



HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Treatment of census forms

CANBERRA

Thursday, 27 November 1997

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Members

Mr Andrews (Chair)

Mr Barresi	Mr Mutch
Mrs Elizabeth Grace	Mr Randall
Mr Hatton	Mr Sinclair
Mr Kerr	Dr Southcott
Mr McClelland	Mr Tony Smith
Mr Melham	Mr Kelvin Thomson
	Mrs Vale

Matter referred to the committee for inquiry into and report on:

The treatment of forms from future population censuses.

The inquiry will examine the issues surrounding the destruction or retention of census forms. It will focus on whether the current practice of destroying census forms after processing should continue or whether they should be retained for medical, social and genealogical research.

WITNESSES

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GILLETT, Mr Geoffrey Lee, Manager, Medicare Eligibility, Government Programs Division, Health Insurance Commission, 134 Reed Street, Tuggeranong, Australian Capital Territory 2901	531
JARVIE, Dr Wendy, First Assistant Secretary, Analysis and Evaluation Division, Department of Employment, Education, Training and Youth Affairs, Level 1, 12 Mort Street, Canberra City, Australian Capital Territory 2600	521
MALEY, Mr Michael, Director, Research and International Services, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory 2600	508
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HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS

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Present

Mr Andrews (Chair)

Mrs Elizabeth Grace	Mr Randall
Mr McClelland	Mr Sinclair
Mr Mutch	Dr Southcott
	Mrs Vale

The committee met at 9.57 a.m.

Mr Andrews took the chair.

MALEY, Mr Michael, Director, Research and International Services, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory 2600

CHAIR—Welcome to this hearing of the House of Representatives Committee on Legal and Constitutional Affairs inquiry into the treatment of census forms. I also welcome other members of the public who are attending. The subject of the inquiry is whether the current practice should continue of destroying name identified forms after the data is collected from them. We have taken evidence so far in all state capitals, and this is the fifth hearing in Canberra. We look forward to hearing from the witnesses today.

Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We have received a submission from the Electoral Commission of 10 July 1997. Would you care to make some opening comments?

Mr Maley—Thank you, Mr Chairman. I would first like to apologise to the committee for having been taken ill on a previous occasion when I was scheduled to give evidence. I hope that that did not cause undue inconvenience.

Our aim in the submission is to assist the committee by drawing its attention to an aspect of the use of census data which has been well established for many years and which has been working so effectively for the past 15 or 20 years that there is perhaps some possibility that the significance of the data for this critical element of the constitution of the parliament could perhaps be overlooked or not given due weight. That aspect is the determination of state representation entitlements, which is made under the Commonwealth Electoral Act 1918.

The critical element that we wish to draw to the attention of the committee is that those provisions in the act in fact apply in the context of section 24 of the constitution, which contains a quite declarative statement in the second sentence that ‘the number of members chosen in the several states shall be in proportion to the respective numbers of their people.’ I point out at the outset that that is a provision that does not apply to the territories. It only applies to the states. The representation of the territories is provided for under section 122 of the constitution and is not constrained to be in proportion to the numbers of the people of the territories.

We wish to point out in our submission that the question of the use of statistics from the ABS to conduct this determination of state representation entitlements was addressed by the High Court, most importantly in McKinlay’s case in the late 1970s. McKinlay’s case, in effect, stated that there was a constitutional requirement that the states’ respective populations be reliably determined; and that meant there was a need for some sort of periodical way of counting the people of the various states—which did

not necessarily have to be by way of a census but had to be based on a reliable statistical base.

The concern has been expressed by the ABS in its submissions to the committee that there would be a possibility, if the retention of census forms were adopted, that this could cause some sort of deterioration in the accuracy of the statistics which could be provided for the purposes, among other things, of determining state representation entitlements. That immediately gave rise to concerns, which we felt we should draw to the committee's attention, that this might have the potential to open up a constitutional challenge to the determination of state representation entitlements or to a particular determination of state representation entitlements. This, we thought, would be something that the committee would want to look at.

I should perhaps point out that, in the past three determinations, it has been the case that there have been some pretty close borderline figures as to whether a state or territory would gain or lose an additional seat. At the last determination, the ACT fell only 657 people short of being qualified for a third seat, and the Northern Territory fell some 5,688 short. In the 1994 determination, the ACT only got its third seat by 503 people, and the Northern Territory was about 8,500 short.

In 1991, the ACT was 3,973 people short of another seat, and South Australia was actually only 5,631 short of another seat. In the context of the size of the population of South Australia, these are not large margins at all. The shortfall in South Australia in 1991 was only 0.39 per cent of the state's population. The accuracy of these figures is important, in terms not just of the absolute accuracy but the relative accuracy when compared with the margins which exist for a state to gain or not gain an additional seat. In looking quickly at those three determinations yesterday afternoon, I found that in each case we had some very close margins.

One more thing I would draw to the committee's attention is an academic paper on this subject which was published about 10 years ago by Mr Geoffrey Lindell, who was then Reader in Law at the ANU and is now at the Melbourne Law School. I can provide a copy of that paper to the committee. It discussed at some length—in the context of a broader discussion of the ways these issues have applied not only in Australia but also in the United States—the question of whether the High Court might be called upon to look at the accuracy of the underlying statistical figures which are used for the determination of state representation entitlements. His argument is a long and subtle one and, not being a lawyer, I would not feel qualified to try to summarise it in a few sentences. The conclusion he reached was:

In the final analysis it is suggested then that the Court is in a position to, and indeed should, exercise its role as the guardian of the Constitution and ensure that judicial relief will be available to correct, where feasible, factual errors in the counting of the population of each State, but at the same time it should not perform this role except in the very clearest of cases and where the suggested presumption of regularity—

which is a reference to a discussion earlier in the paper—has been displaced.

Essentially, what we want to put to the committee is that we have a constitutional issue associated with the determination of state representation entitlements. There has been some academic examination of the question of whether the accuracy of the statistics which are used could form the basis of a constitutional challenge, and that academic discussion has concluded that it could. We believe this is a factor that ought to be taken into account by the committee when it is weighing the relative benefits and detriments of retaining or not retaining census forms.

CHAIR—Thank you very much, Mr Maley. Can you elaborate on the process which is undertaken by the Electoral Commission and on how the population statistics provided by the ABS are used?

Mr Maley—The Commonwealth Electoral Act requires that the determination of the numbers of the people of the Commonwealth and of the several states be made by the Electoral Commissioner. It also provides, however, that the Australian Statistician shall provide to the Electoral Commissioner all such information as he needs for the purposes of making this determination, and that is a legislative framework which has been in place for a good many years now.

The timing of the determination is specified in the Commonwealth Electoral Act. Typically what will happen is that a letter will be sent from the Electoral Commissioner to the Australian Statistician, somewhat in advance of the period within which the determination has to be made, pointing out that this is a statutory requirement which has to be fulfilled, and foreshadowing a request which will be made for information on the numbers of the people of the Commonwealth and of the several states, in accordance with the latest statistics of the Commonwealth. Somewhat subsequently to that, when the period is nearer, the formal request is sent.

