

## Chapter 2

### A history of the current practice

*To date, the practice in Australia has been that census forms are destroyed following the census once they are no longer needed for processing. An electronic file of the information taken from the forms, without any personal or household identifiers, is kept indefinitely.*

*The Committee outlines the history of census form destruction. Prior to the Archives Act 1983, there was no legislative bar to determination of the disposal of census records by the Australian Statistician or the Minister responsible for administration of the census. Under the Archives Act, the disposal of census forms became a matter for Australian Archives. Its Director-General appraised the records from the 1986, 1991 and 1996 Censuses and authorised destruction in each case.*

*The Committee notes, without necessarily drawing conclusions from, the practices followed in Canada, New Zealand, the United States of America and the United Kingdom.*

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### Definition of 'name-identified census forms'

2.1 The term 'census forms' refers to household and personal forms from the census.

2.2 Household forms ask for the name of each person included on the form and the address of the household on census night. Personal forms ask for the name of the person and his or her address on census night.

2.3 It is estimated that about 8 million household forms, and about 1 million personal forms, will be used in the next census.<sup>1</sup>

2.4 In the 1996 Census each household form comprised 16 pages, in the form of an 8 sheet booklet, approximately 230 mm wide and 330 mm long. Each personal form comprised 6 pages, in the form of a 3 sheet booklet, approximately 230 mm wide and 330 mm long.<sup>2</sup>

## **Current Australian practice**

2.5 Since 1971, the practice has been that following the census, the forms are destroyed after the statistical data have been extracted and the forms are no longer needed for processing.

2.6 After census night, the census forms are transported to a processing centre where they are processed to produce the computer files used to provide census information.<sup>3</sup> Names and addresses are not transferred to computer. The original name-identified census forms are destroyed once the computer file has been created. Destruction normally takes place within one and a half years of the census.<sup>4</sup> The forms are pulped and the paper is recycled.

2.7 Only an electronic record of the raw data is kept. The electronic record is made up of the anonymous coded responses (that is, the

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1 Australian Bureau of Statistics, *Submissions*, p. S355.

2 Australian Bureau of Statistics, *Submissions*, p. S355.

3 The 1996 Census processing centre was located in Sydney.

4 Australian Bureau of Statistics, *Submissions*, p. S355.

statistical codes, not the original responses written on the census form) from each individual census form.

2.8 The outcome of the census is a file of coded records for each person, family, household and dwelling enumerated in the census. The file contains no personal or household identifiers.<sup>5</sup> This file of unidentified data is kept indefinitely and can be used to generate further statistical tables at any time.

### **The history of form destruction**

2.9 In the early years of the colony of New South Wales, musters were conducted. Records of these survive from 1800. The first census in New South Wales was taken in 1828. There are some records from 1828, 1841, 1891 and 1901. The census in 1901 was the last conducted under New South Wales legislation, and these records have recently been released.<sup>6</sup>

2.10 In 1905, the Commonwealth Parliament passed the Census and Statistics Act. The first Australian census conducted under that Act was held in 1911. The Act stipulated that a census was to be taken in 1911 and every tenth year thereafter. Censuses were in fact conducted in 1921, 1933, 1947, 1954 and 1961. Since 1961, a census has been held every five years. This change sought to ensure that more reliable State and Territory population estimates are available for determining the number of seats in the House of Representatives to be allocated to each

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5 Australian Bureau of Statistics, *Submissions*, p. S354.

6 For example, the New South Wales censuses of 1828 and 1841. Refer to Ms Christine Yeats, *Transcript*, p. 260.

State, as required by the Australian Constitution. Forms from Commonwealth censuses have not been preserved or made available to researchers before being destroyed.

2.11 Prior to 1971, Commonwealth census forms were kept for a limited period. Only the forms for the previous two censuses were kept at any one time. According to the ABS, the reason for their retention for this period lay in the possibility that a need for new cross-tabulations might appear after the initial analysis had been completed.

2.12 In the past, when statistical information was extracted from census forms manually or by less sophisticated automated means, the forms themselves were crucial for producing new statistical information:

Once [the forms] were destroyed, the raw data was effectively lost, leaving only the statistical tables that had been prepared. Because of this, the forms were only destroyed when it was believed that no more tabulations would be required.<sup>7</sup>

2.13 The introduction of mechanical, and later, computerised, analysis to census data processing removed the need for keeping the census forms after their initial processing.

