



Census Information Legislation Amendment Bill 2005

Rosemary Bell
Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
Basis of policy commitment.	2
Pros and cons	3
History of censuses in Australia	4
Main Provisions	5
Amendments to the <i>Archives Act 1983</i>	5
Amendments to the <i>Census and Statistics Act 1905</i>	6
Concluding Comments.	7
Financial impact	7
Endnotes.	7

Census Information Legislation Amendment Bill 2005

Date Introduced: 3 November 2005

House: House of Representatives

Portfolio: Treasury

Commencement: 28 days after Royal Assent

Purpose

To amend the *Census and Statistics Act* 1905 and the *Archives Act* 1983 to ensure that name-identified information collected at the 2006 Census and all subsequent censuses, from those households that provide explicit consent, will be preserved for future genealogical and other research, and released after 99 years.

Background

Basis of policy commitment

In 1997 and 1998 the House of Representatives Standing Committee on Legal and Constitutional Affairs looked at the practice of destroying name-identified forms collected in the population censuses that are conducted every five years by the Australian Bureau of Statistics (ABS). The Committee recommended in its report, *Saving our census and preserving our history*, that name-identified information contained in forms from future censuses be retained, that the records be closed for a period of 99 years, and that census information continue to be processed and handled only by officers of the National Archives of Australia (Archives) and the ABS.¹

The Government responded to the Committee's recommendations and directed that, for the 2001 Census, people would be given the option of agreeing to the retention of their census form with a minimum closed access period of 99 years. The Government said that, depending on the impact of this decision for the 2001 Census, they would look again at the question of retaining name-identified information from future censuses.²

The *Census Information Legislation Amendment Act* 2000 amended both the *Census and Statistics Act* 1905 and the *Archives Act* 1983 to allow households to choose to preserve their name-identified information recorded in the 2001 Census. According to the Minister's second reading speech on the current Bill, 'over 50 per cent of Australians elected to have their name-identified census information retained by the National Archives of Australia'.³ The Minister said that, given the support shown by the community for this

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

option, the Government has decided to ensure that such information, from households that provide explicit consent on their census form, will be kept by the Archives.

Pros and cons

The impetus for the Committee's inquiry came largely from genealogical researchers interested in using the information contained in the census forms for family history research.⁴ They argued that name-identified census records would contain valuable information about the daily lives and social history of their ancestors which might not otherwise be available.⁵ Academic researchers in fields such as demography, sociology, history and epidemiology already use statistical information from the census for many research purposes.⁶ The Committee accepted that name-identified information, released after a significant period of time, would be an invaluable source of information for historians, historical sociologists and other researchers interested in older records.⁷

The ABS was the principal proponent of the argument that name-identified information from census forms should not be retained.⁸ The ABS submitted that the primary purpose of the census, that is, the collection of accurate statistical data, would be jeopardised if name-identified information were retained. They said that public cooperation with the census would decline if people knew that their information would be kept and released in the future. Non-response rates would rise and the information would be less accurate. The level of non-response and the accuracy of data provided for small geographic areas or particular sub-groups of the population would vary. Data at these levels, such as regional estimates, would be less reliable.

The Committee concluded that a properly managed and comprehensive public education program, promoting the benefits to the community of retaining census forms for future research, would assist in eliminating any potential reduction in public cooperation with the census because of concerns about privacy.⁹ In considering issues of privacy and confidentiality of census records, the Committee referred to the 1979 report of the Australian Law Reform Commission (ALRC) entitled *Privacy and the Census*. In this report, the ALRC stressed that establishing a satisfactory level of confidentiality did not imply a requirement for actual destruction of census forms.¹⁰

The confidentiality of census data continues to be a matter of concern to the ABS and some sections of the community. In April 2005 the ABS published a discussion paper entitled *Enhancing the population census: developing a longitudinal view 2006*.¹¹ The paper outlined a proposal to enhance the value of data from the 2006 Census by combining it with future censuses, and possibly data from the census in 2001, to create a Statistical Longitudinal Census Dataset (SLCD). The SLCD could be used in its own right, but might also be used in conjunction with other data such as the birth and death register, long-term immigration data and national disease registers.¹² According to the Australian Statistician:

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The ABS believes that creating the SLCD, and making it available for use with a limited number of datasets, would greatly expand the amount of data available to inform decision making among governments and the community. Creating this dataset would be an investment in the future, and the value of it would grow over time as more census information is added.¹³

The Australian Privacy Foundation has expressed its concerns about the potential to create a centralised population database,¹⁴ while the Victorian Privacy Commissioner, Paul Chadwick, has warned that the proposed changes to next year's census could compromise the confidentiality of information people supply, and should not go ahead in their present form.¹⁵ Mr Chadwick is reported as saying that the ABS proposal would mean that census responses could be linked back to participants, despite the ABS's destruction of names and addresses. 'Even shorn of name and address, data can be re-identified'.¹⁶ Mr Chadwick says that previously there has been concern about the compulsory nature of the census and the questions asked. He says that where people believe questions are overly intrusive or they are not satisfied about the safeguards guaranteeing confidentiality, 'the quality of their answers may be affected'.¹⁷ He suggests that one option would be to allow people a choice to have census answers retained in a form that could be re-identified for future research.

