

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

**Submission to Senate Standing Committee on Legal and Constitutional Affairs  
re. Privacy Act Amendment (Disasters and Emergencies)**

**Introduction**

The Australian Bureau of Statistics (ABS) wishes to raise its deep concerns on the impact of the Privacy Legislation Amendment (Emergencies and Disasters) 2006 Bill on official statistics. The Bill proposes to, amongst other things, amend the *Privacy Act (1988)* to enhance information exchange between Australian Government agencies, state and territory authorities, private sector organisations, non-government organisations and others, in an emergency or disaster situation. The amendment would allow departments to, if they so wish, disclose personal information without breaching the *Privacy Act* or contravening their secrecy provisions.

The ABS hopes the committee will give due consideration to the ABS' request for an amendment to the Privacy Legislation Amendment (Emergencies and Disasters) 2006 Bill which is detailed below. ABS staff would be pleased to appear before the committee to provide more information regarding this matter. Please contact Ms Teresa Dickinson, Head, Office of the Statistician on 02 6252 5533 or at [teresa.dickinson@abs.gov.au](mailto:teresa.dickinson@abs.gov.au) if you require any further information.

**Proposed ABS amendment**

One class of secrecy provision highlighted in the amendment are designated secrecy provisions. Those agencies with designated secrecy provisions could not be requested to release information about individuals, and would be considered liable if they provided information in contravention of their secrecy provisions. In its current form, subsection 80P (7) of the bill defines designated secrecy provisions as any of the following:

- (a) sections 18 and 92 of the *Australian Security Intelligence Organisation Act 1979* ;
- (b) section 34 of the *Inspector-General of Intelligence and Security Act 1986* ;
- (c) section 39, 39A, 40 and 41 of the *Intelligence Services Act 17 2001* ;
- (d) a provision of a law of the Commonwealth prescribed by the regulations for the purposes of this paragraph;
- (e) a provision of a law of the Commonwealth of a kind prescribed by the regulations for the purposes of this paragraph.

The ABS proposes that the secrecy provisions (sections 19 and 19A) of the *Census and Statistics Act (1905)* (CSA) also be included in the list of designated secrecy provisions as follows:

- (a) sections 18 and 92 of the *Australian Security Intelligence Organisation Act 1979* ;
- (b) section 34 of the *Inspector-General of Intelligence and Security Act 1986* ;
- (c) section 39, 39A, 40 and 41 of the *Intelligence Services Act 17 2001* ;
- (d) sections 19 and 19A of the *Census and Statistics Act 1905* ;

- (e) a provision of a law of the Commonwealth prescribed by the regulations for the purposes of this paragraph;
- (f) a provision of a law of the Commonwealth of a kind prescribed by the regulations for the purposes of this paragraph.

### **ABS reasons for requesting amendment**

The ABS understands that the secrecy provisions of the *Census and Statistics Act 1905* (CSA) could be listed as exempt in the regulations accompanying the *Privacy Act*. However, the ABS is concerned that if the CSA secrecy provisions are listed in separate regulations, which can be relatively easily and quickly amended as circumstances change, and not within the *Privacy Act* itself, the government will be seen to have seriously compromised the safeguards around the data collected by the ABS. This has the potential to substantially impact the quality of statistics, particularly those derived from the Population Census, including population estimates, which depend on community trust and cooperation. Population estimates are used in determining electoral representation, electoral boundaries and for allocation of substantial funds to the States and Territories. Loss of confidence in population estimates could well lead to costly disputation.

The Bill in its current form carries a particular risk to the ABS' reputation in relation to provisions recently made with respect to the archiving of name-identified census forms for 99 years (the Census Time Capsule project). The secrecy provisions of the CSA were recently strengthened to protect this data from any non-statistical use, including from access by courts, tribunals and agencies (other than National Archives Australia). In relation to this matter our Parliamentary Secretary, the Honourable Chris Pearce, assured the public that the strictest privacy protections and security would be in place and that *"The security of the Census Time Capsule ensures that participants' information will not be made available to anyone until the year 2105."* Loss of trust in the ABS, and the government more generally, could accrue from the retrospective weakening of the protection that was given to these data when consent for archiving was sought. Further, in the Householder Guide to completing the Census the ABS states (pp 2-3) *"Your personal information remains confidential to the Australian Bureau of Statistics (ABS). No information will be released in a way that can enable your details to be identified. The one exception is if you agree to question 60 to allow your personal information to be provided to the National Archives of Australia to be released after 99 years. By law, organisations (like the Tax Office, Centrelink and direct marketing companies) cannot have access to personal information from the Census"*

Specific inclusion of the secrecy provisions of the CSA as designated secrecy provisions in this amendment to the *Privacy Act* would have the effect of restating the firm intention of governments: that data collected by the ABS for statistical purposes would be used only for statistical purposes. This would strengthen our ability to deliver high quality official statistics.

### **Other relevant information**

The ABS asks that committee members also note the following when considering the ABS' proposed amendment:

#### **1. Nature of the ABS**

The ABS exists as Australia's national statistical agency - its function in collecting information from Australian's is to enable analysis to support decision making by governments and the community. Information collected by the ABS differs in nature from that from other government agencies - it is not used for managing clients or their interactions with Government.

Ability of the ABS to perform its function relies on the high response rates that accrue from the public trusting that we will keep the data that they provide to us absolutely confidential. The ABS takes this extremely seriously and has never, in its 100 year history, experienced a breach of its secrecy and fidelity provision. The ABS would like to stress that it has never, and would never, ask for its secrecy provisions to be suspended under any circumstances. To do so would quickly erode trust in our promises of confidentiality.

## 2. ABS support in times of Disaster and Emergency

The ABS could, and would, provide aggregated information from the Census and its many other collections to assist in cases of emergency or disasters.

The ABS gives permission for this submission to be made public.

Ms Susan Linacre  
Acting Australian Statistician  
20 September 2006