

Review of sections 89-92 of the *Commonwealth Electoral Act 1918*

Access to the Electoral Roll and Elector Information

**Australian Electoral Commission
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Topics

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Executive summary and list of recommendations

1. This paper has been prepared in response to a recommendation of the Joint Standing Committee on Electoral Matters (the JSCEM) inquiry into the 1996 federal election that the sections of the *Commonwealth Electoral Act 1918* (the Electoral Act) governing access to the Commonwealth Electoral Roll (the electoral roll) be reviewed. See Attachment 1 for a copy of sections 89-92 of the Electoral Act, the sections governing access to the electoral roll. See Attachment 2 for a brief history of the reasons for this review and a copy of the JSCEM's recommendation.
2. The main background to this review is the conflict between two competing principles. The first principle is that the practice of an open democracy requires the electoral roll to be an open and accessible document. The second principle is that personal information provided by Australians to the Australian Electoral Commission (the AEC), for the purpose of constructing and maintaining an electoral roll on the basis of which elections are conducted, should be given the protection and security expected by those Australians and required by the *Privacy Act 1988* (the Privacy Act). The development of privacy principles and privacy law has occurred since the original drafting of most of the provisions in sections 89-92.
3. The electoral roll is a list of the names and addresses of those people eligible to vote in elections for the Commonwealth Parliament. It is used for the conduct of Commonwealth elections and to assist in the conduct of State, Territory and local government elections. A copy of the most up to date electoral roll is available for inspection in AEC offices. Printed copies are available for sale while stocks last. It is printed once in the life of each parliament, as a minimum.
4. Over time, the roll has become the end product of a dynamic set of computer files. The files contain much more information than the roll, but are the basis for the production of rolls and lists for various purposes in various formats as required. The roll is required for publication and sale in Commonwealth format, for printing as certified lists for use in the conduct of Commonwealth elections, and in electronic format for provision under Joint Roll Arrangements and agreements to State and Territory electoral authorities for State, Territory or local government elections.
5. Members of Parliament and registered political parties have access to the electoral roll and related information, in an electronic format, for electoral purposes. State and Territory electoral authorities have similar access. Access to the electoral roll and limited additional information is provided for use in approved medical research studies and public health screening programs. Similar access is provided to prescribed Commonwealth Agencies and Authorities for purposes related to the enforcement of law, prosecution of crime and the protection of the public revenue.
6. Other organisations and commercial enterprises use the electoral roll for family tracing, genealogical research or information services. These uses are neither permitted nor prohibited by the Electoral Act.

7. This review makes the following recommendations:

Recommendation 1. The AEC recommends that the Electoral Act be amended such that the form of medium by which access to the electoral roll or elector information is provided, is removed from the Electoral Act.

Recommendation 2. The AEC recommends that the Electoral Act be amended such that the detail of access to elector information be set out in a table in a schedule to the Electoral Act.

Recommendation 3. The AEC recommends that the end-use restrictions prescribed in section 91A and the penalties for wrongful disclosure or commercial use prescribed in section 91B should apply to all the information relating to electors contained in the electoral roll or the AEC elector information systems, regardless of the medium of supply.

Recommendation 4. The AEC recommends that the Electoral Act be amended such that public access to the electoral roll in AEC offices be provided by access to a current list of the names and addresses of electors enrolled for a division. Particular offices (such as State Head Offices) could provide access also to the list for other divisions at the discretion of the Electoral Commission.

Recommendation 5. The AEC recommends that an internet enquiry facility be provided whereby electors could verify their own electoral enrolment details. The same facility should be provided to enable any person to verify as much of the detail of any elector's enrolment as the enquirer is able to provide.

Recommendation 6. The AEC recommends that the Electoral Act be amended such that the electoral roll is no longer available for sale in any format.

Recommendation 7. The AEC recommends that the Electoral Act be amended to specify that copies of the certified lists provided to candidates during an election do not contain the gender and date of birth details that will appear on the certified lists used by polling officials (should such legislation be passed by the Parliament). Further, in keeping with earlier recommendations, the Electoral Act be amended such that the medium for supply of certified lists not be prescribed.

Recommendation 8. The AEC recommends that section 92 of the Electoral Act should be amended to remove the implication that reviews of the roll are periodic, rather than being a single continuous review by various means.

Recommendation 9: The AEC recommends that section 92 of the Electoral Act should be amended to expand the demand power of the AEC for information from any government or semi-government source at all levels (ie. Commonwealth, State, and local government authorities) for the purpose of preparation, maintenance and revision of the roll.

Recommendation 10: The AEC recommends that section 92 of the Electoral Act should be amended to:

- include an offence provision for failure to comply;
- provide that the AEC may set a deadline for compliance; and
- provide that information demanded or sought by the AEC be provided at no cost to the Commonwealth, or, alternatively at the cost of supply only.

Elector information captured

8. Considerable personal information is collected from each applicant for electoral enrolment or for change of details on the electoral roll. Most of this personal information is stored on the AEC's computerised enrolment system known as the Roll Management System (RMANS), along with information collected from other sources (such as polling official employment records) the personal information on the enrolment system can comprise:

full name
title
former name
current residential address
former residential address
postal address
phone number (not stored on RMANS)
occupation (required by joint roll partners, in four States/Territories at present)
gender
date and place of birth (place of birth not stored on RMANS)
citizenship (and details of any grant of Australian citizenship)
elector notations (such as polling staff, overseas , etc)
name and address of witness (not stored on RMANS)
date of enrolment

9. RMANS also allocates some or all of the following to electors' personal details or residential addresses :

unique transaction numbers for each change made
Commonwealth electorate
State/Territory electorates (in some cases for upper and lower houses)
local government areas
census collector districts
land parcel details
address ID (the link to the address register, the register of approved addresses)
delivery point identifiers (if stored on the address register)
global positioning system references (if stored on the address register)
special category of elector (such as overseas, itinerant, etc)
restricted vote indicator (such as Commonwealth only voter, etc)
history of previous enrolment since RMANS commenced
history as apparent non-voter or multiple voter

10. Clearly the AEC holds a significant amount of personal information on a large number of Australian electors, now approaching 13 million (multiplied several times if the AEC's deleted and archived records are included). From an information privacy aspect, the AEC has a legislative responsibility to keep this information secure and private except as required for the maintenance of the electoral roll, the conduct of elections, or as otherwise required by law.

Access to elector information in general

11. The exercise of democracy in Australia is an open and public process. Two important elements of that openness are the maintenance of a publicly available electoral roll and the conduct of transparent elections. The publicly available electoral roll is one of the inhibitors to enrolment fraud. Even rumours of the detail of such a fraud could be checked by any organisation or member of the public.

12. Public access to the electoral roll has been a facet of federal electoral practice since the Commonwealth electoral roll was created by the *Commonwealth Electoral Act 1902*. At that time the roll for each subdivision was exhibited at places such as police stations, post offices and State schools at certain times. The history of public access to the electoral roll is set out in Attachment 3.

13. The nature of the roll has changed markedly since those early days. In the early half of last century, the roll was a manuscript document on which the entries were added and ruled out manually as electors notified their movements. As time went on the roll became increasingly a typed document and was published at intervals for both elections and for sale. The roll is now, in practice, the end product of a dynamic set of computer files. The files contain much more information than the roll, but are capable of producing rolls and lists for various purposes in various formats as required. The roll is required for publication and sale in Commonwealth format, for printing as certified lists for use in the conduct of Commonwealth elections, and in electronic format for provision under joint roll agreements to State and Territory electoral authorities for State, Territory or local government elections.

14. A variety of other forms of access to elector information is now provided to a limited degree for specified purposes:

- electronic copies of elector information are regularly provided to registered political parties and federal parliamentarians;
- access to elector information is provided to State and Territory electoral authorities who are joint roll partners with the Commonwealth;
- extracts of limited elector information are provided for approved medical research and public health screening projects; and
- access to limited elector information is provided to Commonwealth Government instrumentalities for purposes such as the prevention or prosecution of crime and the protection of the public revenue.

15. Some private companies advertise tracing or information services on the internet and claim that their services are based on data from the electoral roll. The AEC has been unable to establish the accuracy of those claims and, if they are accurate, what elector information source is used.

16. In his November 2000 submission to the JSCEM's inquiry into the integrity of the electoral roll, the Privacy Commissioner commented that

Because it is compulsory to provide personal information for inclusion on the electoral roll, citizens have a strong expectation that this information will only be used for the purpose for which it was collected. Recent public debate in this area has reinforced the view that the community expects that the privacy of personal information collected by government agencies will be protected.

...

Public registers such as the electoral roll pose particular privacy issues because the collection and publication of personal information is compulsory. Firstly, it is compulsory for all Australian citizens to enrol to vote. Secondly, in order to enrol an individual must provide a range of detailed personal information, including full name, residential address, phone number, postal address, former surname, data [sic] of birth, country of birth, citizenship and former enrolled address.

After expressing concern at the limited privacy offered by the Electoral Act for electors' personal information, the Privacy Commissioner went on to recommend a review and update of the privacy protection of information held in public registers, possibly through a broad public inquiry. Similar interests have been expressed to the AEC by the Information Law Branch of the Attorney-General's Department, which is looking for measures to bring the information handling procedures of all Commonwealth Government registers into concert.

17. The AEC is concerned that the number of organisations with access to electors' personal information, provided for the conduct of elections, has the potential to discourage some electors from enrolling and exercising their democratic rights and duties. The AEC proposes, when resources permit, to commission a research study to evaluate any effect current levels of access to elector information have on citizens' willingness to enrol. The AEC notes the recent comment of the Auditor-General in his April 2002 report *Integrity of the Electoral Roll* (Audit Report No.42 2001-2002) at paragraph 5.22 under *Sale of the roll*:

5.22 There is a risk that commercial use of information provided by citizens to meet their electoral responsibilities could bring the electoral administration into disrepute with electors and that citizens might not enrol in order to protect their privacy.

