



Digital Rights Watch

Submission to the Senate Economics
References Committee inquiry into the
2016 Census

September 2016

Who is Digital Rights Watch?

Digital Rights Watch (DRW) is a non-profit charity that supports, fosters, promotes and highlights the work of Australians standing up for their digital rights.

<http://digitalrightswatch.org.au>

For more information about this submission please contact Tim Norton, Chair of Digital Rights Watch - tim@digitalrightswatch.org.au

Executive Summary

Digital Rights Watch (DRW) is pleased to make this submission. In the lead-up to the 2016 Census, DRW raised concerns around the Australian Bureau of Statistics' choice to make mandatory the collection, retention and protection of citizen's names and addresses.¹ After the repeated failure of the Census website on actual Census night, DRW published an open letter calling for a public inquiry to take place². DRW congratulates the Senate on taking up this call.

DRW respectfully submits that the following recommendations be included in the Committee's report:

- [1. The ABS and the Australian government should provide a full and open report into the technological and human error causes of the 2016 Census system failure](#)
- [2. The ABS should provide a full and open account of all privacy complaints received in relation to the 2016 Census](#)
- [3. The ABS and Australian government should provide a report on the services provided by private corporations for the 2016 Census, including the tender process, the terms of engagement and outcomes arising from the take-down on 9 August 2016](#)
- [4. The ABS and Australian government must ensure that all future decision-making about data collection, storage and use is conducted transparently and involves actively soliciting community participation](#)
- [5. The ABS must adopt best practice technical requirements for collection, storage and use of data, including mandatory notification of data breaches](#)
- [6. The ABS should revert to its pre-2016 position in respect of the retention of names and addresses, and allow provision of names and addresses to be at the discretion of individual citizens](#)
- [7. The Australian government should offer an amnesty for any person who files a late or incomplete census](#)

¹ Tim Singleton Norton, 'The census is too important to boycott, despite serious privacy concerns,' 5 August 2016, Sydney Morning Herald
<http://www.smh.com.au/comment/the-census-is-too-important-to-boycott-despite-privacy-concerns-2016-0804-gqllvs.html>.

² Open letter from privacy advocates calls for inquiry into Census 2016, Digital Rights Watch Press Release and Letter
<http://digitalrightswatch.org.au/2016/08/12/open-letter-from-privacy-advocates-calls-for-inquiry-into-census-2016/>.

An appendix has also been included in this submission with a selection of testimonials from Digital Rights Watch members and supporters about the subject matter of the inquiry.

1. The ABS and the Australian government should provide a full and open report into the technological and human error causes of the 2016 Census system failure

The Census was delivered by IBM for the ABS. It was shut down on Census night (9 August 2016) after an international "denial of service" attack, according to the Government.

Some information about the nature of the shut-down has been released to the public, but confusion and misinformation still abounds surrounding the causes, detail, decision making and choices made by the ABS on Census night.

To avoid similar shut downs in future, and to learn more about how to manage government initiatives delivered digitally effectively and efficiently, it is critical that a full evaluation of the causes of the shut down and the subsequent decisions made by the ABS on Census night is provided by the ABS and Australian government.

This report must be made available to the Australian public.

2. The ABS should provide a full and open account of all privacy complaints received in relation to the 2016 Census

The ABS maintains that it sought community input in the process of deciding whether to retain name and address information. In a press release from November 2015, the ABS sought feedback on the proposal to change the way it collected and used information. But the proposed change itself was described in minimalist terms:

The ABS is considering the retention of names and addresses as a key enabler for improved household surveys and high quality statistics.³

There was no discussion of the proposed length of time for retaining names and addresses. Specific reasons for the change were not provided, the ABS simply stated that it would support 'integration... to provide a richer and more dynamic statistical picture of Australia.' There was no indication of how this data would be used or the proposed linking of this data with other data sets. The ABS does provide information about all its data integration projects, but this is information provided after data is collected.

³ ABS to conduct a Privacy Impact Assessment (Media Release), 11 November 2015
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/080BA8A92516B088CA257EF9007CD28A?OpenDocument>.

A Privacy Impact Statement was published a month later in early December 2015.⁴ It indicated that processes would be applied to anonymize the data.⁵ It also gave further information about integration and linking of the data. The publication of the Privacy Impact Statement occurred after the time for public comment had closed.