2.14 In 1971, the then Treasurer, Hon BM Snedden QC MP, ordered the destruction of all census forms then held by the ABS and directed that census forms for the forthcoming census be destroyed as soon as all the information within them had been transferred to magnetic tape. He advised the public that names and addresses on the census forms would not be transferred to the tape.<sup>8</sup> This action was largely in

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7 Australian Bureau of Statistics, *Submissions*, p. S354

8 Exhibit 1 – Commonwealth Treasury, *Press Release No. 28*, 'Destruction of Census Forms', 1 June 1971.

response to privacy concerns, following an extended public debate which:

had been stimulated by the newly formed Australia Party, which had attacked the requirement for names and addresses on census forms, and by earlier publicity about anti-census campaigns overseas.<sup>9</sup>

2.15 In 1979 the Australian Law Reform Commission recommended that census forms be retained.<sup>10</sup> The then Treasurer, Hon John Howard MP rejected this recommendation. Successive governments have maintained the practice of form destruction.

2.16 The *Archives Act 1983* regularised the practice of determining the disposal of census records. Prior to 1983 there was no express law preventing the Australian Statistician or the Minister responsible for administration of the census making a decision to destroy the census records.<sup>11</sup>

2.17 Census records are Commonwealth records, as defined in the Archives Act, and their destruction is controlled by the Archives Act.<sup>12</sup> In practice, this means that short of another law expressly addressing the destruction of census forms, their fate must be assessed by Australian

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9 Australian Bureau of Statistics, *Submissions*, p. S368.

10 Australian Law Reform Commission, *Privacy and the Census*, ALRC 12, 1979, ALRC Sydney.

11 Exhibit 45 – Australian Archives, *1991 Census of Population and Housing: Report on the evaluation of name identified records*, 5 August 1988.

12 Section 6 (h) and section 24. In particular, section 24 (2) provides three conditions for the destruction of Commonwealth records: required by law, approved by Australian Archives or in accordance with normal administrative practice and not disapproved of by Australian Archives.

Archives under the Archives Act.<sup>13</sup> Before they can be destroyed, Australian Archives must authorise the disposal or destruction of census forms and the agency who created or inherited the records, in this case the ABS, must concur.

2.18 Prior to authorising the disposal of the forms from the 1986, 1991 and 1996 Censuses, appraisals of the value of the records were conducted by Australian Archives.<sup>14</sup> In each case it was decided that census forms should not be retained.

2.19 There are no provisions in the *Census and Statistics Act 1905* requiring the destruction of census records. That Act does, however, contain provisions that prohibit disclosure of information that would result in the identification of individuals and provide for penalties relating to the release of such information. The secrecy provisions of the Census and Statistics Act are overridden by the public access provisions of the Archives Act as it is a later and universally applicable statute controlling public access to Commonwealth records.<sup>15</sup>

2.20 Under the Archives Act, all Commonwealth records, other than exempt records, are eligible for access by the public after 30 years (section 31). Exempt records may include information relating to the personal affairs of any person, including a deceased person (section 33 (1) (g)). The identification of exempt records is usually made with the concurrence of the Director-General of Archives (sections 29 and 35).

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13 Australian Archives, *Submissions*, p. S401.

14 The appraisal process is discussed below.

15 Exhibit 45 – Australian Archives, *1991 Census of Population and Housing: Report on the evaluation of name identified records*, 5 August 1988.

2.21 It is the opinion of the current Director-General that census records, if kept, would probably remain closed for a far longer period than the general closed access period of 30 years:

whether the Archives in fact would grant access to 30 year old census forms is very unlikely. ... [T]he Archives' current view is that it would not release census forms to the public once they had become 30 years old.<sup>16</sup>

## **Disposal authorities**

2.22 The Australian Archives issues 'disposal authorities' after assessing the value that records may continue to have for the agency which created them and the wider interests of the Commonwealth and the Australian community.<sup>17</sup>

2.23 Appraisal of records involves assessment of the records and the functions which give rise to them against existing criteria.<sup>18</sup> Only those records attracting a high degree of research value are accorded permanent value status. The Australian Archives advised that in common with official archives throughout the world, it judges only five to ten per cent of records to have enduring value.<sup>19</sup>

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16 Australian Archives, *Submissions*, p. S408.

17 Australian Archives, *Submissions*, p. S401.

18 The existing criteria cover administrative, legal, evidential, financial, policy, precedent, display and research values.