Although the SLCD proposal is not directly related to the proposal to archive census forms for those households that agree to do so, the public discussion it aroused highlights the sensitivity some sections of the community feel about the confidentiality of census data and its use.

History of censuses in Australia

In the early years of the colony of New South Wales, musters were held. Records of these survive from 1800. The first census in New South Wales was taken in 1828. There are some records from 1828, 1841, 1891 and 1901. The census in 1901 was the last conducted under New South Wales legislation.

In 1905, the Commonwealth Parliament passed the Census and Statistics Act. The first Australian census conducted under that Act was held in 1911. The Act stipulated that a census was to be taken in 1911 and every tenth year thereafter. Censuses were in fact conducted in 1921, 1933, 1947, 1954 and 1961. Since 1961, a census has been held every five years. This change was made to ensure that more reliable state and territory population estimates are available for determining the number of seats in the House of Representatives to be allocated to each state, as required by the Australian Constitution. The last census was held in 2001 and the next will be in 2006.

The Australian practice has been that all name-identified information collected in the census is destroyed once the Australian Bureau of Statistics has extracted statistical data from the forms and they are no longer needed for processing. An electronic file of the

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

information taken from the forms, without any personal or household identifiers, is kept indefinitely. Census records are Commonwealth records, as defined in the *Archives Act 1983*, and their destruction is controlled by the Archives Act. Under the Archives Act, all Commonwealth records, other than exempt records, are eligible for access by the public after 30 years. Exempt records may include information relating to the personal affairs of any person, including a deceased person. The identification of exempt records is usually made with the concurrence of the Director-General of Archives.

Main Provisions

The proposed amendments are grouped in two schedules. **Schedule 1** contains amendments to the *Census and Statistics Act 1905* and the *Archives Act 1983* relating to the retention of census information by the National Archives of Australia. **Schedule 2** makes some further amendments to the Census and Statistics Act which are not directly related to the proposal. The amendments have to do with making certain provisions in the Act more uniform and coherent with provisions in the *Legislative Instruments Act 2003*, and with the *Criminal Code Act 1995* (Criminal Code).

Amendments to the *Archives Act 1983*

Schedule 1 amends the Archives Act by removing references to the 2001 Census and replacing them with references which are applicable to a census conducted any year. **Item 4** inserts a note in the Archives Act indicating that census information and Cabinet notebooks have different open access periods to other records held by the National Archives of Australia. Most Commonwealth records are available 30 years after they came into existence, but Cabinet notebooks are not available until 50 years has elapsed. The effect of **Item 5** is to provide the National Archives of Australia with special custody responsibilities specific to census information. **New subsection 22B(1)** sets the closed access period as 99 years beginning on the census day for a particular census. The census day is defined in **new subsection 22B(3)**. **New subsection 22B(2)** makes it clear that the normal 30-year open access period for Commonwealth records, which is specified in subsection 3(7) of the Archives Act, does not apply to census records, and that arrangements for special or accelerated access, contained in section 56 of the Archives Act, also do not apply.

Item 6 deals with the non-disclosure of census information. It is an offence for the Director-General or for a member of the staff of the Archives to divulge or communicate census information to another person or to a court or tribunal.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Amendments to the *Census and Statistics Act 1905*

Item 10 adds a **new subsection 19A(1)** to the secrecy provisions contained in the Census and Statistics Act with specific application to census information. It protects census information in the custody of the Australian Bureau of Statistics from disclosure under compulsion to any Commonwealth agency and prevents information being provided voluntarily to a Commonwealth agency other than in accordance with the Act, that is, by transfer of the information to the National Archives of Australia. This provision reinforces existing secrecy provisions in the Act. **New subsection 19A(2)** reinserts the existing protection from disclosure under compulsion to a court or tribunal. Two new definitions are provided by **new subsection 19A(3)**, that of ‘Agency’ which was not previously required in this Act, and ‘Census day’ which is not specific to the 2001 Census.

Item 1 of **Schedule 2** amends the reference to ‘instrument in writing’ in subsection 13(1) of the Census and Statistics Act. The purpose of this change is to make it clear that the reference is to a ‘legislative instrument’ for the purposes of the *Legislative Instruments Act 2005*. This amendment is relevant to **item 4** of **Schedule 2**.