The outcome of this process was a test for ongoing retention that relies on the ABS making its own determination about community benefit:

For the 2016 Census, the ABS will destroy names and addresses when there is no longer any community benefit to their retention or four years after collection (i.e. August 2020), whichever is earliest.⁶

The Privacy Impact Statement does not provide an account of the community input the ABS received pursuant to the November 2015 press release. As such, there is no consideration of alternatives or modification the proposal to retain names and addresses, nor are there any reference at all to public complaints.

There were widespread reports of people who requesting paper copies of the 2016 Census and were not able to obtain one from the ABS.⁷ The ABS has not provided a full response to these complaints, even though it was clear that this issue was controversial and likely to result in an increased demand for paper copies.

The ABS must provide a full account of privacy complaints received in relation to the 2016 Census as it will assist the public and decision makers to understand several aspects of this process. This includes correspondence received by the ABS as well as representations from organisations. First, it will provide a picture of the extent of public input into the ABS decision-making process. Second, it will allow citizen to understand the extent to which this input was taken into account in drafting the Privacy Impact Statement and ultimately the change in policy. Lastly, it will allow scrutiny of the ABS's approach to Census day in light of the ongoing input from the public. Without this information, it will be difficult to establish best practice for making these changes in a transparent manner that involved community participation. The establishment of best practice is critical to restoring public faith in the ABS.

⁴ Privacy Impact Assessment: Proposal to Retain Name and Address Information from Responses to the 2016 Census of Population and Housing, Australian Bureau of Statistics, December 2015 [http://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/170fd5a4b684aa3eca257f1e0021a392/\\$FILE/ABS%20Privacy%20Impact%20Assessment%202016%20Census.pdf](http://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/170fd5a4b684aa3eca257f1e0021a392/$FILE/ABS%20Privacy%20Impact%20Assessment%202016%20Census.pdf).

⁵ *Id.*, page 11.

⁶ Privacy, Confidentiality and Security, Australian Bureau of Statistics, last updated 16 August 2016 <http://www.abs.gov.au/websitedbs/censushome.nsf/home/privacy?opendocument&navpos=130>.

⁷ AAP, 'Australian census: elderly want paper forms,' The Australian, 2 August 2016 <http://www.theaustralian.com.au/news/nation/australian-census-elderly-want-paper-forms/news-story/bae126b4a98a233d4bee0d0b76f047b5>; Penny Timms, 'Census phone line overloaded and hanging up on callers,' ABC, 3 August 2016 <http://www.abc.net.au/news/2016-08-03/requests-for-a-census-hard-copy-overloads-system/7685740>.

3. The ABS and Australian government should provide a report on the services provided by private corporations for the 2016 Census, including the tender process, the terms of engagement and outcomes arising from the take-down on 9 August 2016

In the decision to move the Census to a largely online collection, it is reasonable to assume that it would be logistically very difficult for the ABS to host the necessary staff and infrastructure to run this online service without the need for external consultants. Indeed, large-scale infrastructure and operational projects of this nature are often outsourced to private technology companies, but given the specific skills required, it may be that there are few competitive bidders. This requires vigilance, both in terms of efficiency (especially in respect of government) but also to ensure the technology is fit for purpose.

It is not clear to what extent the winning tender to run the website was sufficiently supervised and monitored. It is also not clear to what extent the terms of engagement address situations where the technology has not met expectations, and what outcomes the taxpayer may expect in this regard.

To ensure that all tenders for government initiatives delivered digitally are efficient and fit for purpose, the ABS and the Australian government must provide a report on the services provided by private corporations for the 2016 Census and the decision making process to decide on the winning service provider.

4. The ABS and Australian government must ensure that all future decision-making about data collection, storage and use is conducted transparently and involves actively soliciting community participation

The actual extent of community participation in the decision-making around the 2016 Census is not clear (see recommendation 2 above). However, it appears that at no point was there any consideration of alternatives to the retention of names and addresses in the manner prescribed by the ABS. For example, the ABS did not appear to consider a policy that allowed citizens themselves to decide as to whether their name and addresses would be collected and therefore retained. The ABS also provided some information about how it intended to store the names and addresses that it retained, but only after the time for public input had closed. Similarly, the ABS did not disclose which entities it intended to share its data with. Though information about data integration projects is provided to the public by the ABS, it appears this is usually done so after data has been collected.