19 Australian Archives, *Submissions*, p. S401.

## **Considerations in disposal of the 1986 Census forms**

2.24 The Australian Archives was not consulted before the Government's decision to destroy the forms from the 1986 Census was announced in Parliament in February 1985, but nonetheless Australian Archives conducted an appraisal of the records.<sup>20</sup>

2.25 In its appraisal, Australian Archives noted the ABS view that overall accuracy of the census would be adversely affected by retention of the records. In arguing this view, ABS relied on its experience with adverse media coverage about privacy and confidentiality during the 1976 Census, which it believed affected response rates and the accuracy of responses to particular questions. ABS also relied on its survey of public attitudes towards the 1981 Census which indicated that significant numbers of respondents objected to the census or believed that it was not confidential. ABS argued that a reversal of the announced undertaking to destroy the 1986 Census would have risked a loss of public confidence in the protection of personal details in future surveys of any kind.<sup>21</sup>

2.26 The Australian Archives noted alternative views on the degree to which concerns about confidentiality affect response rates.<sup>22</sup> For example, the Australian Law Reform Commission's 1979 report *Privacy*

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20 Australian Archives, *Submissions*, pp. S401–S402.

21 Australian Archives, *Submissions*, p. S402.

22 Australian Archives, *Submissions*, p. S402.



*and the Census* stressed that establishing a satisfactory level of confidentiality did not imply a requirement of actual destruction.<sup>23</sup>

2.27 The Australian Archives concluded from its appraisal that name-identified census records did have value for a range of research uses, but that the Government's unequivocal commitment to the Australian public to destroy personalised census records, and the need to protect the statistical integrity of the census, should 'override all other considerations'. Accordingly, in May 1987 the Director-General of Archives signed an 'authority to destroy' the 1986 Census forms.<sup>24</sup>

### **Considerations in disposal of the 1991 Census forms**

2.28 Appraisal of the value of the 1991 Census records commenced in 1987, some four years prior to the holding of the census. The Archives jointly with the ABS conducted an evaluation of the information that would be collected in the census. The research undertaken for the evaluation included public responses to an ABS paper, a survey of Australian health and demographic organisations about research uses of name-identified data, cost estimates of the creation and storage of alternative formats of census records and a survey of overseas archives.<sup>25</sup>

2.29 The report acknowledged that there was a very good case, based on their residual value, for retaining original census records. In

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23 Australian Law Reform Commission, *Privacy and the Census*, ALRC 12, 1979, ALRC Sydney.

24 Australian Archives, *Submissions*, p. S402.

25 Australian Archives, *Submissions*, p. S403.

particular, in other countries, techniques such as record linkage were being used in medical and demographic research of significance. Individual census returns of a recent nature were regarded by researchers 'as a source of information unparalleled in value by any other source for the purpose of data linkage'. Australian Archives stated:

The prospect this type of research held out for improving the health circumstances of Australians provided the strongest and most practical reason for retaining the records.<sup>26</sup>

2.30 The Australian Archives commented that the 'catch' in record linkage was that researchers required access to 'very recent information which identified people by name, and to be done efficiently, they would need access to name-identified details in electronic format'.<sup>27</sup>

2.31 The Australian Archives made its decision not to retain name-identified census forms after weighing arguments for and against their retention:

A decisive factor was the very real possibility that public confidence in the census, and hence the willingness of individuals to provide full and accurate information about themselves, could be undermined. The climate of public opinion in Australia in the past had strongly influenced the views of the ABS and successive governments that personalised data from the census should not be retained. The study noted that public attitudes about privacy had not changed, and if anything had strengthened ... . A further consideration was the substantial costs which would be incurred in storing and accessing the records.<sup>28</sup>

2.32 In September 1989, the Director-General of Archives signed an authority to destroy the 1991 Census forms.

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26 Australian Archives, *Submissions*, p. S403.

27 Australian Archives, *Submissions*, p. S403.

28 Australian Archives, *Submissions*, p. S403.

## **Considerations in disposal of the 1996 Census forms**

2.33 Appraisal of the value of 1996 Census forms began in 1993, some three years prior to the census. Australian Archives broadly followed the approach adopted for the 1991 Census – a consideration of the relative value of the records and a balancing of the public interest in either their retention or destruction. The full appraisal undertaken for the 1991 Census was not repeated, as the information content of the 1996 Census was similar to the 1991 Census.<sup>29</sup>

2.34 As part of the appraisal, the Australian Archives undertook a limited survey of twenty genealogical, historical, archival, research and government bodies. The results of the survey indicated that approximately half of the respondents wanted census records kept permanently for social, demographic or other research purposes. The other responses varied from disinterest, to stipulating that individual respondents' interests would not be affected by the non-availability of name-identified records. Genealogical associations suggested the only clearly identified use – compiling family and local histories, tracing settlement and immigration patterns, studying demographics in small areas and compiling individual and group biographies.<sup>30</sup>

2.35 The Australian Archives concluded that:

while a strong case was acknowledged for the retention of name-identified census records with considerable evidence produced of the research values of the records, it was not apparent that this outweighed the community interest in ensuring an effective census. Privacy concerns and the possible adverse effects on the overall success and veracity of the census could not be clearly

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29 Australian Archives, *Submissions*, p. S404.