The letters are invariably phrased in terms of the language of the Commonwealth Electoral Act. In other words, we do not expand on it. We simply say, 'Please give us the numbers of the people of the Commonwealth and of the several states, in accordance with the latest statistics of the Commonwealth.' We typically then receive a letter back from the Australian Statistician which will say, 'In accordance with the latest statistics of the Commonwealth, these are the numbers.'

We then apply a formula which is spelled out in the act for determining the representation entitlements, and we gazette the instrument which embodies that determination. It is a purely mechanical exercise, in effect, because the numbers which we are given by the Statistician—subject to one minor qualification dealing with Norfolk Island, which is not of major significance in this context—determine the representation entitlements of the states. There is no significant degree of discretion in what we do once we receive those figures.

CHAIR—Does the Electoral Commission, though, ever question or seek to go behind the numbers?

Mr Maley—No.

CHAIR—If your request is in terms of the formal wording of the law and the reply is equally formally provided to you, are you saying that, once you have that reply and the statistics accompanying it, you simply take that on face value?

Mr Maley—Yes.

Dr SOUTHCOTT—Regarding section 24 of the constitution, there is a situation now where the entitlements of each state relate to their population and then the size of each seat is divided up into the number of seats they are entitled to, but with the number of electors. So you have a situation in South Australia and Western Australia, with a very similar number of electors, where South Australia actually has 12 seats and Western Australia has 14 seats, due to the fact that there is a much smaller population under 18 in South Australia. Effectively—and it is a hypothetical situation—without section 24 of the constitution, you have already got all the information you need, which would be the number of electors.

Mr Maley—No, because section 24 of the constitution requires that the determination be based on population, not on the numbers of electors.

Dr SOUTHCOTT—I understand that.

Mr Maley—I do not understand your question.

Dr SOUTHCOTT—Okay. What I am saying is that section 24 is the constraint, effectively; that is why you have to base it on population rather than electors.

Mr Maley—Yes.

Mr SINCLAIR—I am curious about something you have said in your submission. The essence of what you have said is that any reduction in the level of public cooperation with the census, if the forms were to be retained, would lead to a reduction in the quality of data available to the ABS. That is essentially what you say, isn't it?

Mr Maley—Yes.

Mr SINCLAIR—Have you been with the Electoral Commission for very long?

Mr Maley—Fifteen years.

Mr SINCLAIR—Over that time the sort of information that has been requested and is now included in electoral rolls has varied, hasn't it? We used to have more information as to the sex and profession of a person.

Mr Maley—Yes. You need to distinguish between different documents. Some of that information is still retained on the enrolment forms but it no longer appears on the printed rolls.

Mr SINCLAIR—That is right. In fact, in order to get this information you ask people to fill in the form which identifies who they—

Mr Maley—Yes.

Mr SINCLAIR—Your forms have changed over time.

Mr Maley—Yes.

Mr SINCLAIR—Have you found difficulty in getting people to fill in those electoral forms?

Mr Maley—I think I will come at that from a slightly different angle by saying that because the extent to which one can enforce compulsory enrolment in a grand way is, as it were, limited, and because we do not have any sort of national database of the population with which we can compare the electoral rolls and chase people up who we know are not enrolled, we are very much dependent on a high degree of cooperation from the public in ensuring that the rolls are up to date. We do not engage in mass prosecution action of people who are not enrolled. We tend much more these days to try to focus on education and getting information out to people about an effective way to enrol. We have studied, from time to time, the extent of under-enrolment. I have some figures which I can give to the committee.

Mr SINCLAIR—What sorts of figures would they be?

Mr Maley—I could mention three distinct studies that have been done recently with a varying degree of disaggregation. In January 1996 we commissioned a report which was prepared by Roy Morgan on citizenship and enrolment status. That showed a degree of enrolment of the order of 92 per cent for that period but it tracks it over a number of things—

Mr SINCLAIR—Is that for the whole of Australia, or a region of Australia?

Mr Maley—It is broken down. I can give the full statistics to the committee. Overall, we are looking at of the order of 92 per cent.

Mr SINCLAIR—That is 92 per cent Australia wide?

Mr Maley—Yes. There was a subsequent study done as a benchmark exercise for the work we are doing on the constitutional convention election. That was done earlier this year and it revealed that about 93 per cent were enrolled. Very recently—only in the last month or so—we have had a study done as part of a longer-term exercise by Newspoll which has shown 92.8 per cent of Australian citizens are, in fact, enrolled at their current addresses. I will provide all of these figures to the committee.

One point is worth drawing attention to, I think. The most recent surveys where things are actually broken down by state, show a variation in the degree of proclaimed enrolments from 89.7 per cent in New South Wales to 100 per cent in Tasmania—perhaps this needs to be taken with a grain of salt because it is a small sample—to 98.7 per cent in South Australia. Looking at those figures which we have only recently received, I think it raises a question which the committee may wish to consider. If this is indicative in any way of the sort of non-response that might be associated with a retention of census forms, it is important not only to look—

Mr SINCLAIR—So you do retain your enrolment forms?

Mr Maley—Yes. We microfilm our enrolment forms.

Mr SINCLAIR—For how many years? Would it be back to Federation?

Mr Maley—Until they get superseded by an enrolment form from someone else. We certainly do not have them back to Federation.

Mr SINCLAIR—When did you start the practice of microfilm?

Mr Maley—Well before my time.

Mr SINCLAIR—For at least 15 years?

Mr Maley—Yes. It has been done for a long time.

Mr SINCLAIR—Ninety-two per cent is a fairly significant enrolment factor, isn't it?

Mr Maley—It is a good enrolment factor, but I would make the point that if you have variations in the degree of compliance from state to state, that may have implications specifically for the accuracy of the source figures that we were talking about earlier which depends very much on the relative accuracy of the population figures of the various states.

Mr SINCLAIR—But it is more likely that the variation in detail requested is a

more material factor in determining whether a person is concerned about what is in the form than whether the forms are going to be kept.

Mr Maley—That could well be the case.

Mr SINCLAIR—It is all conjecture, isn't it? You have no statistical or other arithmetical reason for the conclusions that you have reached: that is, if you keep these papers, people are not going to comply. As far as the electoral forms are concerned, because you do keep them and you have a 92 per cent plus enrolment, it is fairly significant. So there is no physical evidence that your fears are in any way justified.

Mr Maley—What I cannot confirm for you is the extent to which the 8 per cent may be deterred from enrolment either because of concern about the specific information which is on the enrolment form or, more generally, because they do not wish to hand on information which is seen somehow as bringing them or their particulars within the knowledge of the system.

Mr SINCLAIR—As an individual, if you are asked something that you feel is private, you are more likely to resist filling in a form or having that form kept than if you are asked benign information about which you have no concerns at all, aren't you?

Mr Maley—Yes. But I think people's perception of what is personal and significant to them does vary from individual to individual.