Form of access to elector information

18. The Electoral Act specifies to some extent the media on which access to the electoral roll is to be provided. (Examples are that access must be provided on microfiche and that copies should be provided on print, tape or disk.) With the

rapidly increasing developments in technology the AEC considers that it is no longer appropriate to specify, in the Electoral Act, the media for provision of access. The AEC and other organisations currently have to maintain microfiche readers used for no purpose other than to read the microfiche copies of the roll specified in the Act. Newer forms of access, by e-mail or security controlled internet access may be more appropriate in the near future. There may, however, be other more appropriate forms of access on the horizon. The media for access available through such rapid changes in technology should not be restricted by the detail in the law, provided the basic principles of that access are set out and not compromised. It would be preferable that each change in technology not require a legislative change.

Recommendation 1

The AEC recommends that the Electoral Act be amended such that the form of medium, by which access to the electoral roll or elector information is provided, is removed from the Electoral Act.

19. The provisions of the Electoral Act under review (sections 89 to 92) currently constitute a complex scheme for access to elector information. For example, to describe the access to the electoral roll and elector information prescribed for a member of the House of Representatives, the reader would have to consult the following sections and paragraphs - 91(2)(c), 91(3), 91(4A)(a), 91(4A)(d), 91(6A) and 91AA(1)(c). The AEC considers that it would be easier for its clients and for AEC officers if the details of access to the electoral roll and elector information were to be set out in a table in a schedule to the Electoral Act, with the basic principles of access to be set out in the main body of the Act.

20. The revised sections of the Electoral Act could prescribe the basic principles for public access to the electoral roll and political, medical/health and government agency access to elector information, and then refer to the schedule for the detail of that access.

21. The schedule could be set out in tabular form by client (member of the public, Member or Senator, registered political party, etc) specifying the elector information to be included in the access provided and, if necessary, the timing/frequency of that access. Specific details such as the medium through which access is to be provided should be at the judgement of the Electoral Commission with regard to the technology in use at the time and the client's needs.

22. This would mean that the Electoral Act would not prescribe the medium through which access to the electoral roll should be provided in AEC offices and would not specifically require the electoral roll to be published in book form for inspection or sale.

Recommendation 2

The AEC recommends that the Electoral Act be amended such that the detail of access to elector information be set out in a table in a schedule to the Electoral Act.

End-use restrictions

23. End use restrictions for the use of any elector information provided on tape or disk were introduced in 1990 (see section 91A of the Electoral Act). A penalty for wrongful disclosure or commercial use of such information was introduced in 1990 and has since been increased to 1,000 penalty units (see section 91B, currently \$110,000). The AEC believes that end use restrictions and penalties for wrongful disclosure or commercial use should apply to all access to the electoral roll or elector information, not just to access provided by tape or disk. This is consistent with earlier recommendations that the form in which access is given not be prescribed.

24. This view is supported by Recommendation 35 of *In Confidence*, a June 1995 report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, which recommended that the end use restrictions applying to elector information contained on tape or disk also apply to the same data contained on microfiche or hard copy. There has been no government response to that report as yet.

Recommendation 3

The AEC recommends that the end-use restrictions prescribed in section 91A and the penalties for wrongful disclosure or commercial use prescribed in section 91B should apply to all the information relating to electors contained in the electoral roll or the AEC elector information systems, regardless of the medium of supply.

Public access to the Electoral Roll

25. Public access to the Commonwealth electoral roll has been prescribed since 1902 when the Commonwealth electoral roll was first established in legislation. Public access to the electoral roll is an essential element of open democracy. The electoral roll comprises the names and places of living of electors, and other details as prescribed (section 83 of the Electoral Act). There are currently no other details prescribed.

26. Public access is currently provided in AEC offices to microfiche copies of the electoral roll for each State or Territory. That is, the electoral roll for the whole of Australia is available in eight listings. Microfiche copies of the electoral roll are reproduced at approximately six monthly intervals. Public access to more up-to-date changes to the electoral roll is available in individual divisional offices (that is, each division has an up-to-date copy of its own electoral roll).

27. One of the main purposes of public access to the electoral roll is to enable all Australians to check the accuracy of any person's enrolment. The following extract from the AEC's 17 October 2000 Submission to the JSCEM's Inquiry into the Integrity of the Electoral Roll sets out the AEC's view on the importance of public access to the electoral roll.

9.2.1 The most important means for maintaining the integrity of electoral rolls, and deterring and detecting enrolment fraud, is the transparency of those rolls. It is a universally agreed democratic principle that electoral rolls should not be hidden documents administered in secret, but should be open and accessible to all citizens, so that they can check their own enrolments and those of others, and make complaint and seek amendment if any errors or inaccuracies are discovered. Part IX of the Electoral Act allows for objections to the enrolment of any elector by any other elector, as well as extensive appeal procedures for both parties.

9.2.2 Any elector can object against the enrolment of another elector in the same Division. The objecting elector provides reasons for the objection to the Divisional Returning Officer (DRO) along with a deposit of \$2. The DRO writes to the objected elector seeking confirmation of the reasons and determines whether the objection is upheld or rejected. If the objection is upheld, the \$2 deposit is refunded to the objector. Despite the objection forms being readily available from any Divisional Office, the refundable nature of the objection deposit, and the concerns expressed by many critics of the federal electoral system about the state of the rolls, very few private objections are lodged with the AEC.

28. Another major purpose for public access is to enable any elector to check the details of their own enrolment to ensure that the record held is accurate. The provisions of the Privacy Act provide that an elector has a right of access to their personal information held on the AEC's elector information systems. Nevertheless, there seems to be no necessity to provide that access by an Australia wide electoral roll in eight listings as the AEC does at present. The need for public access could be satisfied by access to a single electoral divisional list for the division in which the name and address to be checked should appear. That would mean that the AEC could make access available to 150 separate electoral divisional listings, with only the local divisional listing available at the local divisional office in most cases. This more dispersed access might protect electors' personal information from wider dissemination better than at present, but would still provide the access essential for checking any person's enrolment.

29. At the other extreme, and ignoring any implications for citizens' willingness to enrol and put their details on the public record, the AEC could provide complete public access to the national electoral roll in alphabetical listing or listed by street and number. That would make the electoral roll as open and public a document as possible. Such access would obviously also make the personal information of many millions of Australians easily available to whomever might want it, from tracing bureaus to debt collection agencies to direct marketers and to those with criminal intent. The Parliament has recognised the rights of Australians to reasonable protection of their personal information held in government agency registers through the Privacy Act. Any review of the provisions governing access to elector information should balance the need for public access to the electoral roll with the rights of Australians to have their personal information appropriately safeguarded.

30. There are various options for public access to the electoral roll in AEC offices:

- access to a single national listing of all electors, searchable and retrievable in different formats. This degree of access would permit an interested elector to retrieve the names and addresses for the electors enrolled for a particular street

and do their own doorknock or other investigation to check for any possible electoral fraud. It would, however, also provide a ready-made tool for tracing any elector or for direct marketing, debt collection, harassment, or any other purpose. It could also reveal the names and numbers of electors at each address - for example women living alone and possible household relationships;

- access to a single national listing of all electors, which did not facilitate any re-sorting of the information into address or other order, or provide bulk printout, could provide the necessary access for checking an elector's enrolment and avoid most benefit to commercial enterprises or other organisations seeking access for uses other than for the conduct of elections;
- access to a single national file of all electors which only confirmed the information input would permit any person to verify whether a suspected fraudulent name and address is included on the electoral roll, or to verify their own enrolment details. This type of access would enable an enquirer to verify as much information as they already know about an elector, but would not provide any additional information in response to the enquiry. Consideration would have to be given to the extent to which details such as given names had to match those contained on the electoral roll to achieve a confirmation;
- the same types of access could be given to the electoral roll in eight State and Territory listings as at present, or in 150 separate divisional listings; or
- access could be given only to confirm information input to the inquiry facility, so that a suspected fraudulent enrolment could be verified on the local divisional roll or an elector could confirm their personal details. The main type of claimed fraudulent enrolment is for real or imaginary people to be enrolled in an electorate for which they are not entitled to be enrolled, presumably to alter the political balance of voters in a very close seat. This would require an enrolment for a false place of living. Any member of the public from that electoral division who suspected such a fraudulent enrolment would be able to verify whether those details are entered on the electoral roll. Some registered political parties, on the other hand, already have access to the complete roll sortable alphabetically or in street order.

31. The AEC could provide these levels of access by various types of media. For example, in hard copy prints of divisional electoral rolls, in microfiche prints of State or Territory rolls as at present, or by electronic enquiry via a dedicated personal computer or terminal. Given the number of changes to the electoral roll, approximately 25% of electors each year (almost 3 million roll amendments including new enrolments), the AEC is firmly of the view that electronic access to up-to-date electoral enrolment is the best way to provide public access in AEC offices. The access could be to a divisional listing extracted at regular intervals from the elector information held by the AEC. There would be no access to the AEC's enrolment systems from the divisional listing made available for public access on the dedicated personal computer.