30 Australian Archives, *Submissions*, pp. S404–S405.

estimated. However, the appraisal concluded that if the accuracy of the census were compromised by its retention, the value of the records for any kind of research would be greatly diminished.<sup>31</sup>

2.36 In September 1994, the Director-General of Archives signed an authority to destroy the 1996 Census forms which stated that:

A disposal authority allowing the destruction of name-identified records for 1996 and beyond will be issued. If circumstances alter for subsequent Census records then these disposal arrangements can be reviewed.<sup>32</sup>

2.37 Unlike the disposal authorities for the 1986 and 1991 Censuses, this is a continuing authority and unless and until revoked, applies to name-identified records from all future censuses. Australian Archives' current disposal practice, however, requires all continuing authorities to be reviewed every ten years.<sup>33</sup>

#### Committee observations

2.38 The Committee notes that a somewhat restricted appraisal was conducted by Australian Archives for the 1996 Census. The explanation, that the 'full appraisal' undertaken for the 1991 Census was not repeated because the information content of the two censuses was similar, seems somewhat weak. The resulting impression on the Committee from this explanation is that the outcome of the later appraisal relies strongly on the conduct of the earlier one. Given that the resulting disposal authority had such a sweeping application, 'destruction of name-identified records for 1996 and beyond' one might have expected the related appraisal to

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31 Australian Archives, *Submissions*, p. S405.

32 Australian Bureau of Statistics, *Submissions*, p. S393.

33 Australian Archives, *Submissions*, p. S405.

have been more, and not less, extensive than had previously been the practice.

2.39 The Committee considers that the appraisal of the 1996 Census was inadequate, and believes that the resulting disposal authority is unsatisfactory and should not be relied upon.

### **Privacy considerations**

2.40 The privacy of personal information has been raised as an issue in relation to census records for some time.<sup>34</sup>

2.41 As a Commonwealth Government agency, ABS is subject to the *Privacy Act 1988*. The Information Privacy Principles in that Act apply to personal information held by the ABS as a result of the census.

2.42 The Privacy Commissioner's office has always supported the destruction of census forms on privacy grounds. The Privacy Commissioner has stated that:

The ABS collects an extensive amount of very sensitive personal information during censuses and the only way to guarantee that the privacy of that information will be protected is if the information is destroyed as soon as possible. Any other treatment of census forms will create some degree of risk to the privacy of individuals. The Privacy Commissioner's office has always supported the destruction of census forms to ensure the privacy of individuals whose information is contained on those forms.<sup>35</sup>

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34 Privacy concerns relating to the storage and use of name-identified forms from future censuses are examined below in Chapter 4.

35 Privacy Commissioner, *Submissions*, p. S669.

## **Some international comparisons**

2.43 Canada, New Zealand, the United States of America and the United Kingdom are often used for comparison purposes with Australia because they are seen to be similar countries in terms of their demographic characteristics and social attitudes. These countries also conduct censuses in a similar fashion to Australia. Some countries do not conduct traditional censuses, relying instead on the use of administrative records to provide basic population counts and some population characteristics.

2.44 While the Committee notes the practices followed in these countries, it does not necessarily draw any conclusions from them about the practices that should be followed in Australia. Arguments for and against retention may differ substantially within Australia from the arguments that apply in any other country.

2.45 The Committee notes that Canada and New Zealand have decided to destroy records from their 1996 censuses, albeit for quite different reasons, as discussed below.

### **Canada**

2.46 For many years, the Canadian policy has been to retain census forms permanently although records from the 1906 census onwards are not open to public access. All census forms dating from the first census taken after Canadian Confederation have been recorded on microfilm.

### Decision on 1996 records

2.47 From 1955 to the 1991 census, microfilmed census records had been used by Canadians as proof of age for pension entitlements.<sup>36</sup> Because of budget cuts, only part of the 1991 census forms was microfilmed. The 1991 census returns that have not been microfilmed are being held in secure storage and it is hoped that resources will be found in the future to complete the microfilming of these records.