Item 3 repeals sections 14 and 15, both of which are criminal offence provisions, and substitutes them with similar provisions that are harmonised with the Criminal Code. It is an offence for a person to fail to fill up and supply a census form (section 14) or to provide false or misleading statements or information on the form (section 15). According to the Explanatory Memorandum, the office of the Director of Public Prosecutions has indicated that, prior to the commencement of Chapter 2 of the Criminal Code, section 14 of the Act was understood and accepted to be a strict liability offence.¹⁸ The purpose of the proposed amendment in **item 3** is to restore strict liability to the offence and bring it into conformity with the general principles of criminal responsibility in Chapter 2 of the Criminal Code. The penalty for breach of **new section 14** is one penalty unit (\$110) for each day until the person complies with the direction. **New subsection 14(3)** provides that subsection 14(1) does not apply in relation to a person’s failure to answer a question, or supply particulars, if a person is able to prove that to do so is against their religious beliefs. **New section 15** provides a penalty of ten penalty units (\$1100) for knowingly providing false or misleading information in the filling up of a census form or in answer to a question for other statistical information.

Item 4 repeals section 19, the existing secrecy provisions of the Census and Statistics Act, and recasts that section to conform with the specification of offences under the Criminal Code. It increases the penalty from \$5000 or 2 years imprisonment or both, to 120 penalty units (\$13 200) or 2 years imprisonment or both. It leaves the evidential burden with the defendant to prove that the person acted either in accordance with a determination made under section 13 to release information, or for the purposes of the Act.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Concluding Comments

The census is carried out by the Australian Bureau of Statistics in accordance with the *Census and Statistics Act 1905*. Its main purposes are to measure accurately the number of people in Australia on census night in order to provide a reliable basis to estimate the population of each state and territory, and to provide information for small geographic areas and for small population groups. The next census is due to be held on the night of 8 August 2006.

This Bill amends the Census and Statistics Act and the *Archives Act 1983* to ensure that name-identified information collected at the 2006 Census and all subsequent censuses, for those household that provide explicit consent on the form, will be preserved for future genealogical and other research.

There will be a closed-access period of 99 years rather than the usual Archives Act closed-access period of 30 years. The Bill contains provisions to ensure that, during the 99-year period, the name-identified census information will not be released under any circumstances, not even to a court or a tribunal. Under this legislation, upon the expiry of the closed-access period, the name-identified information of those households which have explicitly consented to this happening, will be released so that it can be used for research purposes.

Financial impact

The cost of the proposal is stated in the Explanatory Memorandum as \$19.1 million over four years.¹⁹ The money is required to fund a public education campaign to make households aware of the proposal, and to transfer the information from the name-identified census forms for those households that give consent to the retention of their data, to an appropriate archival format.

Endnotes

-
- 1 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Saving our census and preserving our history: a report on the inquiry into the treatment of name-identified census forms*, Canberra, May 1998, pp. 136–42.
 - 2 Government response to the House of Representatives Standing Committee on Legal and Constitutional Affairs Report ‘*Saving our census, and preserving our history*’, 6 April 2000.
 - 3 Hon. C. Pearce MP, ‘Second reading speech: Census Information Legislation Amendment Bill 2005’, House of Representatives, *Debates*, 3 November 2005, p. 1. Speaking just prior to the 2001 Census, a representative of the Australasian Federation of Family History Organisations said genealogical groups hoped that up to 90 per cent of people would agree to

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- have their census forms retained. See Danielle Cronin, ‘Some census details to be filed till 2100’, *Canberra Times*, 11 July 2001.
- 4 See for example Glen Turner ‘Call to publish name-related census data’, *Canberra Times*, 14 January 2002.
 - 5 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Saving our census and preserving our history*, p. 133.
 - 6 *ibid.*, p. 133.
 - 7 *ibid.*, p. 134.
 - 8 *ibid.*, Chapter 3 ‘Effects on data quality of retaining census forms’, pp. 33–66.
 - 9 *ibid.*, p. 130.
 - 10 Australian Law Reform Commission, *Privacy and the Census*, ALRC 12, 1979, pp. 37–48.
 - 11 Dennis Trewin, ‘Enhancing the population census: developing a longitudinal view 2006’, Australian Bureau of Statistics *Discussion Paper* 2060.0, 26 April 2005.
 - 12 *ibid.*, p. viii.
 - 13 *ibid.*, p. v.
 - 14 ‘Who is misleading who over the census?’ Letter by Anna Johnston, Chair, Australian Privacy Foundation, *Australian Financial Review*, 28 June 2005, p. 57. See also ‘Quarrel over use of census database’, by Chelle Murphy, *Australian Financial Review*, 27 June 2005, p. 6, and ‘ABS committed to privacy safeguards’, Letter from Susan Linacre, Acting Australian Statistician, *Australian Financial Review*, 30 June 2005, p. 59.
 - 15 Michelle Grattan, ‘Census reputation at stake: commissioner’, *The Age*, 30 June 2005, p. 5.
 - 16 *ibid.*
 - 17 *ibid.*
 - 18 Explanatory Memorandum, Census Information Legislation Amendment Bill 2005, p. 8.
 - 19 *ibid.*, p. 3.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Copyright Commonwealth of Australia 2005

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

This brief has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Information and Research Service, nor do they constitute professional legal opinion.

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2526.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.