32. There would be a further advantage to providing public access to the electoral roll in electronic format in AEC offices, which would benefit “silent electors”, those people who have their addresses deleted from the electoral roll because of fear for the personal safety of themselves or their families. Currently, following approval of silent elector status and where the elector has not changed address, a silent elector’s address is suppressed from the computer files which produce the electoral roll as soon as an application for silent enrolment is approved. Nothing, however, can be done about the address appearing on the more than 150 sets of microfiche already available for inspection in AEC offices until the microfiche are next reproduced six months later (unless the AEC arranges for that particular page of the fiche to be withdrawn from public inspection). Nor can anything be done about printed copies of the electoral roll already sold. The provision of public access by electronic means would ensure that silent electors’ addresses are removed from most forms of public access as soon as their applications are approved.

33. The timing of the introduction of electronic public access in AEC offices would be dependent on resources, as it would require provision of dedicated personal computers and the development of the necessary software. Electronic public access would be legally possible if the change specified in recommendation 1 was implemented. The introduction of electronic public access would also mean that the electoral roll need no longer be printed for inspection.

Recommendation 4

The AEC recommends that the Electoral Act be amended such that public access to the electoral roll in AEC offices be provided by access to a current list of the names and addresses of electors enrolled for a division. Particular offices (such as State Head Offices) could provide access also to the list for other divisions at the discretion of the Electoral Commission.

Internet access to roll information

34. The question of public access to the electoral roll via the internet has been raised with recent JSCEMs. The Western Australian Electoral Commission (State) already provides an internet enquiry facility for the Western Australian State electoral roll (www.waec.wa.gov.au). That facility will only confirm an entry in the electoral roll in response to an enquiry which includes the elector’s full name, full address and date of birth.

35. An internet enquiry facility for the Commonwealth electoral roll would undoubtedly reduce the number of calls made to the AEC election enquiry service for enrolment checks in the period from the announcement of an election to the close of the rolls. It would permit electors to check their enrolment details at their own convenience. The facility would also permit any person with access to the internet to check the details of a suspected fraudulent enrolment.

36. The Western Australian facility permits an elector to check whether their own correct enrolment details are entered on the roll, but does not permit another person to check for a fraudulent enrolment unless that person knows the name, address and date of birth details for the suspected fraudulent enrollee. An alternative would be for the Commonwealth internet enquiry facility to confirm any match for the information input in the enquiry, but not provide any further details of the relevant enrolment or enrolments. In that case, an enquiry for “Jane Smith” would presumably return the response that Jane Smith is entered on the electoral roll. That information would not be of much value to the enquirer as there may well be thousands of Jane Smiths on the electoral roll over the whole of Australia. Whereas an enquiry for “Jane Annette Smith, 495 Nowra Avenue, Broome” would return a response that confirmed such an enrolment or that no such enrolment existed.

Recommendation 5

The AEC recommends that an internet enquiry facility be provided whereby electors could verify their own electoral enrolment details. The same facility should be provided to enable any person to verify as much of the detail of any elector’s enrolment as the enquirer is able to provide.

Sale of Rolls

37. Further, with the internet facility, there would be no valid reason for the continued sale of rolls. As candidates, registered political parties, and Members of Parliament will continue to be supplied with elector information, and electors and any other person can have access to elector information as specified above through the internet, there are no legitimate electoral related reasons for making rolls available for sale. Access would continue also to elector information as prescribed such as for Commonwealth Agencies and Authorities and medical research and public health screening purposes. Other purposes would need to be prescribed. Withdrawal of the roll from sale will also eliminate the last legitimate source of elector information for non-electoral related and commercial purposes. (See also paragraphs 54 to 58 regarding commercial use of the roll.)

Recommendation 6

The AEC recommends that the Electoral Act be amended such that the electoral roll is no longer available for sale in any format.

Political access to elector information (by Members of Parliament, registered political parties and candidates)

38. In 1983, specific provisions were inserted in the Electoral Act (now section 91) to provide for the provision of the roll and elector information to registered political parties and to Members of Parliament. The JSCEM subsequently considered this matter and recommended that Members of Parliament and registered political parties

receive electors' gender, age and salutation details (Recommendation 52 of the 1996 Federal Election report, June 1997). Recent amendments to the Electoral Act have specified in detail the elector information which may be provided to registered political parties and Members of Parliament (see section 91AA in Attachment 1).

39. The AEC notes the comment by the Auditor-General in the 2002 ANAO report *Integrity of the Electoral Roll* (April 2002), when discussing "Access by Members, Senators and political parties" (paragraphs 5.27 to 5.36) that "the absence of end use restrictions on data from the electoral roll could increase the potential for electoral fraud".

40. While not within the context of sections 89-92, certified lists of voters and reference rolls are another form of electoral roll. The Government supported Recommendation 5 of the May 2001 report of the JSCEM *User friendly, not abuser friendly* that gender and date of birth be included on the certified lists. The intention of this proposal is to limit the possibility of a person attempting to vote in the place of another person of a different gender or an obviously different age. The AEC has concerns that because copies of the certified lists are provided to candidates under section 91C of the Electoral Act, the inclusion of gender and date of birth details on the certified lists provided to candidates will create an unnecessary invasion of elector privacy.

Recommendation 7

The AEC recommends that the Electoral Act be amended to specify that copies of the certified lists provided to candidates during an election do not contain the gender and date of birth details that will appear on the certified lists used by polling officials (should such legislation be passed by the Parliament). Further, in keeping with earlier recommendations, the Electoral Act be amended such that the medium for supply of certified lists not be prescribed.

Access to elector information for medical research and public health screening

41. For some years the AEC has provided access to extracts from the electoral roll for use in approved medical research and public health screening programs. Legislative amendments in 1998 and 2000, permitted the provision of gender and age-range information for these purposes (see section 91AB of the Electoral Act). Access to elector information for these purposes is given at the discretion of the AEC under paragraph 91(4A)(e), subject to regulation 10 of the Electoral and Referendum Regulations 1940 (the Electoral Regulations).

42. The required approvals for medical research and health screening purposes are specified in regulation 10 of the Electoral Regulations (see Attachment 4). The regulation specifies that medical research must be in accordance with the Guidelines for the Protection of Privacy in the Conduct of Medical Research (the Guidelines) issued by the National Health and Medical Research Council (NHMRC). The Federal Privacy Handbook sets out that for the purpose of the Guidelines, "medical research"

is defined as “systematic investigations for the purpose of adding to generalised knowledge pertaining to human health and includes epidemiological research”. On occasion, the AEC has experienced difficulty in determining whether particular requests for the provision of elector information for studies funded by the National Health and Medical Research Council meet the definition of “medical research”. In such cases, the AEC seeks advice from the NHMRC. However, the AEC is of the view that a more formal process should be in place (eg. the NHMRC must advise the AEC that the medical research project complies with the necessary requirements before the AEC releases the elector information, similar to the requirement that public health screening programs must be approved by the Secretary of the Department of Health and Ageing) and will be consulting the NHMRC on this issue.

43. Accordingly, the AEC has no recommendation to change the current provisions relating to access to elector information provided for medical research and public health screening at this time.

Access to elector information by Commonwealth Agencies and Authorities for law enforcement, protection of public revenue and prevention of fraud

44. For some years the AEC has provided access to elector information to Commonwealth Government Agencies and Authorities seeking that information for purposes permitted under the Privacy Act, that is for law enforcement, the protection of the public revenue or the prevention and detection of fraud and other crimes.

45. Paragraph 91A(2A)(c) of the Electoral Act provides that the permitted uses for electronic copies of elector information are those specified in the Electoral Regulations (see Attachment 4). In regard to Commonwealth Agencies and Authorities, those uses are the types of uses which would be permitted under Information Privacy Principle 11 of the Privacy Act:

Principle 11. Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
 - (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
 - (b) the individual concerned has consented to the disclosure;
 - (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
 - (d) the disclosure is required or authorised by or under law; or
 - (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.

3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

46. In 1990 specific provisions were inserted in the Electoral Act (subsection 91(10)) to permit the provision of elector information including gender and date of birth details to the Commonwealth Agencies and Authorities specified in Schedule 2 of the Electoral Regulations.

47. In 2000, the AEC received revised legal advice that resulted in the AEC no longer providing access to Commonwealth Agencies and Authorities in electronic format other than as specifically provided for by legislation. The revised advice was that the AEC could not rely solely on subsection 91(10) in providing access to elector information electronically in these situations, and that it was necessary to rely also on paragraph 91(4A)(e). Section 91A, however, required prescribed permitted purposes before such access could be given and there were no appropriate permitted purposes prescribed under paragraph 91A(2A)(c) or the Electoral Regulations for the release of information to Commonwealth Agencies and Authorities in accordance with paragraph 91(4A)(e).

48. It was necessary for the AEC to withdraw the electronic provision of elector information to Commonwealth Agencies and Authorities until such time as permitted purposes were prescribed by way of Schedule 3 of the Electoral Regulations.

49. The permitted uses for elector information provided in electronic format to each specified Commonwealth Agencies and Authorities are now approved by the Electoral Commissioner, specified individually in the Electoral Regulations (Schedule 3), and set out in Safeguard Agreements signed by the Agency Head or the Chief Executive Officer of each organisation. The intention, at the time the regulation was made, was that amendments would be developed for the Electoral Act to specifically provide for electronic access to elector information by Commonwealth Agencies and Authorities. A “sunset clause” was inserted in the regulation to allow time for the amendments to the Electoral Act to be researched and put into place. The “sunset clause” takes effect on 25 July 2003.

50. An amendment will be necessary to give effect to the required changes to the Electoral Act, and has been given policy approval by Government. An amendment will be included in a Bill in the near future.

Access to elector information for family tracing purposes

51. The AEC has received requests over a number of years from Government and non-government agencies seeking access to up-to-date and historical electoral rolls for family tracing purposes. The reasons stated relate to adoptions, foster situations, children taken into government care many years ago, family members who are out of touch because of war or refugee situations, genealogical research or for other reasons.

