureau must have been clutching at straws when it relied on a report by the West German Government to support its argument. The Bureau devotes almost two pages of its 13 page argument to this support. The ABS summarised it as follows:

*It cannot, of course, be assumed that the findings of this investigation in the Federal Republic of Germany would apply in their totality in Australian circumstances.*

That is a nice little qualification. The summary continues:

The results must, however, be regarded as significant-particularly when account is taken of the thoroughness of the study, the unambiguous nature of the technical conclusions and the strong support of the Government for the maintenance of compulsion in a country in which there are strong concerns for individual privacy.

If that had been a second-year university student presenting a summary of a report of the nature of the one from the West German Government, in my book that student would have failed. The Bureau may have summarised the report thus; however, I took the trouble to get a copy of the report. If one can work one's way through the obscure English translation one can only surmise that either the study was inadequate and/or that the report of the study was inadequate. Despite what the ABS would have us believe, the study only tells us about the response rates of compulsory as compared with voluntary micro-census surveys-quantitative data, not qualitative data. It does not examine the accuracy or the truthfulness of responses. It is a possibility that a percentage of those who respond in the compulsory surveys tell lies. This may distort the findings just as much as a failure to respond would do. I seek leave to table the West German report which I obtained through the Library, entitled, Experiences Resulting from the Implementation of the Microcensus Act. This report by the West German Government, dated 10 June 1985, was submitted in Bonn in January 1988.

Senator Paterson went on to say:

Spot checks comparable to the microcensus- which is the micro-census which this report is studying-are being carried out under obligation to give information on principle in 12 countries in the OECD realm-including the Federal Republic of Germany. Nine countries are practising voluntary giving of information.

Voluntary labour force spot checks in these countries, which-like the microcensus-are to supply safe absolute figures and rates of change up to the previous report period, achieve answer proportions lying between 81% and 95%.

We are talking about voluntary questionnaires. Other countries are getting response rates of 81 per cent and 95 per cent. The ABS failed even to mention that in its report. It talks only of the West German Government because it supports its argument. The report also states:

The distinctly higher proportions are above all obtained because the people questioned consider giving information at State surveys in the States under consideration as their duty as citizens on principle.

I suggest that if the ABS took the time to inform citizens about the importance of such a survey we might find that the Australian citizenry would also be inclined to respond. If this is the only evidence that the ABS can muster to support the need for a compulsory household expenditure survey it should go back to the drawing board. This issue of privacy and individual rights is so important that maybe the Australian Government should fund an independent study rather than rely on an inadequate report of a single study-I stress the word 'single'-which it admits may not be applicable to Australia. No university department would be allowed by an ethics committee to carry out a compulsory survey with such fragile information and a study based on such poor methodology.

The ABS advertises and implies compulsion even when a Census or survey is in its initial “*request*” mode. It does this because it has unfettered power to threaten people and is driven by bureaucratic hubris. This hubris is reflected in the ABS obsession with claiming that respondents “willingly cooperated” in the survey or census. The prevarication inherent in this claim is that a person who receives 5 harassing home visits and 3 threatening letters but succumbs to the ABS’ demands and threats before a formal Notice of Direction is issued will be declared as having “*willingly cooperated*” with the ABS.

In the interests of probity, the Committee should investigate whether there is any remuneration benefit in the performance contracts of senior ABS officers which is based on the response rates for statistical collections in their areas of responsibility.

The administrative fiasco that surrounds Census 2016 has been exacerbated by the ABS’ irresponsible direct and indirect references to this penalty. This caused widespread angst and trauma especially amongst older members of the community. Fearful of being fined, people panicked and were foregoing sleep and phoning the ABS call centre in the middle of the night to obtain census forms prior to Census night. The failure of the online system has exacerbated this anguish as people do not know if their forms have been received and are anticipating receiving a fine notification. While these fears are unfounded, the ABS has caused them and has made no attempt to apologise or assuage people’s fears.

This penalty must be removed from the Census and Statistics Act 1905. It can be replaced by a single “*on the spot*” administrative fine for non-compliance if it is deemed essential that a person provide certain information to the ABS and if the Parliament gives specific approval for the ABS to issue non-compliance fines in any particular survey or census. If a person still refuses to comply, the matter can then be referred to a Magistrate to issue a court direction to the person and penalties can apply if the person defies the court.

Yours Faithfully