Mr SINCLAIR—Yes. So the more information you want, the more likely you are to have more people objecting. So the more information you have on the census form, the more likely people are, for one reason or another, to say, 'I do not really want to tell them about this or that.'

Mr Maley—The broader the range of people would be who are likely to find something to object to, yes.

Mr SINCLAIR—In other words, it is because of what is in the form rather than the fact that the form is going to be kept that concerns them.

Mr Maley—Not necessarily. I think that people will have a perception not only of what is in the form but also who is likely to have access to the form and when. There tends to be a degree of perception with these things which is difficult to displace. It may not necessarily have an objective basis but, in practice, it can concern people.

I was talking yesterday afternoon to some of the people who have been operating the telephone information service for the Constitutional Convention. One of the things that is being persistently raised in queries—this is only anecdotal evidence, but it is very recent—is that people worry about having date of birth shown on declaration envelopes of

one form or another. There may be some sort of perception that somehow their vote is not going to be—

Mr SINCLAIR—But once they have filled the form in, they would believe that somebody has chalked it up, or put it into a computer, or somehow or other kept that record, wouldn't they?

Mr Maley—In relation to—

Mr SINCLAIR—They might not like filling it in and they are apprehensive about it being there, but they know it is going to be there, and the fact that it is kept for 10 years or one year is not as important as the fact that they filled it in.

Mr Maley—I think the ABS has conveyed quite effectively, in its publicity campaigns relating to previous censuses, the notion that information that identifies individuals is not going to be able to be retained. I must admit that from a personal point of view I have found plausible the argument that the destruction of census forms increases people's confidence about this. I cannot give you statistics on it, but we have a lot of anecdotal evidence within our organisation ranging over a period of years that there is a degree of resistance to the enrolment process associated with people being concerned about privacy and not wanting to be part of the system. About 14 years ago we introduced a process for silent enrolment which was specifically focused on people who were in physical danger from having their names publicly proclaimed.

CHAIR—Let me follow that up. In terms of your research though, given these latest figures of 92 per cent to 93 per cent enrolment—or to put it another way, 7 per cent to 8 per cent unenrolment—I would presume that the AEC would have done some studies over time about the reasons which people have for not enrolling.

Mr Maley—I cannot point you to that at the moment. These are quite recent surveys and we would be looking at the extent to which you could gain information.

CHAIR—Before you go on Mr Maley, I want to clarify what you mean by that. When you say you cannot point to them now, do you mean they do not exist or you do not have access to them or what?

Mr Maley—They do not exist in these particular surveys.

Mr SINCLAIR—Have you ever done any?

Mr Maley—I would have to check that. I would have to take that on notice, because we have been looking at enrolment over a long period of time. For the purposes of this exercise, I have obtained the most recent survey.

Mr SINCLAIR—But you can get similar earlier surveys?

Mr Maley—Not as a consistent series, but they have been done from time to time.

CHAIR—Can I be specific as you are taking this on notice, Mr Maley? Can you provide us with the details and copies, if possible, of any research that the AEC has done into the reasons for which people do not enrol?

Mr Maley—I will take that on notice.

Mr RANDALL—I like to think that I see it quite clearly. You are saying that the AEC does not support the retention of census forms because the Bureau of Statistics have said to you that it would be less accurate. It appears from what you have said so far that you do not have any particular information other than anecdotal or gut feeling. As a result, you are basing your judgments on that.

I believe there is some doubt as to the accuracy of the position of the Bureau of Statistics regarding the retention of statistical data, given the fact that in Canada, for example, and other countries they do retain them and they are considered quality information. I have to say to you that I take umbrage—and I have said this to the chief statistician—that there seems to be some sort of hammer over our heads saying, ‘If you don’t go along with our line, we are going to look at the way we draw your seats.’ That is the inference that I have taken before from Mr McClelland. I will certainly be making this point further when this is put in the House.

When you talk about the accuracy of the information you have got, I do not think it is very accurate at all, given the fact that there is so much movement within electorates between elections. I am told a quarter of the population of my electorate shifts in three years. The information you are running says that there are only 500 people in Canberra and there are 5,000 people here. At the last federal election in Western Australia I had about 72,000 people in my seat. In Moore they had 93,000. In Kim Beazley’s seat of Brand there was 90,000-odd. You have a disparity of 20,000 people and you are saying that you want to be accurate.

I put it to you that I do not think you are running on any accurate line at all. You talk about it being up for challenge constitutionally. I would have thought that, if there was going to be any constitutional challenge to losing candidates, then Moore and Brand might have taken the opportunity then.

Mr Maley—There are a number of issues that I would need to address there. Firstly, I am sure I could speak on behalf of the AEC as affirming absolutely that there would be no threat in any way, shape or form from the redistribution process arising from any deliberations of this committee or, indeed, from any deliberations of the parliament. The redistribution process is taken according to very strict criteria which are set out in the

Commonwealth Electoral Act. It follows rules which have been laid down by the parliament and it embodies a very high degree of public participation. I feel confident in asserting that on behalf of the AEC.

In relation to enrolment figures, particularly the enrolments at particular elections, there are a couple of points to be made. Firstly, the criteria set out in the act require now that redistributions be based not just on current figures, but also on projected figures. Projected figures by their very nature are subject to error from time to time and inevitably you will get situations where this occurs.

The second thing is that the process of taking into account the enrolment trend is one that puts seats which are thought likely to have a reducing enrolment above the quota at the time of redistribution and seats which are thought likely to have a rising enrolment below the quota at the time of redistribution, with the aim of bringing them together to equality 3½ years after the redistribution. If an election takes place at a time other than 3½ years after the redistribution, which certainly happens from time to time, then you would not necessarily expect every division to have an equal enrolment.

This is an issue which, in fact, has been addressed by the Joint Standing Committee on Electoral Matters in its review of the redistribution process in 1995 to give the possibility of a greater flexibility in determining what should be the target point for equality of enrolments. That is not something which has been under the control of the Electoral Commission. That 3½-year period was specified in the act and the redistribution bodies have had to comply with it.

I would come back to the point which I made at the outset. It is up to this committee, making its judgment as to the relative merits of the uses which may be found from retaining census forms as compared to destroying them, to make a judgment as to whether the risks potentially associated with a loss of accuracy of census figures—

Mr RANDALL—Mr Maley, I have to stop you there because you did not answer my question about this and now you are going back to the situation where you are saying there are risks. You have no evidence that there are risks. You are going on the information given to you by the Bureau of Statistics and their information is based on a McNair survey which I personally, and others, do not see as being terribly accurate. In fact, we have had evidence to this committee that says it is not accurate. You are again going along that premise that this information could be corrupted. Almost your entire argument this morning has been based on information given to you by the Bureau of Statistics and I tell you that I do not think it is correct.

Mr Maley—All I can say on that is that it is something ultimately that the committee will have to make a judgment on. We are not attempting to form a judgment as to the accuracy of the prognostications of the ABS. They have survey data and survey data is subject to all sorts of arguments from time to time. Certainly we are taking that survey

data at face value as a prima facie cause for an interest in the subject. I would have to say that it seems consistent with concerns that we have encountered from time to time and, again, this is significantly anecdotal. I would have to say that people do have concerns about privacy.