52. Following the withdrawal of the sale of microfiche versions of the electoral roll, during its inquiry into the integrity of the electoral roll the JSCEM received a submission from the National Missing Persons Unit of the Australian Bureau of Criminal Intelligence (NPWU). This submission (listed in Attachment 5) was written on behalf of the Salvation Army Family Tracing Service, the Australian Red Cross International Tracing and Refugee Services, the International Social Service - Australia Branch, Familink Identity Search Service (NSW) and Link Up (NSW) Aboriginal Corporation. NPWU explained that the electoral roll was the primary information source used by non-government organisations to locate missing people being sought by their families and stressed the importance both socially and in economic terms of this service to Australia. NPWU offered to nationally accredit family tracing organisations before access to the microfiche versions of the electoral roll are again made available to them.

53. Submissions with related content were made by the Public Trustee of South Australia, the Benevolent Society, the Victorian Adoption Network for Information and Self Help, the Salvation Army South Australia Division Family Tracing Service and the Society of Australian Genealogists.

54. The AEC does not consider release of information in these circumstances to be appropriate given the purpose for which electors' personal information is collected. The AEC has consistently rejected such requests from organisations or individuals because the release of electors' personal information for such purposes would not be in accordance with either the Electoral Act or the Privacy Act.

Access to the electoral roll for commercial purposes

55. The AEC understands that developments in technology in the last few decades have made the electoral roll a commercially valuable document. Apparently the available technology has made it commercially viable to take the published electoral rolls (in book or previously in microfiche format) and re-enter them by keyboard or scan them into a database to be cross-matched with other information such as telephone numbers, credit history, purchasing history, etc, for onselling.

56. The AEC does not condone commercial use of electors' personal information from the electoral roll, nor provide support for this practice in any way. The AEC ceased the sale of microfiche electoral rolls in early 2000 because revised legal advice indicated that there was no specific legislative authority to make such sales, but also because of privacy concerns regarding the misuse of electors' personal information. The AEC is, however, still required to sell the printed electoral roll.

57. The AEC is aware of private companies that have advertised on the internet and in other places that their tracing services are based on the data from the electoral roll. The AEC has made enquiries of some of these organisations, but has not been able to trace the source of the claimed elector information.

58. Elector information can be sourced legally from printed copies of the electoral rolls (currently produced every three years). Elector information could also have been legally sourced from the microfiche copies of the electoral roll that the AEC sold until early 2000.

59. A penalty of 1,000 penalty units (\$110,000) is provided for unauthorised disclosure or commercial use of elector information provided by means of a copy of the electoral roll supplied by the AEC on tape or disk. There are, however, no end-use restrictions on printed copies of the electoral roll. If AEC Recommendation 6, with respect to withdrawal of the electoral roll from sale becomes law, the AEC would be in a position to strongly encourage the Australian Federal Police to look into the source of the information supporting the advertised electoral roll tracing services. The amount of the penalty would be a clear indication of the importance attributed to this sort of breach by Parliament.

Section 92 of the Electoral Act – Electoral roll reviews

60. Section 92 concerns the method of reviewing the electoral roll. Traditionally, electoral roll reviews were conducted periodically (usually once every two years), by way of a door-knock of most addresses within a division, or by mail in remote areas or for larger residential complexes such as nursing homes and university residences. Electoral roll review is now a continuous process, incorporating data-matching and data-mining as well as targeted door-knocking and other activities. Section 92 was amended in 1995 to remove the requirement that roll reviews be periodic. However, the wording of section 92 still does not clearly reflect that intent or current practice and should be further amended accordingly.

Recommendation 8

The AEC recommends that section 92 of the Electoral Act be amended to remove the implication that reviews of the roll are periodic, rather than being a single continuous review by various means.

61. Another issue of concern to the AEC is that the demand power in subsection 92(1) is too narrow in its application. Currently, the AEC has no power to seek information for roll preparation, maintenance and revision purposes from State or local Government authorities or Government Business Enterprises (other than police, statistical or electoral bodies as currently set out in section 92). Widening the demand powers would allow the AEC to obtain up-to-date change of address information from a wider variety of sources. The AEC acknowledges, however, that in proceeding with this proposal it may be necessary to undertake consultation with the Privacy Commissioner in regard to the privacy implications and the Attorney-General's

Department or Australian Government Solicitor in relation to any possible Constitutional issues.

Recommendation 9

The AEC recommends that section 92 of the Electoral Act be amended to expand the demand power of the AEC for information from any government or semi-government source at all levels (ie. Commonwealth, State, and local government authorities) for the purpose of preparation, maintenance and revision of the roll.

62. Further, section 92 has no offence provision attached to it for failure to comply with AEC demands made under this section and, as a result, the AEC has not been able to enforce this demand power in the case of non-compliance. The AEC is of the view that the Electoral Act should be amended to provide for a deadline for provision of information and a penalty for non-compliance (similar to those contained in the section 192 of the *Social Security (Administration) Act 1999* and section 128 of the *Veterans' Entitlements Act 1986* – see Attachment 6). Further, the AEC is also of the view that the Electoral Act should be amended to provide that any information demanded or sought be provided at no cost to the Commonwealth or alternatively at the cost of supply only.

Recommendation 10

The AEC recommends that section 92 of the Electoral Act be amended to:

- **include an offence provision for failure to comply;**
- **provide that the AEC may set a deadline for compliance; and**
- **provide that information demanded or sought by the AEC be provided at no cost to the Commonwealth, or, alternatively at the cost of supply only.**

Further matters for review

63. During the review of sections 89-92 of the Electoral Act, other issues arose that fall outside the ambit of these sections but that the AEC believes should be subject to further review.

The electoral roll as a computer based document

64. The Electoral Act currently describes an electoral roll as a paper document for a local area comprising a subdivision. Divisional, State and Territory rolls are seen as a composite of those discrete subdivisional rolls (see sections 81 to 83 of the Electoral Act). In previous years (before the amalgamation of most subdivisions in the 1980s) there might have been several thousand such subdivisional rolls being maintained and printed in the year leading up to an expected election, and a similar number of supplemental rolls printed after the close of rolls for that election. Computerisation and improvements in printing technology have eliminated the requirement for such

things. The electoral roll today is, in reality, a single integrated computer database from which a variety of products can be generated, including the certified lists of voters to conduct an election, lists of electors for registered political parties, Members of Parliament and so forth. While the difference in concept does not make the Electoral Act unworkable, there may be advantages in bringing the wording of the Act closer to reality.

The ongoing electoral roll should not be closed for election periods

65. The AEC's enrolment computer system (RMANS) is a living computer 'document' held on a series of interrelated computer files. RMANS is not closed down for election periods, rather a 'snapshot' is downloaded when all enrolment applications received by the close of rolls have been processed. That 'snapshot' is the basis for the electoral roll, the certified lists and other data for the election. Snapshots can be taken for a variety of purposes, including providing elector information to State and Territory authorities for the conduct of State, Territory and local government elections and to Members of Parliament and registered political parties.

66. Currently, subsection 102(4) of the Electoral Act specifically prevents a claim for enrolment from being considered during an election period. If the electoral roll for a particular election is now in reality a 'snapshot' taken from RMANS, it is no longer necessary for the Electoral Act to freeze enrolment activity during an election period. The 'snapshot' is already frozen by its nature and it may be possible for the Electoral Act to describe that situation better, while leaving enrolment in general continuing so that the enrolment system is up-to-date for any further election or other enrolment activity (State/Territory or local government) which may occur in close proximity to a federal election.

References to subdivisions could be removed from the Electoral Act

67. Other than in the Northern Territory, the AEC no longer maintains subdivisional rolls other than one subdivisional roll comprising each electoral division. Much of the language of the Electoral Act concerning electoral rolls and enrolment, and also concerning some aspects of voting (for example absent voting), is based on the concept of a subdivision. The electoral roll is maintained by address and locality, and the subdivisions are no longer a practical basis for enrolment or voting. There may be value in reviewing the geographical base for enrolment and adopting local government areas, census collector districts, or some other geographical division as a base element of an enrolment or voting area. It may not be necessary for the Electoral Act to describe a local area smaller than a Commonwealth electoral division.

68. The Electoral Act is moving toward individual addresses as the basis for both enrolment and the geographic qualification for enrolment in a particular electoral division. The Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002 includes an amendment that would provide for address-based enrolment. The grouping of individual addresses into small local area units, such as local government areas or census collector districts, has been convenient for redistributing electoral boundaries and for re-casting the electoral roll into Commonwealth, State/Territory or local government certified lists of voters. The

concept of a subdivision as another geographic element is probably no longer relevant.

Clarification of Parts VII and VIII of the Electoral Act

69. The increase in the types of possible enrolment and the changing nature of the electoral roll mean that the Electoral Act no longer sets out clear and cohesive instructions for applying for enrolment or changing enrolment details. In earlier form, Part VII of the Electoral Act appeared to deal with qualifications for enrolment while Part VIII dealt with applications for enrolment and their processing. Some of the procedures for applying for enrolment now occur in Part VII and different applications may have different criteria. Examples are that section 93 in Part VII of the Act, dealing with traditional enrolment, does not mention applying for enrolment, dealing instead with entitlement. Part VIII deals with claims (applications) for enrolment. Sections 94A, 95 and 96 in Part VII, however, deal with applications for enrolment from outside Australia and enrolment as an itinerant elector. This raises confusion as to the extent to which those applications are also bound by the provisions regarding claims for enrolment in Part VIII. It may be preferable to return to the situation in which Part VII deals with qualifications only and Part VIII deals with the way in which claims or applications are made and processed.