When soliciting community participation into a decision about the policy of the ABS, the public is entitled to expect that the ABS will provide a complete picture of how the data will be collected, stored and used. This will involve disclosing whether the proposed change will involve mandatory collection of data, how the data will be stored in a manner that complies with technical best practice, and a full list of entities with which the data will be shared. Without this complete picture, the community cannot meaningfully participate in the decision-making process.

Transparent decision-making must also include evidence of consultation with, and commentary from an independent body, such as the Office of the Australian Information Commissioner in the Privacy Impact Statement.

5. The ABS must adopt best practice technical requirements for collection, storage and use of data, including mandatory notification of data breaches

DRW has deep concerns over the capacity of the ABS to adequately store, maintain and protect the privacy of Australian citizen's data in an ongoing manner.

In the period of 2013-2016, the OAIC received 14 data breach notifications with regard to personal information held by the ABS.⁸ Whilst it is welcoming to see the ABS voluntarily notify the OAIC of these breaches, this highlights how difficult it is to maintain the security of such records. It also points to the need for mandatory notifications to be brought into effect immediately.

Data collected should be treated as belonging to the individual. That is, citizens should be permitted to decide who is permitted to access their personal data, including which entities the ABS may share data with. Citizens should also have the right to withdraw their consent to the storage and use of their personal data, and have the ABS destroy that data as a result.

Updates and developments of technology used to anonymise and store data should be subject to rigorous analysis as to their fitness for purpose. This process should include documented testing, bug bounties and de-anonymisation efforts to demonstrate the veracity of the ABS's claims with some confidence. Best practice will involve taking steps to determine the level of risk of reidentification. This includes an assessment which takes into account the content and value of the original data and the availability of other data that can be linked to this. The Victorian Commissioner for Privacy and Data Protection argues that consideration must extend to all domains: physical, personnel, information, ICT, and governance. It also involves applying the motivated intruder test: 'assessing whether a

⁸ Paul Farrell, 'Australian Bureau of Statistics reports 14 data breaches since 2013,' The Guardian, 28 July 2016 <https://www.theguardian.com/australia-news/2016/jul/29/australian-bureau-of-statistics-reports-14-data-breaches-since-2013>.

reasonably competent motivated person with no speciality skills could succeed in re-identifying the data.⁹

Any entities which wish to access Census data must also comply with best practice technical requirements.

In order to promote confidence in the storage and sharing practices of the ABS, it must adopt a mandatory notification scheme, whereby citizens are contacted in the event of any unauthorised access to their personal data.

The technical best practice requirements and mandatory notification scheme should be subject to monitoring by an independent body, such as the Office of the Australian Information Commissioner and the process made visible to civil society and concerned groups and citizens.

6. The ABS should revert to its pre-2016 position in respect of the retention of names and addresses, and allow provision of names and addresses to be at the discretion of individual citizens

Until such time as the public can have confidence that the ABS is complying with best practice in terms of collecting, storing and using data, the policy position should revert back to what it was prior to the changes for the 2016 Census.

This would mean that the collection of names and addresses are no longer mandatory as part of any future Census.

7. The Australian government should offer an amnesty for any person who files a late or incomplete census

A large number of people did not provide their name and address on the Census, including 13 per cent of people between 18 and 34 years of age.¹⁰ There are many good reasons why this may have transpired, including widespread and growing concerns about the government disrespect for personal privacy. In the wake of revelations of mass surveillance by Edward Snowden, and the passage of Australia's data retention legislation, the public has good grounds to be concerned at the prospect of placing large amounts of personal information in the hands of government that will be linked to their name and address.

⁹ Commissioner for Privacy and Data Protection, Background Paper: De-identification https://cpdp.vic.gov.au/images/content/pdf/privacy_week/De-identification_Background_Paper.pdf.

¹⁰ Essential Report: Census, 16 August 2016 <http://www.essentialvision.com.au/census>.

There are also reports of misinformation about the return of the 2016 Census and the final date for completing it.¹¹

The difficulty of fining people for non-submission in a way that is fair and consistent, given both the widespread privacy concerns and access issues relating to the website down-time could hardly be understated.