If the committee reaches the conclusion that the retention of census forms will not have any deleterious effect on the accuracy of the census and, if that conclusion turns out to be correct, that is fine and we do not have a problem with that at all. However, if it turns out to be incorrect and if the survey data, obtained by the ABS and put to the committee, turns out to be an accurate reflection and there is a deterioration in the quality of the census data and associated data provided by the ABS, we simply wish to draw to the attention of the committee that this could have consequences for the determination of state representation entitlements. We go no further than that.

Mrs VALE—Mr Maley, you were talking about uses to which the committee might agree to put census forms. Academic representatives from various universities in Australia and, indeed, genealogists have argued to us that the value to research of retaining census forms outweighs the arguments for their destruction. I would like to know your personal view on that and on the potential research value of retaining census forms, say, for another 100 years.

Mr Maley—I would not like to offer an opinion on that, one way or the other, because I think it really is a value judgment which one has to make on particular pieces of research and on the significance of genealogy as an activity as opposed to the uses that are made of ABS data in the broader context of the process of government.

I do not think that is something on which I would want to express a personal opinion. I have not. I would not want to judge the research that the demographers, the medical researchers and the genealogists are doing and weigh that up and say that it is important, it is unimportant or it justifies taking the risk. I appreciate that it is a complex question with a lot of different interests involved. All we wanted to do was to get on the table a matter which we think the committee needs to bear in mind.

Mrs VALE—Thank you.

Dr SOUTHCOTT—In similar countries like the UK, US, Canada and New Zealand where they do retain the census forms, are you aware of any problems that they have in determination of population? Are you aware of any problems that their equivalent electoral commissions have in drawing seats?

Mr Maley—Well, all sorts of different regimes apply—some constitutional, some not—for the process of allocating seats. The point I would make is that we are not talking here about a process of drawing boundaries. We are talking about a process of apportionment of seats among geographical units. I think the case where this has become

most prominent is the United States where they have had issues of apportionment and arguments formally on apportionment for years. Whole books have been written on the history of the apportionment problem in the US. One of the motivations in the paper from Mr Lindell, which I mentioned and which I will be passing on to the committee, was a major court challenge which took place against the US census in 1980, where census figures are used both for apportioning seats among the states and then subsequently for the drawing of boundaries within the states. So the issue has certainly come up. I would not want to go further than that. There is a detailed discussion of the recent US experience in Mr Lindell's paper.

Dr SOUTHCOTT—Are you aware, in those countries that I mentioned, of any decrease in the quality of the statistics available based on the fact that the censuses are being retained?

Mr Maley—No, it is not an issue that we have looked at.

Mr McCLELLAND—If I understand the thrust of your evidence, it is that the Australian Electoral Commission has been advised that there is a risk of a degree of non-compliance and you have said that, if there is a risk of non-compliance, the committee should tread warily because it would have repercussions on the activities of the Australian Electoral Commission. Is that—

Mr Maley—I think it is not only on the activities of the Australian Electoral Commission but it is also on the constitutional process of allocating seats among states which, I think, goes a bit beyond being an activity of ours. We are the people who do it for the time being, but it is a process which is required by the constitution. There will always have to be someone who does it.

I think that is a fair statement. We are not, I think, in a position to predict what will be the effect of the retention of census forms, but we note the advice that has been given to the committee by ABS and our concern really is, contingent upon that advice being correct: what are the consequences in our area of activity? We are not really in a position to make a judgment on whether that advice is correct. I would say personally that I find it plausible, but I go no further than that. That is something that the committee will have to make its judgment on. If it turns out that ABS is correct, it has potential consequences in our area. I think that is a fair statement of our argument.

CHAIR—Mr Maley, you said that the electoral enrolment forms are maintained and microfilmed or microfiched by the Electoral Commission. You will probably have to take this question on notice. Would you be able to provide us with some indication of the cost of that process?

Mr Maley—I will have to take that on notice. We have forms in a number of different formats. In the old days, they were microfiched. More recently, they are put on

a mag-optical disk image retention system. So it varies and we would have to look at that.

CHAIR—Perhaps if you could give us a breakdown of the cost of doing it in the various forms—the old way and the new way.

Mr Maley—I will see what we can do on that.

CHAIR—We would appreciate that further information that various members have asked you to provide and we will take those documents which you have indicated. I thank you on behalf of the committee for the submission and also for coming along this morning.

Resolved (on motion by Mr McClelland):

That the committee authorises receipt of the documents *Enrolment Study 1997, Constitutional Convention Election Benchmark Report, Citizenship and Enrolment Status* and the article from *New South Wales Law Journal* by Mr Geoffrey Lindell as exhibits to the inquiry.

[10.38 a.m.]

JARVIE, Dr Wendy, First Assistant Secretary, Analysis and Evaluation Division, Department of Employment, Education, Training and Youth Affairs, Level 1, 12 Mort Street, Canberra City, Australian Capital Territory 2600

NEVILLE, Mr Ivan, Director, Regional Analysis and Policy Section, Department of Employment, Education, Training and Youth Affairs, PO Box 9880, Canberra, Australian Capital Territory 2600

CHAIR—I welcome you both to the hearing. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We are in receipt of the submission from the department of 7 July 1997. Would you care to make some brief opening comments?

Dr Jarvie—Yes. Thank you for the opportunity. DEETYA has a very great interest in census data and the quality of that data. It is a very important basis for much of our analytical and planning work. There are a number of different dimensions to this. In terms of the census data itself, we are interested in broad aggregates at a national level, in terms of employment, education and training and how it has changed over time, but we have a particular interest in different population groups. Ones I would like to mention there are youth, indigenous population and people with a disability. For many small groups, the census data is our only reliable source of information, particularly at a regional level.

We are also generally interested in regional information and small area information. Once again, census data is one of the few reliable sources of information at that level. We need it for such things as higher education participation rates by region, to assist with our employment services that we provide and to assist planning work of, say, the area consultative committees and the like. Apart from us using census data for our planning purposes, it also provides a very important sampling frame for many of the surveys which we also use, such as the ABS labour force survey.

In terms of the precise data we are interested in, for those population groups and that level, we are interested in some of the items that are particularly difficult to collect and are sensitive. In particular, we are interested in income and occupation information and industry information. For that you generally need to get employer details, and that is quite sensitive information.

In terms of this inquiry we have a very longstanding interest in census data and its quality. That is evidenced by the fact that we did make a submission to the 1993 review of the census of population and housing. More generally in relation to the terms of reference for this committee, we understand that Australia has a very good record in terms of the

quality and the response rate to its census.

The ABS has indicated to us its concerns that if Australia was to change its longstanding policy of census form destruction, there is a risk of public reaction that could cause reduced response rates and poorer quality reporting. We would be extremely concerned if this was to occur, particularly if the drop in response rates or reduced quality were to occur in particular population groups or for questions in which we have a particular need or interest. We also think this could reduce trust in the ABS and could flow to response rates for other surveys. Our particular concern there would be the labour force survey.