70. As the subject of this paper recommends clarifying sections 89-92, the AEC believes that Parts VII and VIII of the Electoral Act also require revision to clarify the complex and various entitlement and eligibility criteria and processes for enrolment. At the same time, these Parts should also be reviewed with a view to providing for the reality of modern communication and interaction with the Government. Like most areas of the Electoral Act, Parts VII and VIII describe manual, paper-based forms and processes that might be streamlined and made more efficient through modern technologies.

The need for more efficient procedures to update electors' changes of address

71. The combination of the level of mobility of the Australian population and the number of government and other instrumentalities which need to have their registers updated following each move, raises a question as to the appropriateness of the procedures required for updating the electoral roll. The AEC, in combination with its Joint Roll Partners in the Electoral Council of Australia, is looking at new ways to make the process easier for its clients. It may be possible to extend the efforts already made in some areas to provide more of a one-stop shop for updating details with the AEC and other government agencies. Progress in this area requires a review of the legislation setting out the method of updating the electoral roll where the elector has already provided suitable proof of identity with their advice of change of address to another 'trusted' government source.

72. Following on from the previous point, the Electoral Act should be reviewed to cater for possible electronic applications for enrolment, both separately and as part of a one-stop shop approach to changes of address. The technology for electronic signatures as secure as handwritten signatures appears to be imminent if not already achieved. In addition, the Commonwealth Government is moving towards providing

electronic facilities for as many transactions as possible that Australians make with government agencies (the *Electronic Transactions Act 1999*).

73. Recent developments in continuous roll updating and in data matching and data mining should be developed further. One of the procedures hampering the update of the roll following information obtained by these methods is the need to encourage electors to forward a signed application so the AEC can update the electoral roll with information already in our possession. Some electors regard this process as archaic and overly bureaucratic.

Attachment 1

Copy of sections 89-92 of *Commonwealth Electoral Act 1918*

89 Printing of Rolls

- (1) Rolls shall be printed whenever the Electoral Commission so directs but so that the Rolls are printed at least once during the period of 2 years after the commencement of the first session of the Parliament after a general election.
- (2) Supplemental Rolls, setting out additions since the latest print of the Rolls, shall be prepared and printed at such times as the Electoral Commission directs.

90 Inspection etc. of Rolls

- (1) Copies of the latest print of the Roll for a Division and of the Supplemental Rolls (if any) relating to that Roll shall be available for public inspection without fee:
 - (a) at the office of the Divisional Returning Officer for that Division;
 - (b) if there is an Assistant Divisional Returning Officer for a Subdivision of that Division—at the office of that Assistant Divisional Returning Officer; and
 - (c) at such other places (if any) as the Electoral Commission determines;and shall be available for purchase at that office or those offices, as the case requires, and at such other places (if any) as the Electoral Commission determines, on payment of such amounts as the Electoral Commission determines to be appropriate in relation to prints of Rolls of that kind.
- (2) Each Roll kept by a Divisional Returning Officer or an Assistant Divisional Returning Officer shall be available for public inspection, without fee, at the office of the Divisional Returning Officer or of the Assistant Divisional Returning Officer, at any time during ordinary office hours.
- (3) The Electoral Commission shall, at each capital city office of the Commission, keep available for inspection by members of the public, the latest microfiche of:
 - (a) the Roll for each State and Territory; and
 - (b) any other Roll specified in a direction given by the Electoral Commissioner for the purpose of this paragraph.
- (4) The capital city offices of the Electoral Commission are:
 - (a) the principal office of the Commission in Canberra;
 - (b) the principal office of the Commission in the capital city of each State; and
 - (c) the principal office of the Commission in Darwin.
- (5) The Divisional Returning Officer for a Division shall keep available, at his or her office, for inspection by members of the public, the latest microfiche of:
 - (a) the Roll for the Division; and
 - (b) any other Roll specified in a direction given by the Electoral Commissioner for the purpose of this paragraph.
- (6) A microfiche of a Roll shall be made whenever the Electoral Commissioner so directs.

- (7) A microfiche referred to in subsection (3) or (5) shall be available for inspection during ordinary office hours without fee.

91 Provision of Rolls and habitation indexes to political parties etc.

- (1) In this section:

habitation index, in relation to a Division, means a list of electors for the Division arranged, in a manner determined by the Electoral Commission, by reference to the respective places of living of the electors whose names are on the Roll for the Division.

supplement means, in relation to a Roll, a record of the changes to the Roll during a period of time.

- (2) The Electoral Commission shall, after each general election:
- (a) provide to each registered political party a copy of the latest print of the Roll for each State and Territory;
 - (b) provide to each Senator for a State or Territory 5 copies of the latest print of the Roll for that State or Territory;
 - (c) provide to each member of the House of Representatives 5 copies of the latest print of the Roll for the Division for which the member was elected; and
 - (d) provide to such other persons or organisations (if any) as the Electoral Commission determines are appropriate a copy of the latest print of such Rolls as the Electoral Commission considers appropriate.
- (3) Instead of providing a copy or copies of the latest print of a Roll to a party or person referred to in paragraph (2)(a), (b) or (c), the Electoral Commission must, if the party or person so requests, provide a copy of the Roll on tape or disk.
- (4) Instead of providing a copy of the latest print of a Roll to a person or organisation referred to in paragraph (2)(d), the Electoral Commission may, at its discretion, provide a copy of the Roll on tape or disk.
- (4A) In addition to any tapes or disks provided under subsection (3) or (4), the Electoral Commission:
- (a) must, on request, and as far as practicable, provide to a registered political party a member of which is a Senator or a member of the House of Representatives a copy on tape or disk of any Roll or of any supplement to a Roll; and
 - (b) must, on request, and as far as practicable, provide to any other registered political party a copy on tape or disk of any Roll or of any supplement to a Roll; and
 - (c) must, on request, and as far as practicable, provide to a Senator for a State or Territory a copy on tape or disk of the Roll for any Division in that State or Territory or of any supplement to that Roll; and
 - (d) must, on request, and as far as practicable, provide to a member of the House of Representatives a copy on tape or disk of the Roll for:
 - (i) the Division for which the member was elected; or
 - (ii) if the member was elected for a Division that has been affected by a redistribution—any Division that after the redistribution includes the Division, or a part of the Division, for which the member was elected; or of any supplement to that Roll or Rolls;

- (e) may, on request, if it considers it appropriate, and subject to conditions (if any) determined by the Commission, provide to any person or organisation a copy on tape or disk of any Roll, of any supplement to a Roll or any extract of any Roll.
- (5) So far as practicable, the Electoral Commission shall, after each general election, provide to each registered political party a copy on tape or disk of the habitation index for each Division.
- (5A) In addition to any tapes or disks provided under subsection (5), the Electoral Commission must, on request, and as far as practicable, provide to a registered political party a copy on tape or disk of any habitation index.
- (6) A print, tape or disk provided to a party or person under subsection (2), (3), (4) or (5) shall be provided:
 - (a) without charge; and
 - (b) not later than 2 years after the commencement of the first session of the Parliament after the last general election.
- (6A) A tape or disk provided to a party, Senator or member under paragraph (4A)(a), (c) or (d) is to be provided without charge.
- (6B) If the Commission provides a tape or disk under paragraph (4A)(b) or (e) or subsection (5A), it may charge a fee that covers the cost to the Commission of providing the tape or disk.
- (7) In spite of subsections (2), (4A), (5) and (5A), the Electoral Commission is not required by those subsections to provide a registered political party with:
 - (a) a copy of the latest print of the Roll for a State or Territory; or
 - (b) a copy on tape or disk of the Roll for a State or Territory; or
 - (c) a copy on tape or disk of the habitation index for a Division in a State or Territory;unless a branch or division of the party is organised on the basis of that State or Territory.
- (8) The Electoral Commission shall not include on a tape or disk of a habitation index provided under subsection (5) or (5A) the name of a person whose address has been excluded or deleted from a Roll under section 104.
- (9) Except as otherwise provided by this Act, the Electoral Commission shall not provide any person with any information which discloses particulars of the occupations, sex or dates of birth of electors.
- (9B) If an arrangement under section 84 allows information to be provided to an electoral authority of a State or Territory, the Electoral Commission may also provide that electoral authority with information that discloses particulars of the sex or dates of birth of electors who are enrolled in another State or Territory. Information provided under this subsection may be provided:
 - (a) on tape or disk; or
 - (b) by any other means.
- (10) The Electoral Commission may provide a prescribed authority with a microfiche of a Roll or with information referred to in subsection (9) if the provision of the microfiche or information is authorised by the regulations.

(10A) Nothing in section 91C, 91D or 91E derogates from the requirement of the Electoral Commission to provide copies of the latest print of the Rolls under this section.

(11) In subsection (10), *prescribed authority* means:

- (a) the Agency Head of an Agency (within the meaning of the *Public Service Act 1999*) that is specified in the regulations for the purposes of this subsection; or
- (b) the chief executive officer of an authority of the Commonwealth that is so specified.

91AA Provision of additional information to political parties etc.

(1) If a copy on tape or disk of any Roll is provided:

- (a) to a registered political party under paragraph 91(4A)(a) or (b); or
- (b) to a Senator under paragraph 91(4A)(c); or
- (c) to a member of the House of Representatives under paragraph 91(4A)(d);

the Electoral Commission may include on the tape or disk any or all of the information set out in subsection (2) in relation to each person included in the copy of the Roll.