The ABS has made repeated references to its reputation and the public's investment of trust. This reputation and public trust will continue to be degraded if fines are issued for non-submission of the 2016 Census. The public should not be penalised for mismanagement and mistakes made by the ABS, nor should they be penalised for taking actions to protect their privacy after the ABS unilaterally changed the system by which their data is collected and recorded.

To repair the damage done to the ABS and the Census process more generally, it is important that people not be fined for submitting a late or incomplete Census.

¹¹ Bernard Keane, 'Panicked ABS top dogs declare census return 'crisis'', Crikey, 8 September 2016 <https://www.crikey.com.au/2016/09/08/panicked-census-bureaucrats-declare-census-crisis/>.

Appendix: Testimonial from Digital Rights Watch members and supporters

In preparing this submission, DRW consulted widely with our members and supporters. Many expressed their deep concerns over the privacy issues that were not addressed in the lead-up to Census night. For the benefit of Senators on this committee, we have included a selection of their comments here:

Paul, Melbourne

Digital technology is fragile by nature. Specifically, security can be easily compromised and I am uncomfortable with the possibility that my personal information and that of my immediate family may be illegally accessed, or accessed for reasons that I may strongly disagree with.

I am uncomfortable with the idea of compulsorily providing my personal information to be retained effectively ad infinitum. I do not believe this is in the spirit of free choice and democracy.

I dislike the possibility that, having compulsorily provided my personal information, it may be linked to other data bases to create a profile. It would be simple enough to add any number of algorithms to flesh this out. It is secretive and sneaky and once again is not in the spirit of a free democracy.

David

I thought the public focus on filling in names on the Census form was shooting at the wrong target. As outlined by investigative journalists in several Fairfax media articles, my main concern was the creation of a "statistical linkage key" that would enable ABS to continue to trawl through available databases without my knowledge or consent.

Ralph, Brisbane

I was concerned about the requirement to enter our names in the Census. This does not seem necessary for the purposes of the Census and has the potential to turn the Aust Bureau of Statistics into a Bureau of Surveillance. There certainly was virtually no public discussion about the new level of intrusion into our privacy.

Malcolm, Canberra

I am particularly concerned with the high-handed tactics of the ABS towards anyone with questions about the census. 'Just trust us' and fines were all that the ABS could offer! The ABS had every opportunity to lay out their case for the new changes – 5

years in fact! But instead they chose to 'inform' the public in shortest of statements, and in an obscure place on their website leaving no time for public debate which was their likely intention.

I believe the ABS never wanted to listen to the public's privacy concerns and hoped that this one would just sail through unchallenged! I am grateful for the Senators and the many others who are holding the ABS to account.

Steve, Melbourne

The privacy concerns of many Australians have been merely glossed over with no attempt whatsoever to address those concerns. More over, the shambles that was the Online disaster only served to cement those very valid concerns and cast even more doubt on the technological expertise of those responsible. Rather than explain the situation and offer any plausible explanation, the government and the ABS resorted to the blame game which only managed to further entrench the perception of incompetence and data security risk.

Add to this the seemingly never ending scramble for new laws chipping away at our personal freedoms, human rights and data privacy, and you have a data collection monolith taking on the image of an out of control monster that no one understands, no one trusts, and no one wants to be part of. This train wreck is of the governments own making and Australians have every right to be sceptical, suspicious and hesitant to share their personal data.

Hudson

I believe it to be unfair and unjust to fine Australians who, through no fault of their own, were unable to fill out the census form due to the incompetence of ABS. But I also believe the changes made to this year's census has broken the faith and trust of the Australian people.

The census is supposed to be about collecting statistical data to gauge how we live, what could be improved upon and what is going well - not to set up a massive database streamlined to improve the government's ability to spy and control its citizens! It honestly feels like something straight out of a dystopian sci-fi nightmare!

Mike, Sydney

My biggest concern is that personal data is used, shared & linked to other personal data without any informed consent by the person concerned.

Douglas

I filled in the Census but did not provide by name and address due to concerns about the process that led to the decision ABS to keep the name and address for an

extended period and the implications for its extended use in conjunction with other data sets.

Les, Melbourne

The ABS does not need my personal information for anything other than to ensure that I have been accurately counted then this information should be destroyed. We do not need another insecure department holding non pertinent information that could be out of date before it is even used.