In summary, as we stated in our submission, we would argue that, given the risks that the ABS considers there are, there would need to be pretty strong reasons for a policy change. We would urge the committee to think about it fairly carefully.

CHAIR—Thank you. To what extent do you think your department is hamstrung in that you do not have access to the sort of longitudinal survey which is undertaken, for example, in the United Kingdom, which can only be done by having access to name identified census data?

Dr Jarvie—I am not familiar with the nature of the survey you are talking about in Great Britain. We do have longitudinal surveys we run ourselves for population groups that we have particular interest in. For example, we run a longitudinal survey of Australian youth and we look at that in a high level of detail, much more detail than we would get from the census, for example, and we have been running that for a number of years. It is now run through—

CHAIR—Do you follow particular individuals through?

Dr Jarvie—Yes we do; we follow them through. We ask them, obviously, and they are followed through. We are also currently doing a survey of Aboriginal job seekers that we are doing on a longitudinal basis, but we can ask quite complex information in that, and it is fully voluntary, of course.

CHAIR—What is the degree of accuracy of that? If somebody objects to being involved, presumably they are not involved.

Dr Jarvie—Yes, exactly.

CHAIR—So that is less accurate than the UK one, where I think it is a sample of 500,000 people. As people move out of the country or die it is topped up so you always have a sample that I think is 500,000, which has been followed now for something like 20 years.

Dr Jarvie—I am sorry, I do not know enough about the survey to comment on that survey or its nature, length or anything about it.

CHAIR—Presumably, a survey like that would be highly useful to the department in terms of planning and of following the various subgroups that you made mention of.

Dr Jarvie—Yes, particularly for people when you do not know a great deal of their transitions. For a lot of surveys cross-sectional data is fine. The census data is wonderful for that—the level of detail you can get and the fact it is so accurate and so wide-ranging. But, obviously, it is a hand-written survey; if you want to get something more detailed you might prefer a telephone survey. If you want to explore things more, have more options, different ways to go, you have to do it by telephone or face to face. I do not know anything about the British survey so I cannot really comment.

Dr SOUTHCOTT—How are the ABS labour force surveys conducted?

Mr Neville—It is probably a question that should be directed more to the ABS, but it is a monthly—

Dr SOUTHCOTT—You rely enormously on these surveys?

Mr Neville—We rely very much on the labour force survey. It is a key economic indicator and a monthly survey. It covers about 30,000 households across Australia, which is about one-half of one per cent of all dwellings. I think about 60,000 or 65,000 people are included in that survey every month.

Dr SOUTHCOTT—What is done with the information after it is collected?

Mr Neville—By our department or by the ABS?

Dr SOUTHCOTT—Both.

Mr Neville—I do not think we are really in a position to answer in terms of what the ABS does. Clearly they process the information. I understand there is no name identifier associated with the results of that survey. But I think the question of whether the actual questionnaires are maintained or destroyed should go to the ABS.

Dr SOUTHCOTT—Would you have a concern about the accuracy of the labour force surveys if the information was being retained?

Mr Neville—As I said, I am not really sure what the current situation is anyway. I am not really in a position to say whether what is happening now is appropriate or not. Clearly the labour force survey is a slightly different collection to the census in that it is only a survey. The problem with accuracy and reliability, particularly as you look at lower

level estimates such as regional information, is one of the problems of the labour force survey. That is why the department relies very heavily on the census every five years, so we can examine some of these final level detailed statistics more thoroughly.

Dr SOUTHCOTT—The census is every five years. Do you conduct some surveys yourself as well?

Dr Jarvie—We conduct surveys on a range of areas all the time.

Dr SOUTHCOTT—For example, do you have surveys in which you do have name identified data collected?

Dr Jarvie—No. My division runs a lot of surveys. I cannot speak across the department as a whole. In all the surveys that I have been involved in, we have found that to increase the response rate to our surveys and make sure we have good data quality, we have to tell people that their names will not be retained and that they will not be passed on to anybody else. We find that a very important part of increasing the response rate to our surveys. People want to be anonymous. They do not want their name to be passed over to a market polling company. They really want to be sure that this is a one-off in those sorts of surveys, unless we particularly ask if we can come back in six months or a year.

We think there is a level of public concern about anonymity and confidentiality and privacy because of our own experience in running surveys. The surveys I am referring to are mainly the ones we have run through our evaluation and monitoring branch. We do quite a lot of surveys of participants in programs and the like.

Dr SOUTHCOTT—You mentioned earlier that you felt retaining the census might impact on the accuracy of other surveys that the ABS conducts as well. Wouldn't you be concerned about the corollary that, if the information on the surveys that the ABS currently conducts is retained, that could impact on the accuracy of the census?

Mr Neville—I guess we really are not in a position to know what the situation is with the retention of survey forms from other ABS surveys. As I said, it is my understanding that, in terms of the labour force survey, there are no name and address details identified on the unit record information maintained by the ABS.

Dr SOUTHCOTT—In some of the ABS surveys you do have to give some very detailed and personal information about hours worked, income and so on. You have come to us and said that the ABS says it is likely that the accuracy of the information will drop if census forms are retained. Yet there is a whole raft of research which is done by government departments and the ABS in which the information is retained.

Dr Jarvie—I am not expert on this, by the way, but I think the census is qualitatively different. The census has an enormously high profile. It is the one survey the

ABS does that probably everybody knows about and I do think there could be flow-on effects the other way. Whereas if some problem did emerge with another survey—I am just speculating—I can see it would be much less likely to impact on the census. But really you would have to ask the ABS about that; they are the experts.

Mr Neville—I guess the census really does affect every household in Australia and that is one of the reasons that it is given such a high profile in the media. There are other surveys, including the labour force survey which is a large survey in terms of the number of people that take part. We are still talking very small numbers overall and it does not have the same profile as the census.

Mr RANDALL—Did you or your department receive a letter from the ABS advising you to put in a submission to this inquiry?

Dr Jarvie—Yes. We received a letter from the ABS advising us that the inquiry was being held and drawing to our attention that we might like to put a submission in.

Mr RANDALL—As I said to Mr Maley from the AEC, you have come here saying that you have a certain function and that function would be less profitable if the data we received from the ABS was corrupted in any way. That is basically what you are saying. In fact, it is what you say here.

Dr Jarvie—It would be poorer quality.

Mr RANDALL—You have got no evidence of that and in fact you have said it is anecdotal. You are saying you trust in the ABS. You have not got any statistical data to support that. In fact you are relying on the information of the ABS who have said that they have done a McNair survey which supports that. You feel within yourself that that would be true but it is not very scientific for somebody at the top of their department to come in and say they have got a gut feeling that that would be the case.

Dr Jarvie—No, we did not say that we had a gut feeling.

Mr RANDALL—You did use the word ‘anecdotal’.