(2) The following information may be included in relation to a person:

- (a) the person's postal address;
- (b) the sex of the person;
- (c) the person's date of birth;
- (d) the person's salutation;
- (e) the census district in which the person lives;
- (f) the most recent enrolment date and enrolment transaction number for the person;
- (g) whether the person is:
 - (i) not entitled to be enrolled as an elector of the Commonwealth; or
 - (ii) not also enrolled as a State elector, Australian Capital Territory elector or Northern Territory elector; or
 - (iii) less than 18 years old;
- (h) whether the person is a general postal voter;
- (i) whether the person has only recently been enrolled;
- (j) whether the person has re-enrolled and, if so:
 - (i) the Division and State or Territory in which they were previously enrolled; and
 - (ii) the enrolment transaction number for the person's previous enrolment;
- (k) the electoral district for the purposes of State or Territory elections in which the person lives;
- (l) the local government area in which the person lives;
- (m) the Australia Post delivery point identifier for each address of the person.

(3) The Electoral Commission must not include on a tape or disk any of the information set out in subsection (2) in relation to a person whose address has been excluded or deleted from a Roll under section 104.

91AB Provision of information for medical research and health screening

- (1) If a copy on tape or disk of any Roll, or any extract of any Roll, is provided under paragraph 91(4A)(e) to:
 - (a) a person or organisation that conducts medical research; or
 - (b) a person or organisation that provides a health screening program;the Electoral Commission may include on the tape or disk any or all of the information set out in subsection (2) in relation to each person included in the copy of the Roll.
- (2) The following information may be included in relation to a person:
 - (a) the sex of the person;
 - (b) the age range that covers the person.
- (3) The age ranges to be used under subsection (2) in a particular case are to be determined by the Electoral Commission. However, each age range must cover at least 2 years.

91A Use of information from Roll and habitation index

- (1) If a tape or disk has been provided under subsection 91(3), (4), (4A), (5), (5A) or (9B) or section 91AA or 91AB, a person must not use information obtained by means of the tape or disk except for a purpose that is a permitted purpose in relation to the person or organisation to which the tape or disk was provided.

Penalty: 100 penalty units.

- (1AA) If information has been provided under paragraph 91(9B)(b), a person must not use the information except for a purpose that is a permitted purpose in relation to the person or organisation to which the information was provided.

Penalty: 100 penalty units.

- (1A) The permitted purposes in relation to a Senator or member of the House of Representatives are:
 - (a) any purpose in connection with an election or referendum; and
 - (aa) research regarding electoral matters; and
 - (b) monitoring the accuracy of information contained in a Roll; and
 - (c) the performance by the Senator or member of his or her functions as a Senator or member in relation to a person or persons enrolled for the Division, State or Territory to which the tape or disk relates.
- (2) The permitted purposes in relation to a political party are:
 - (a) any purpose in connection with an election or referendum; and
 - (aa) research regarding electoral matters; and
 - (b) monitoring the accuracy of information contained in a Roll; and
 - (c) the performance by a senator or member of the House of Representatives who is a member of the party of his or her functions as a senator or member in relation to a person or persons enrolled for the Division, State or Territory to which the tape or disk relates.
- (2A) The permitted purposes in relation to a person or organisation other than a Senator, member of the House of Representatives or political party are:
 - (a) any purpose in connection with an election or referendum; and

- (b) monitoring the accuracy of information contained in a Roll; and
 - (c) any other purpose that is prescribed.
- (2B) For information provided under subsection 91(9B), the only permitted purposes in relation to an electoral authority of a State or Territory are:
- (a) any purpose in connection with an election or referendum; and
 - (b) monitoring the accuracy of information contained in a Roll.
- (3) In this section:

election means:

- (a) a Senate election;
- (b) a House of Representatives election;
- (c) a State election;
- (d) a Territory election; or
- (e) a local government election.

referendum means a referendum conducted under a law of the Commonwealth or of a State or Territory.

91B Prohibition of disclosure or commercial use of Roll or habitation index

- (1) For the purposes of this section, information is protected information in relation to a person if the person knows, or has reasonable grounds for believing, that:
- (a) the information has been obtained under paragraph 91(9B)(b); or
 - (b) the information has been obtained by means of a tape or disk provided under section 91.

- (2) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 91A.

Penalty: 1,000 penalty units.

- (3) A person shall not use protected information for a commercial purpose.

Penalty: 1,000 penalty units.

91C Provision of certified list of voters to candidates

The Electoral Commission, as soon as practicable after the close of the Rolls, must give to each candidate in a House of Representatives election a copy of the certified list of voters for the Division for which he or she is seeking election.

91D Provision of certified list of voters to members of House of Representatives

- (1) The Electoral Commission, as soon as practicable after a candidate in a House of Representatives election has been declared elected under section 284, must give to the successful candidate 3 copies of the certified list of voters for the Division for which he or she was elected.
- (2) The Electoral Commission, as soon as practicable after the result of a Senate election has been declared under section 283, must give to each member of the House of Representatives 3 copies of the certified list of voters for the Division for which the member was elected that was provided for the purposes of paragraph 203(1)(b) for the Senate election.

- (3) Subsection (2) does not, after a Senate election, entitle a member of the House of Representatives to copies of the certified list of voters for a Division if the member would have been so entitled by virtue of a House of Representatives election held at the same time as the Senate election.

91E Provision of certified list of voters to Senators

- (1) The Electoral Commission, as soon as practicable after the result of a Senate election has been declared under section 283, must give to each Senator 3 copies of the certified list of voters for each Division in the State or Territory that he or she represents.
- (2) The Electoral Commission, as soon as practicable after a candidate in a House of Representatives election has been declared elected under section 284, must give to each Senator who represents the State or Territory in which the Division for which the election was held is situated 3 copies of the certified list of voters for the Division.
- (3) Subsection (2) does not, after a House of Representatives election, entitle a Senator to copies of the certified list of voters for a Division in the State or Territory which that Senator represents if the Senator would have been so entitled by virtue of a Senate election held at the same time as the House of Representatives election.

92 Roll reviews

- (1) All officers in the service of the Commonwealth, all police, statistical, and electoral officers in the service of any State, officers in the service of any local governing body, and all occupiers of habitations shall upon application furnish to the Electoral Commission or to any officer acting under its direction all such information as the Electoral Commission requires in connexion with the preparation, maintenance or revision of the Rolls.
- (2) The Electoral Commission must cause reviews to be conducted of the Rolls, with a view to ascertaining such information as is required for the preparation, maintenance and revision of the Rolls.
- (3) There must be paid to the Electoral Commission, out of the Consolidated Revenue Fund, amounts equal to the sum of the expenses reasonably incurred by it in respect of reviews conducted under subsection (2).
- (6) The Consolidated Revenue Fund is appropriated as necessary for the purposes of subsection (3).
- (7) The Minister for Finance may make advances to the Electoral Commission on account of the amount that is expected to become payable under this section to the Commission.
- (8) Amounts payable to the Electoral Commission under this section shall be paid in such amounts, and at such times, as the Minister for Finance determines.

Attachment 2

History of proposal to review sections 89-92 of the Electoral Act

As long ago as 15 September 1992, the Privacy Commissioner, in a letter to the Deputy Electoral Commissioner, wrote

I am advised that the Australian Electoral Commission (AEC) has recently received FOI applications for access to both the electronic roll and habitation indexes and, that on the basis of advice from the Attorney-General's Department, AEC are intending to grant access.

My concern about this matter arises from an apparent inconsistency between the release of information under FOI and the policy on which the Commonwealth Electoral Act is based. On my reading of the Act there is clear intent that only printed and microfiche versions of the electoral roll be made publicly available as a matter of course, and that special access provisions would apply to the release of habitation indexes and electronic rolls. I note, in particular, that access to habitation indexes is restricted to political parties only and the Act sets out re-use and disclosure limitations under which penalties are prescribed.

The release under FOI of personal information in a format previously not publicly available raises significant privacy issues and I would appreciate it if you would consider deferring the release of the habitation indexes and electronic electoral rolls while this matter is considered in detail.

The immediate concerns of the Privacy Commissioner in this regard were met by a change to the *Freedom of Information Act 1982* inserted through Government amendments to the Electoral and Referendum Amendment Bill 1992 during debate.

In June 1995, the House of Representatives Standing Committee on Legal and Constitutional Affairs tabled *In Confidence*, its Report of the Inquiry into the Protection of Confidential Personal and Commercial Information held by the Commonwealth. Recommendation 35 sought the application of end-use restrictions to printed or microfiche copies of the Commonwealth Electoral Roll the same as those applying to electronic copies:

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that the end use restrictions which currently apply to electoral roll data contained on tape or disk also apply to the same data contained on microfiche or in hard copy.

There has been no government response to *In Confidence*.

The June 1997 JSCEM Report on the conduct of the 1996 election, Recommendation 53:

that sections 89 to 92 of the Electoral Act, concerning improper use of roll information, be reviewed to take account of developments in computer technology. The existing entitlements of MPs and registered political parties should be maintained.

The June 2000 JSCEM Report on the conduct of the 1998 election, Recommendation 11:

Subject to the JSCEM acceptance of matters raised in the AEC's internet issue paper, that the publicly available Commonwealth Electoral Roll be provided on the AEC internet site for name and address/locality search purposes, and that the Roll be provided in CD-Rom format with the same search facility to public libraries without internet access. Both the internet and CD-Rom Roll should be updated monthly subject to search capacity being limited to individual names and addresses on the Roll.

The May 2001 JSCEM Report (*User friendly, not abuser friendly*) of the inquiry into the integrity of the electoral roll, Recommendation 7:

That the Australian Electoral Commission complete its review of sections 89 to 92 of the *Commonwealth Electoral Act 1918* in sufficient time for the committee to consider this matter during the next federal election inquiry.

The April 2002 ANAO Report on the integrity of the electoral roll, Recommendation 12:

To assess and to minimise risks to the integrity of the roll arising from new technology and increased access to roll data, the ANAO recommends that the AEC give priority to completion of its review of ss.89 to 92 of the *Commonwealth Electoral Act 1918*, recommended by the JSCEM, taking into account the extent of current electronic access to electoral roll data, and effectively assessing and treating the risks inherent in current developments in computer technology.

Attachment 3

History of public access to the Electoral Roll

Commonwealth Electoral Act 1902

Section 34. Copies of the Lists so far as they relate to any Electoral Division shall be exhibited at such police stations, post offices, State schools, and other places within the Division as the Commonwealth Electoral Officer directs and shall remain so exhibited for a period of thirty days.

Commonwealth Electoral Act 1902-1905

Section 33. Rolls shall be printed whenever the Minister so directs.

Section 34. Supplemental Rolls, setting out additions since the last print, shall also be prepared, and wherever practicable printed, immediately previous to a General Election, and at such other times as the Minister directs.

Section 35.

- (1) The last printed copies of each Division Roll shall be open for public inspection at the chief polling place for the Division without fee, and shall be obtainable thereat and at such post-offices in the Division, as the Divisional Returning Officer appoints on payment of the price prescribed.
- (2) Every Roll kept by an Electoral Registrar shall be open to public inspection without fee at such times and places as are prescribed.

Commonwealth Electoral Act 1918

Section 36

- (1) The Rolls shall be printed whenever the Minister so directs.
- (2) Supplemental Rolls, setting out additions since the latest print of the Rolls, shall be prepared, and wherever practicable printed, immediately previous to a Senate Election or a General Election for the House of Representatives, and at such other times as the Minister directs.

Section 37

- (1) Copies of the latest print of the Division Roll and of all supplemental prints shall be open for public inspection at the office of the Divisional Returning Officer for the Division without fee, and shall be obtainable thereat and at such post-offices in the Division as the Divisional Returning Officer appoints, on payment of the price prescribed.
- (2) Every Roll kept by a Registrar shall be open to public inspection without fee at the office of the Registrar at all convenient times during his ordinary office hours.

Commonwealth Electoral Act 1918-1940

Section 36

- (1) The Rolls shall be printed whenever the Minister so directs.
- (2) Supplemental Rolls, setting out additions since the latest print of the Rolls, shall where necessary, be prepared and printed immediately after the issue of a writ for an election or referendum, and at such other times as the Minister directs.

Section 37

- (1) Copies of the latest print of the Division Roll and of all supplemental prints shall be open for public inspection at the office of the Divisional Returning Officer for the Division without fee, and shall be obtainable thereat and at such post-offices in the Division as the Divisional Returning Officer appoints, on payment of the price prescribed.
- (2) Every Roll kept by a Registrar shall be open to public inspection without fee at the office of the Registrar at all convenient times during his ordinary office hours.

Commonwealth Electoral Act 1918 - from 1984 to 1990

Printing of Rolls

Section 89

- (1) Rolls shall be printed whenever the Electoral Commission so directs.
- (2) Supplemental Rolls, setting out additions since the latest print of the Rolls, shall be prepared and printed at such times as the Electoral Commission directs.

Inspection, &c., of Rolls

Section 90

- (1) Copies of the latest print of the Roll for a Division and of the Supplemental Rolls (if any) relating to that Roll shall be available for public inspection without fee -
 - (a) at the office of the Divisional Returning Officer for that Division;
 - (b) if there is an Assistant Divisional Returning Officer for a Subdivision of that Division - at the office of that Assistant Divisional Returning Officer; and
 - (c) at such other places (if any) as the Electoral Commission determines.

and shall be available for purchase at that office or those offices, as the case requires, and at such other places (if any) as the Electoral Commission determines, on payment

of such amounts as the Electoral Commission determines to be appropriate in relation to prints of Rolls of that kind.

(2) Each Roll kept by a Divisional Returning Officer or an Assistant Divisional Returning Officer shall be available for public inspection, without fee, at the office of the Divisional Returning Officer or of the Assistant Divisional Returning Officer, at any time during ordinary office hours.

Commonwealth Electoral Act 1918 - from 1990 onwards

These sections of the Electoral Act have remained in their current form, since amended in 1990 - see Attachment 1 for the current provisions.

Extracts from the Electoral and Referendum Regulations 1940 concerning permitted uses for elector information

7 Provision of microfiche or information — Act, subsection 91 (10)

The provision of:

- (a) a microfiche of a Roll; or
- (b) information referred to in subsection 91 (9) of the Act;

to a prescribed authority is authorised for the purposes of subsection 91 (10) of the Act.

8 Agencies for the purposes of prescribed authorities (Act s 91 (11) (a))

The Agencies specified in Part 1 of Schedule 2 are specified for the purposes of paragraph 91 (11) (a) of the Act.

9 Authorities for the purposes of prescribed authorities (Act s 91 (11) (b))

The authorities of the Commonwealth specified in Part 2 of Schedule 2 are specified for the purposes of paragraph 91 (11) (b) of the Act.

10 Permitted purposes for use of information on Roll

(1) For paragraph 91A (2A) (c) of the Act, the following activities are permitted purposes for which information granted under paragraph 91 (4A) (e) of the Act may be used:

- (a) the conduct of medical research in accordance with the Guidelines for the Protection of Privacy in the Conduct of Medical Research:
 - (i) issued by the National Health and Medical Research Council under subsection 95 (1) of the *Privacy Act 1988*; and
 - (ii) gazetted on 22 March 2000;
- (b) the provision of a public health screening program:
 - (i) approved by the Secretary of the Department of Health and Aged Care; and
 - (ii) conducted in accordance with the Guidelines for the Conduct of Public Health Screening Programs with particular reference to Privacy and the Management of Personal Information:
 - (A) issued by the Department of Human Services and Health; and
 - (B) gazetted on 1 December 1993.

- (2) For paragraph 91A (2A) (c) of the Act, Schedule 3 sets out purposes for which information that has been provided to a prescribed authority, under paragraph 91 (4A) (e) of the Act, may be used.
- (3) Subregulation (2) and Schedule 3 cease to have effect at the end of the period of 3 years starting when subregulation (2) commences.

**Schedule 2 Agencies and authorities
(regulations 7, 8 and 9)**

Part 1 Specified Agencies

Department of Agriculture, Fisheries and Forestry

Department of Defence

Department of Education, Training and Youth Affairs

Department of Employment, Workplace Relations and Small Business

Department of Family and Community Services

Department of Foreign Affairs and Trade

Department of Immigration and Multicultural Affairs

Department of Transport and Regional Services

Department of Veterans' Affairs

Part 2 Specified authorities of the Commonwealth

Australia Post

Australian Competition and Consumer Commission

Australian Customs Service

Australian Federal Police

Australian Securities and Investments Commission

Australian Security Intelligence Organisation

Australian Taxation Office

Centrelink

ComSuper

Director of Public Prosecutions

Insolvency and Trustee Service Australia

National Crime Authority

**Schedule 3 Purposes for use of information
(subregulation 10 (2))**

Item	Agency or authority	Purpose
1	Australian Customs Service (ACS)	<p>(a) Verifying the identity or status of travellers and consignees of cargo or postal articles</p> <p>(b) Verifying the identity and status of importers and exporters</p> <p>(c) Investigating criminal offences and offences against legislation administered by the ACS</p> <p>(d) Checking the accuracy of information given to the ACS</p> <p>(e) Verifying the identity of individuals on behalf of the government of another country, or on behalf of a law enforcement administration, under an international agreement or arrangement</p> <p>(f) Surveillance purposes</p> <p><i>Note</i> At the commencement of this Schedule, the following areas of the ACS will be using the information for these purposes: Border Division Investigations Branch Intelligence Branch Commercial Division</p>
2	Australian Federal Police (AFP)	<p>(a) Identifying or locating offenders, suspects or witnesses</p> <p>(b) Deciding whether suspects can be eliminated from an investigation</p> <p>(c) Target development</p> <p>(d) Intelligence checks</p> <p>(e) Protecting the safety of officers, staff members, AFP employees and special members</p> <p>(f) Law enforcement</p> <p>(g) Surveillance</p>

Item	Agency or authority	Purpose
		<i>Note</i> At the commencement of this Schedule, AFP Headquarters and each State and Territory Office of the AFP will be using the information for these purposes
3	Australian Securities and Investments Commission (ASIC)	<p>(a) Identifying or locating suspects or witnesses</p> <p>(b) Surveillance</p> <p>(c) Law enforcement</p> <p><i>Note</i> The following areas of ASIC will be using the information for these purposes:</p> <p>Operational enforcement teams</p> <p>Information Resource Centres</p>
4	Australian Taxation Office (ATO)	<p>(a) Identifying or locating taxpayers</p> <p>(b) Preventing, detecting or investigating taxation fraud</p> <p><i>Note</i> At the commencement of this Schedule, the following areas of the ATO will be using the information for these purposes:</p> <p>Individuals Non-Business Business Line</p> <p>Small Business Business Line</p> <p>Withholding Tax Section</p> <p>GST Fraud Section</p>
5	Centrelink	<p>Preventing and detecting fraud relating to identity or incorrect payments</p> <p><i>Note</i> At the commencement of this Schedule, the Detection and Review Team of Centrelink will be using the information for this purpose</p>
6	ComSuper	<p>Locating members and former members for the purpose of protecting public revenue in relation to the payment of benefits, the recovery of overpayments and the review of entitlement to benefit</p> <p><i>Note</i> At the commencement of this Schedule, the Records Management Unit of ComSuper will be using the information for this purpose</p>
7	Department of Defence	<p>Identifying debtors in relation to the Department</p> <p><i>Note</i> At the commencement of this Schedule, the</p>