Dr Jarvie—Yes. It is true. This is an area where we have no statistical data because we have not done it before. We have not retained, as far as I am aware, census data before with names on it. Nobody has any information about what would happen in Australia if we retained the forms. You are quite right. All we can do is to say, based on what expertise is available, what we understand the public are saying or have said to us. We are not saying this will definitely happen if we retain the census forms.

Mr RANDALL—You cannot say it will definitely happen.

Dr Jarvie—I am saying there is a risk.

Mr RANDALL—How can you say there is a risk? Have you got any evidence to say there is a risk?

Dr Jarvie—No, I have not got any statistical evidence.

Mr RANDALL—I rest my case.

Dr Jarvie—I am saying that I am relying on what the ABS has told us.

Mr RANDALL—That is the point—

Dr Jarvie—In terms of their surveys and they are a reputable survey organisation after all.

Mr RANDALL—So is the Canadian Bureau of Statistics and they do not seem to have the same argument that the Australian Bureau of Statistics runs. You are taking the advice of this august body which is the Australian Bureau of Statistics. I am sure it is but there are other examples in the world. Are you aware, for example, of any criticism in Canada of the quality of their data?

Dr Jarvie—I do not know anything about the Canadian data quality.

Mr RANDALL—Because they retain theirs.

Dr Jarvie—I am not familiar with the situation in Canada so I cannot comment on that. I am conscious that there are many groups in Australia that are concerned about issues of confidentiality and privacy. I think there is a lot of general information derived from surveys, not just the ABS surveys, about that level of concern. We found in our own surveys that people ask us, 'Is this information going to be retained? Is this form going to be retained?' They ask us and we have to say, 'No, it is not going to be retained,' to reassure them and get them to contribute. I cannot say for sure that you would have a massive public reaction or a problem but there is a risk. I would suggest it would depend on the country. In some countries it may be possible and others not. I cannot say categorically everything will be fine but I cannot say definitely that there would be a major problem.

Mr RANDALL—I have to say, as respectfully as I can, that it appears to me that the Bureau of Statistics people are in a very powerful position because they are the disseminators of all this fine information. They have gone to all the government agencies and basically gathered together their forces to support their argument. They are in a very powerful position to do that because if you did not appreciate what they are saying then I am sure they might not appreciate you either.

Dr Jarvie—I do not know what to say to that!

Mr RANDALL—Well, I am saying it. I find this sort of collusion from the ABS—and you are just one of the bunnies who has come in to support them—a bit thuggish.

Dr Jarvie—I can simply say that is not true.

Mr RANDALL—You said that you responded to a letter from the ABS asking you to come in and make a submission, so it is true.

Dr Jarvie—No. They wrote to our secretary, drawing it to our attention. It was discussed in the department as to whether we were interested and concerned. DEETYA thought about it and decided that there was a risk here, that there was a problem, and so they would put in a submission. There was no thuggery.

Mr RANDALL—Yes, but it was based on the advice of the ABS that there was a problem.

Dr Jarvie—It was based on their concerns that they raised with us about a potential problem, yes, but it was based also on our own extensive use of census data and how important it is to us as well. Do not forget that part of the equation as well. If it had not been an area of very great interest to us, we would not have put in a submission.

CHAIR—Dr Jarvie, is it true that an officer of the ABS was seconded to DEETYA for the purposes of preparing a submission?

Dr Jarvie—No.

CHAIR—No-one has been seconded to working with DEETYA for the purposes of preparing a submission?

Dr Jarvie—No.

Dr SOUTHCOTT—Dr Jarvie, could you supply us with a copy of the letter from the ABS and the accompanying material?

Dr Jarvie—Yes.

Mr MUTCH—Have you had any contact with your contemporaries in Canada, or had any opportunity to discuss their collection of statistical information or their research methodologies?

Dr Jarvie—No, not me personally. I know from time to time we have had DEETYA people working in Canada and they would be far more expert about this than

me. However, I personally have not and I do not think Ivan—

Mr Neville—No.

Dr Jarvie—has either so we cannot help you there.

Mr MUTCH—You might be interested in some of the transcripts of what was investigated. We went to Bathurst Island and the Tiwi people there seemed to be quite happy with the thought of the data being kept. In fact, they were quite keen for it to be kept. So that might be of interest to you.

Dr Jarvie—Yes, thank you.

Mr MUTCH—The other one that might be of interest to you is the submission made by Professor Sless. We had Professor Sless from the Communications Research Institute who examined for us the surveys that were undertaken by the ABS which everyone seems to be relying upon which I think is very insightful, to use that word, into the use of such surveys.

Dr Jarvie—I have not seen that.

Mr MUTCH—You might be interested in that as well. A lot of university academics and sociologists have said to us that access for them to this particular name identified information would be valuable in their own academic research. Do you think that if we could achieve the dual purpose of getting reliable statistics but also allowing discreet and confidential access to academic researchers, it would be of some use to the nation by being able to provide government with better research upon which to base the decision making process?

Dr Jarvie—It is hard for me to comment given I do not know what sort of academic work the university people were referring to.

Mr MUTCH—Longitudinal studies between census and so forth and the work that is done overseas in countries that do keep their census information.

Dr Jarvie—Obviously, there could be benefits from this sort of research. I have not looked at it closely so I cannot say much more than that. Obviously, everybody would like to be able to meet everybody's needs. I think it would be very nice. I was a historian at one stage, and to be able to trace people over time would be useful, I understand that, but the problem here is we do not know for sure what would happen and there is a risk. Public reaction could be bad and there could be major problems if that occurred. I know it is a long chain but we have that concern.

Mr McCLELLAND—Just on that, you have indicated the sorts of uses that you

make of the information. As I understand it, the census information which is given to you, and indeed members of parliament, is a snapshot of about 250 homes. You have indicated that you use it, for instance, to pick disadvantaged areas—

Dr Jarvie—Are you talking about the census collection districts?

Mr McCLELLAND—Yes. They are snapshots of 250 homes with which you can track what has happened in that census collection district. My query is: is that good enough for your purposes or would you be assisted if you were able to look at the specific people who lived in that home? In other words, would there be advantage to you in having the availability of the actual names and addresses of the people on an individual household basis as opposed to these 250 home snapshots?

Dr Jarvie—I would have to think about that a bit more. Obviously the more information you have about a sample or a population the better. It means that if you wanted to draw a subsequent sample you could target it more carefully. As I said to the other gentleman, you can always see how you could use this information. It is a question of balance, of weighing up what are the risks.

Mr Neville—A lot of the use we make of census data is not necessarily at that extremely fine level of detail. We may look at the information, say, on a statistical local area basis, which is slightly more aggregated. As Dr Jarvie has said, there is this trade-off of whether getting more information is going to have some flow-on effects to the quality of information. As we have indicated, that is a primary concern of ours.

Dr Jarvie—For all of our planning purposes, I have to say that census collection district is quite adequate. In fact, we rarely use it at that level. We normally use it at the minimum of the local government level and the like. Only for the subsequent purposes of possibly drawing another sample would it be useful for another purpose, but not the data itself.