Item	Agency or authority	Purpose
		Accounting Operations unit of the Department will be using the information for this purpose
8	Department of Education, Training and Youth Affairs	Preventing, detecting or investigating fraud and other criminal offences in relation to the Department's programs and public money managed by the Department <i>Note</i> The Legal, Business Assurance and Investigations Branch of the Department will be using the information for this purpose
9	Department of Employment, Workplace Relations and Small Business	Identifying or locating suspects, debtors or witnesses in relation to criminal investigations <i>Note</i> At the commencement of this Schedule, the Compliance, Investigations and Recoveries Team of the Department will be using the information for this purpose
10	Department of Family and Community Services	Identifying or locating clients for debt management, determination or correction purposes <i>Note</i> At the commencement of this Schedule, the Child Support Agency will be using the information for this purpose
11	Department of Foreign Affairs and Trade	(a) Confirming the identity of passport applicants or identifiers of documents (b) Verifying information relating to a passport or an application for a passport (c) Locating parents who have not lodged an application for a passport, in connection with seeking consent to issue a passport to a minor (d) Assisting in consular operations to locate next-of-kin in Australia <i>Note</i> The following areas of the Department will be using the information for these purposes: Passports Branch Consular Branch
12	Department of Immigration and Multicultural Affairs	(a) Facilitating travel to Australia, or entry to Australia, for an Australian citizen who may have lost his or her passport (b) Enabling airport officers to identify

Item	Agency or authority	Purpose
		<p>travellers and confirm their status</p> <p>(c) Assisting investigations and compliance staff in the detection of persons suspected of being in Australia unlawfully, or of working without authority, or of being involved in people smuggling</p> <p>(d) For debt recovery purposes, verifying contact details of persons who have received loans with the assistance of the Committee for the Allocation of Loan Funds to Refugees in Centres</p> <p><i>Note</i> The following areas of the Department will be using the information for these purposes: Border Control and Compliance Division Humanitarian Settlement Section</p>
13	Department of Veterans' Affairs	<p>Undertaking reviews of, or research into, the health of former members of the Defence Force</p> <p><i>Note</i> At the commencement of this Schedule, the Disability Compensation Branch of the Department will be using the information for this purpose</p>
14	National Crime Authority (NCA)	<p>(a) Collecting, analysing or disseminating information or intelligence relating to relevant criminal activities</p> <p>(b) Investigating matters relating to relevant criminal activities</p> <p>(c) Assembling or analysing evidence about offences and suspected offences</p> <p><i>Note</i> At the commencement of this Schedule, the Operations Support Group, Security Section, of the NCA will be using the information for these purposes</p>

Attachment 5

List of relevant submissions and reports

AEC submissions to parliamentary inquiries can be accessed through the AEC website (www.aec.gov.au). Parliamentary Committee reports and some submissions to Parliamentary Committees can be accessed through the relevant Committee on the Parliament House website (www.aph.gov.au), copies of other submissions can be obtained from the relevant committee.

- Apr 2002 *Integrity of the Electoral Roll*, ANAO Audit Report No.42 2001-2002, see especially Chapter 5 Security of, and Access to, the Electoral Roll
- May 2001 *User friendly, not abuser friendly*, JSCEM Report of the Inquiry into the Integrity of the Electoral Roll, see especially paragraphs 2.134-2.144 Access to the Electoral Roll
- May 2001 Submission from the Society of Australian Genealogists to the JSCEM's inquiry into the integrity of the electoral roll
- Feb 2001 Submission from the Salvation Army South Australia Division Family Tracing Service to the JSCEM's inquiry into the integrity of the electoral roll
- Jan 2001 Submission from the Victorian Adoption Network for Information and Self Help to the JSCEM's inquiry into the integrity of the electoral roll
- Dec 2000 Submission from the Benevolent Society to the JSCEM's inquiry into the integrity of the electoral roll
- Nov 2000 Submission from Privacy Commissioner to the JSCEM's inquiry into the integrity of the electoral roll
- Oct 2000 Submission from the Public Trustee of South Australia to the JSCEM's inquiry into the integrity of the electoral roll
- Oct 2000 Main AEC submission to JSCEM's Inquiry into the Integrity of the Electoral Roll, especially section 9 The Commonwealth Electoral Roll
- Sep 2000 Submission from the National Missing Persons Unit of the Australian Bureau of Criminal Intelligence to the JSCEM's inquiry into the integrity of the electoral roll
- Jun 2000 Advisory Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs on the Privacy Amendment (Private Sector) Bill, see especially Part 5 Political Acts and Practices Exemption
- Jun 2000 JSCEM Report on its inquiry into the 1998 federal election, see especially Access to Roll

- May 2000 AEC submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs' Inquiry into the Privacy Amendment (Privacy Sector) Bill
- Mar 1999 Main AEC submission to the JSCEM's Inquiry into the Conduct of the 1998 Federal Election, especially section 4.7 Public Access to the Roll
- Jun 1997 JSCEM report of its inquiry into the conduct of the 1996 federal election, see especially section 7.65 Computer Technology and Commercial Use of Roll Information
- Apr 1997 Report by NZ Privacy Commissioner on privacy implications of use of NZ Electoral Act 1993 (www.privacy.org.nz/people/electact.html)
- June 1995 *In Confidence*, Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, see especially section 9.6 Public Register Information
- May 1994 AEC supplementary submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the protection of confidential personal and commercial information held by the Commonwealth
- July 1993 AEC supplementary submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the protection of confidential personal and commercial information held by the Commonwealth
- Feb 1993 ICAC (NSW) Seminar - Just trade? Proceedings of seminar on the ICAC report on unauthorised release of government information (www.icac.nsw.gov.au)
- Oct 1992 AEC main submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the protection of confidential personal and commercial information held by the Commonwealth
- Aug 1992 ICAC (NSW) report on unauthorised release of government information (www.icac.nsw.gov.au)

Attachment 6

SOCIAL SECURITY (ADMINISTRATION) ACT 1999 - SECT 192

General power to obtain information

The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to the Department if the Secretary considers that the information or document may be relevant to one or more of the following:

- (a) the question whether a person who has made a claim for a social security payment is or was qualified for the payment;
- (b) the question whether a social security payment is payable to a person who is receiving the payment;
- (c) the question whether a social security payment was payable to a person who has received the payment;
- (d) the rate of social security payment that is or was applicable to a person;
- (e) the administration of an agreement between Australia and a foreign country on social security matters;
- (f) the question whether a person who has been granted a concession card is or was qualified for the card;
- (g) the question whether a person who has applied for financial supplement is eligible for the supplement;
- (h) the question whether a person who has obtained a financial supplement is or was eligible for the supplement;
- (i) the determination of the maximum amount of financial supplement that a person is eligible for.

SOCIAL SECURITY (ADMINISTRATION) ACT 1999 - SECT 197

Offence—failure to comply with requirement

(1) A person must not refuse or fail to comply with a requirement under this Division to give information or produce a document.

Penalty: Imprisonment for a term not exceeding 12 months.

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the requirement.
- (3) Subsection (1) does not apply if the person has a reasonable excuse.

VETERANS' ENTITLEMENTS ACT 1986 - SECT 128

Secretary may obtain information etc.

- (1) The Secretary may, for the purposes of this Act, by notice in writing given to a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, of a State or of a Territory or by any authority of the Commonwealth or of a State or Territory), require the person:
 - (a) to:
 - (i) provide the Department, or an officer specified in the notice, with such information as the Secretary requires; or
 - (ii) produce to the Department, or to an officer so specified, any documents in the custody or under the control of the person; within the period (not being less than 14 days after the notice is given) and in the manner specified in the notice; or
 - (b) to appear before an officer specified in the notice at such reasonable time (not being a time earlier than 14 days after the notice is given) and place as are specified in the notice to answer questions.
- (2) Without limiting the generality of subsection (1), the Secretary may:
 - (a) by notice in writing given to a person who is indebted to the Commonwealth under or as a result of this Act, require the person:
 - (i) to provide the Department, or an officer specified in the notice, within the period specified in the notice (not being less than 14 days after the notice is given), with such information concerning the person's financial situation as is required by the notice or to produce to the Department, or to an officer so specified, within that period, such documents concerning that situation as are so specified; and
 - (ii) if the person's address changes, to notify the Department or an officer so specified, within 14 days of the change, of the new address; or
 - (b) by notice in writing given to a person who the Secretary believes may have information concerning the whereabouts of a person who is indebted to the Commonwealth under or as a result of this Act or the financial situation of such a person, require the person to provide the Department, or an officer specified in the notice, within the period specified in the notice (not being less than 14 days after the notice is given), with such information concerning those matters as is required by the notice or to produce to the Department, or to an officer so specified, within that period, such documents concerning those matters as are specified in the notice.
- (2A) The Secretary may require the information or answers to questions under this section to be verified or given, as the case may be, on oath or affirmation, and either orally or in writing, and for that purpose the Secretary or an officer to whom information or answers are verified or given may administer an oath or affirmation.

(3) The oath or affirmation to be taken by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

(4) A person must not fail to comply with a notice under subsection (1).

Penalty: \$1,000 or imprisonment for 6 months, or both.

(4A) An offence under subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(4B) Subsection (4) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4B). See subsection 13.3(3) of the *Criminal Code*.

(5) A person shall not, in purported compliance with a notice under subsection (1), intentionally furnish information or give evidence that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(6) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(7) This section does not require a person to furnish information, produce a document or give evidence to the extent that, in doing so, the person would contravene a law of the Commonwealth (not being a law of a Territory).