CHAIR—Just on that, the ability is there to drill down through that census collection material to the census collection districts. With all the other information the department has about individuals, it must be very close to possible to identify individuals, if one wanted to. I am not saying that you do but I am saying that, given the range of other information that would be collected about individuals—

Dr Jarvie—Do you mean if you could match census data—

CHAIR—Yes. What I am saying is that, given something like Austudy payments, to take one example, or HECS arrangements—

Mr RANDALL—Social security.

CHAIR—I am leaving social security aside at the moment, but that would be another example in a different area. Given that and given the small number of individuals in a census collection district, it would be possible to name identify individuals now, wouldn't it? I am not saying that you do.

Dr Jarvie—I would be extremely surprised if that was possible. I just cannot imagine how it could be done, actually.

Mr RANDALL—I can.

CHAIR—We will not pursue it if you cannot imagine how it could be done.

Dr Jarvie—It would require enormous resources to even start to think about it, which we would not do anyway. But I do not believe you can do it.

CHAIR—I was not suggesting that you do or even that you intend to. I am just asking the question: is it feasible?

Mr Neville—No, and why would we want to anyway?

CHAIR—We will leave it there if that is your answer. Thank you for your submission from the department and also for coming in to discuss it with us this morning.

[11.06 a.m.]

BALDOCK, Ms Leonie, Manager, Program Support, Government Programs Division, Health Insurance Commission, 134 Reed Street, Tuggeranong, Australian Capital Territory 2901

GILLET, Mr Geoffrey Lee, Manager, Medicare Eligibility, Government Programs Division, Health Insurance Commission, 134 Reed Street, Tuggeranong, Australian Capital Territory 2901

McKENZIE, Ms Margaret Janet, Manager, Program Coordination and Data Access, Government Programs Division, Health Insurance Commission, 134 Reed Street, Tuggeranong, Australian Capital Territory 2901

CHAIR—I welcome the witnesses from the Health Insurance Commission. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We are in receipt of your submission of 25 November, which we thank you for. The particular matter which led to us asking you to make a submission and come before us relates to the access of Medicare materials and records that are kept at the present time. I think that will help us to focus on what we are interested in, in terms of the Health Insurance Commission, as an analogous, or possibly analogous, situation or example to that of census forms. If you would like to make some opening comments, please do.

Ms Baldock—Thank you. The Health Insurance Commission has been asked to appear before the committee today in order to outline the data held on the Australian population as a consequence of the administration of the Medicare program by the Health Insurance Commission. The data held by the Health Insurance Commission is fully set out in the paper submitted for the committee's consideration. The main aspect of Medicare data which I should draw to the committee's attention is that it is data necessary to establish entitlement for Medicare benefits, and details of services rendered for which a Medicare benefit is payable. The data is not such as to establish family relationships, as people grouped on a single Medicare card may not be members of one family, or indeed a family can appear on a number of separate Medicare cards.

Medicare data is governed by strict legislative provisions which ensure the privacy of information is safeguarded and information can only be divulged in accordance with that legislation. Having said that, the administration of the Medicare program, for which all Australian residents are eligible, does mean that records are held which identify a significant majority of the people in Australia.

CHAIR—For what period of time is data maintained by the commission, what data

is maintained, and what is the manner in which the data is maintained?

Ms Baldock—That is detailed, again, in our paper. Perhaps Ms McKenzie or Mr Gillett would be better able to—

Ms McKenzie—We maintain a lot of paper records, basically to enable us, as Leonie said, to determine entitlement for eligibility and for claiming. That paper documentation is generally kept for a period of about two years and it is destroyed in accordance with the requirements of the Archives Act. If there is any sort of action on it, such as a compensation case or something in train, then that data is kept for a greater period of time.

We also have electronic data and we have a database set up of all entitled people. That database we maintain indefinitely. For any changes that are required—such as changes of name, additions of new family members, changes of address—that electronic data record is amended. We do have details kept where either the address has been changed or the name has been changed. We have details kept as to which officer changed it but we do not have a historical trail of what previous addresses or previous names were. So, yes, generally it is kept for a period of about two years and our electronic data is just kept indefinitely and updated as required.

CHAIR—So in the case of anybody who is alive and eligible—as far as you are aware—you can go back to the first time when, for example, they made application for a Medicare card?

Ms McKenzie—We can go back to 1 February 1984—that was actually the start of the Medicare program. We would have their electronic records as they are today with their address as it is, not their previous address.

CHAIR—But, if they have moved address, you do not have details of where they were?

Ms McKenzie—We do not have a historical record of addresses.

CHAIR—I understand that. In terms of the legislation and the provisions of the Freedom of Information Act, would an individual be entitled to obtain access to his or her data?

Ms Baldock—That is correct.

CHAIR—So, if I were so minded, I could make an application under FOI to obtain a copy of the data relating to me?

Ms Baldock—That is correct.

Ms McKenzie—There are also other avenues available to you under the Health Insurance Act under which we operate. Basically, if people want access to their own data, they certainly can get access to it and they do not need to actually go through FOI.

CHAIR—The data that I could obtain access to as an individual would be my name, address, gender and, presumably, some record of claims that had been made. Is that so?

Ms McKenzie—Yes, all the historical record of your entire claims since Medicare started.

Ms Baldock—That would only indicate medical services for which a Medicare benefit was payable. It is not necessarily a complete medical history because there are medical services for which a Medicare benefit would not be payable or may not have been claimed.

CHAIR—Leaving that aside, if someone wanted to virtually compile a medical history of an individual or if an individual wanted to compile a medical history of himself or herself, there is reasonably accurate information available. The only inaccuracy is what medical service may have been provided for which there was not a claim but, if it has been claimed, it is there. Is that so?

Ms Baldock—That is correct.

Mr Gillett—There are quite a number of services that can be rendered through the public hospital system and, of course, those services do not appear on Health Insurance Commission records.

CHAIR—I am accepting that. I am just trying to understand what is actually there. So the individual can get access to all of that?

Ms Baldock—That is correct.

CHAIR—Does that information ever go off your records? What do you do when someone dies?

Mr Gillett—Certainly, in relation to an eligible person we still maintain that record; it shows that that person at that particular time was an eligible person.

CHAIR—Let us project ahead 100 years. If there were no change to that system, in 100 years time would it still be possible—if there were provision to do so legally—to obtain—so far as they exist on your records—the details of the medical history of any individual who had made a claim or was eligible to make a claim?

Ms Baldock—The only qualifier that I should place on that is that I believe, because we retain records in accordance with the provisions of the Archives Act, that there are certain provisions about destruction of records. I believe it may be within, perhaps, 50 years of the record being end dated; that would be the only qualifier. If there were provisions saying that, if you know that someone has had their record end dated, you would only retain it for a period of time we would be acting in compliance with that, so it might not be a permanent record.

CHAIR—Subject to the current legislative requirements of, say, the Archives Act, the way the system works it would be feasible to obtain, in the future, those medical records or history?

Ms Baldock—That is correct.

CHAIR—Beyond the individual making a claim for access to his or her own records, there is provision in the legislation, in section 130, for information to be divulged where the minister or his delegate certifies that release of information is necessary in the public interest.

Ms Baldock—That is correct.

CHAIR—Can you indicate the sorts of circumstances in which information has been divulged pursuant to the section?

Ms Baldock—Certainly. There are guidelines that we apply administratively when looking at that provision. In each case, we would weigh up the importance of maintaining the privacy of the individual's record against the public interest. The word 'necessary' is important, because it is not just convenient for the public but in fact has a fairly high onus of being a necessity that the information be divulged.

Examples would be to assist police investigations in the case of serious offences, such as murder or abduction. If we believe that information held on Medicare records may assist the police in identifying or bringing to justice somebody, then it is possible that may be considered to be necessary in the public interest, or that the public interest in those sorts of orders could outweigh the privacy of the individual concerned. It is a high standard.

Mr RANDALL—So if somebody with HIV was running around doing things they should not do, you would provide that information?

Ms Baldock—The release of information under that provision is under a delegation from the minister and I am not a decision maker. But one of the guidelines—

Mr RANDALL—It could be, though?

Ms Baldock—In one of the guidelines I think the wording is: to prevent or lessen a serious or imminent threat to the life or health of somebody. It may well be that the example you have given could cause the delegate to form the view that this person should be identified if in fact there was a serious or imminent threat to the life or health of others.

CHAIR—What about in a trial—are the records able to be subpoenaed by a court?

Ms Baldock—No, they are not. Subsection (2) of section 130 provides some immunity and says that the Health Insurance Commission is not required to produce documents in court. Similarly, we are not subject, as I understand it, to search warrants. It is really only where the legislation can be invoked in order for the information to be divulged in accordance with those provisions.

CHAIR—Can you give any other examples to us of the types of circumstances in which information is divulged?

Ms Baldock—Another is to assist the coroner in establishing the cause of death or the time of death of an individual. As I say, the standard has been set quite high.

CHAIR—To come back to my question about a trial, I am thinking of a hypothetical example, in a rape trial, say, where the victim alleged rape and alleged that she had attended upon a medical practitioner shortly thereafter, and the defence was that it did not happen. There would not be any way in which the allegation of attending on the medical practitioner could be proven or disproven by recourse to your records?

Ms Baldock—The victim, because it would be the victim's information, would obviously be able to substantiate whether or not a service had occurred. Our guidelines on release to the police do make reference to rape as being the sort of serious offence under which a public interest release could be contemplated.

CHAIR—I understand from what you said earlier that it could be contemplated at the request of the prosecution authorities. What if it was a request from defence counsel?

Ms McKenzie—What we would basically do in those circumstances is tell them that the information is confidential under the Health Insurance Act and that an avenue available to them was to get the consent of the individual whose records they are.

Mr RANDALL—But if they did not, wouldn't it still be in the public interest?

Ms Baldock—It could be referred to the delegate for consideration. As I say, the guideline actually contemplates assisting police in conducting investigations such as murder, abduction and rape. So if the police were to approach it, it would be open to the delegate to determine whether or not it was considered necessary in the circumstances of the case.

Mr McCLELLAND—What would be the ability of the Health Insurance Commission to retain the personal details of people as opposed to their medical record to be available for researchers in 100 years time? Is that a resource or something that the Health Insurance Commission could do?

Ms Baldock—By personal details, you mean name and address changes as they occur over time?

Mr McCLELLAND—Yes.

Ms Baldock—Our system is not geared to do that at the moment, so there would be a cost involved in changing the system. I do not know how significant, or otherwise, that would be. There are obviously issues associated with data storage, but I cannot see why that could not be done if that were part of the Health Insurance Commission's charter.

Mr McCLELLAND—But you do not need to do that for the purpose of your—

Ms Baldock—No, because we are only attempting to establish eligibility and to identify the person so that they can be located at a particular point in time.

Mr Gillett—The amount of detail that we have on the system in relation to personal details is fairly limited. It certainly does not extend to family groupings or anything like that. It is basically name, gender, date of birth and the cardholder's address.

CHAIR—Has the commission been approached by researchers wanting to do epidemiological research for access to the data? It seems to me that it would be very useful data for epidemiological research.

Ms Baldock—Yes, we have. Essentially, there are two broad categories, I suppose, of releases for that purpose. In the case of researchers who want identified information, we require that the consent of each participant be provided to us. We include the ability for the participant to withdraw their consent at any time. We understand that they may not want to be committed long term to having their information released. Probably more commonly, researchers do not require identified data and they can deal with statistical data. The Health Insurance Act contemplates that there is no impediment to releasing data which would not enable the identification of an individual and so we do assist research programs from time to time with statistical data.

CHAIR—There have been allegations about some sort of cancer or leukemia around the Wollongong area and there was the classic case of the asbestosis in Wittenoom. If one is a researcher who wants to look at the incidence of particular forms of cancer in the Wollongong area, is statistical data provided on the basis of individual medical practitioners within an area? One might want to become extremely detailed in the amount of data—for instance, whether it is one part of the city versus another part of the city

where there seems to be an impact. How detailed is the statistical data which is released?

Ms Baldock—In essence, we are conscious of the fact that, even though it is de-identified, the data should still be aggregated to the extent that it does not allow the identification of an individual. We look at the cell size and the number of individuals in each cell. For example, if there is a number that is quite small which would, if you had additional information, impliedly point to an individual, then we roll up cell sizes, so that we aggregate sufficient data so that it would not point to an individual. It is similarly the case with doctors. If there is only one doctor with a particular specialty in a postcode, we would not release that as statistical data because, by implication, you know who that medical practitioner is.

CHAIR—How far do you roll it up? For example, in a postcode, if there are two doctors with a specialty, would you release it? Where do you draw the line?

Ms Baldock—I believe that the minimum cell size—

Ms McKenzie—We generally look at about 10 as a minimum cell size.

CHAIR—Right.

Mr RANDALL—For the record, do the people that represent your statistical database know that you are retaining their records?

Ms Baldock—Yes, that is correct.

Mr RANDALL—They know that you can name identify them?

Ms Baldock—I am sorry; perhaps I did not understand your question. You are saying that members of the public who are eligible for Medicare would be aware that their names are included in the database?

Mr RANDALL—That is right.

Ms Baldock—I would expect that people would be—

Mr RANDALL—That is right; so it is pretty matter of fact. This is just for the record. They know that you keep them in that name identified fashion for some time?

Ms Baldock—I would expect that people would be aware of that. I cannot speak for the whole Australian population.

Mr RANDALL—No. This might appear to be almost naive; I am just asking the question.

CHAIR—I thank you very much for the submission and also for coming along and discussing it with us this morning. I thank all those for their attendance here today and also for the recording of the evidence.

Resolved (on motion by Mrs Vale):

That the committee authorises publication of the evidence received today at the public hearing.

Committee adjourned at 11.27 a.m.