2.48 Following the 1991 census complaints were lodged with the Canadian Privacy Commissioner. An investigation followed, and the 1994–95 Annual Report of the Privacy Commissioner recommended the destruction of all personalised records from the 1991 census (and all other census records not in the public domain) after processing was completed.<sup>37</sup>

2.49 Canada is destroying the paper returns from its 1996 census because of a lack of funds for microfilming, however, data is to be electronically preserved.<sup>38</sup> The Committee understands that the position with future censuses has not yet been determined.

### Public access to historical census records

2.50 Canada has a 92 year closed access period for census records up to 1901. All retained records after the 1901 census (that is, from 1906 onwards) remain under the control of the Chief Statistician and are not

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36 Australian Archives, *Submissions*, p. S407.

37 Correspondence to the Committee from the Canadian High Commission.

38 Correspondence to the Committee from the Canadian High Commission.

open to public access. The Chief Statistician does not have the authority to transfer records, from censuses conducted under the Statistics Act, to the National Archives. It is only records obtained from censuses conducted under earlier census Acts that have been transferred to the National Archives and are subject to the regulations allowing disclosure 92 years after the taking of a census or survey.<sup>39</sup>

2.51 Public access to post-1901 census records could only be facilitated by changing the confidentiality provisions of the Statistics Act. ABS has stated that there is no proposal to change the legislation to allow access to these records.<sup>40</sup>

2.52 Starting with 1906, Canadian censuses have been conducted under the authority of various statistics Acts, each containing strict confidentiality provisions. These provisions are such that only the person named in the record may have access to his or her own information. These provisions are timeless and remain in effect even after a person has died.

2.53 The various census Acts under which earlier censuses (1901 and previous) were collected did not contain confidentiality provisions. When collecting that information, census-takers were instructed to protect the confidentiality of the records but these instructions had no legal basis. Consequently, it was not until the proclamation of the Privacy Act in 1983 that there was a statute governing those records. Regulations pursuant to the Privacy Act allow information under the control of the National Archives to be placed in the public domain – in

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39 Correspondence to the Committee from the Canadian High Commission.

40 Australian Bureau of Statistics, *Submissions*, p. S855.



cases where the information was obtained through the taking of a census or survey – 92 years after the census or survey.

2.54 The Chief Statistician authorised the transfer to the National Archives of a copy of the microfilmed records from the 1901 and 1891 censuses to be made available to the public. Earlier censuses had already been transferred to the National Archives. These records are available to the public through the National Archives of Canada.

### **New Zealand**

2.55 The New Zealand policy of retention of census forms was first introduced in 1966. Today, records from the censuses of 1966, 1976 and 1986 (every second census) are retained in the possession of the Government Statistician.<sup>41</sup>

2.56 In 1995, the Government Statistician proposed to destroy all named census forms from the 1996 and future censuses and also the records that had been retained from the 1966, 1976 and 1986 censuses.

2.57 Under section 15 of the New Zealand Statistics Act 1975, the Statistician is given sole responsibility for deciding the procedures and methods for the provision of statistics from a census.<sup>42</sup> Following submissions from interested parties, the Statistician decided to retain the records from earlier censuses but to destroy name-identified forms from the 1996 census without microfilming.

2.58 In announcing his decision, the Statistician said that:

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41 Correspondence to the Committee from the New Zealand High Commission.

42 Statistics New Zealand, *Media Release*, 18 December 1995.

The 1996 Census forms will not be kept as archives as this census, to be held on 5 March, is being undertaken at a time of heightened awareness of privacy issues. Privacy legislation also places an obligation on agencies to ensure each individual has an awareness of the purposes for which the information is being collected.

Statistics New Zealand would not risk adverse reaction to the 1996 Census by raising on the census form the issue of retention.<sup>43</sup>

2.59 New Zealand has already destroyed the paper forms from the 1996 census and is shortly to destroy the computer images of those forms.<sup>44</sup>

### **United States of America**

2.60 Censuses are conducted every ten years in the United States. The United States retains microfilmed copies of its census forms and keeps them confidential for 72 years, with the exception of an 'age-search' function provided to help people to verify their age.<sup>45</sup>

2.61 Microfilmed copies of the census forms are transferred from the Bureau of the Census to Archives after the census. The original census forms are destroyed.<sup>46</sup>

2.62 During the 72 year closed access period, census information is only available for the age-search function and only to the individuals who provided it and their heirs or authorised agents.<sup>47</sup> After the 72 year

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43 Statistics New Zealand, *Media Release*, 18 December 1995.

44 Correspondence to the Committee from the New Zealand High Commission.

45 Australian Bureau of Statistics, *Submissions*, p. S387.

46 Australian Bureau of Statistics, *Submissions*, p. S387.

47 Australian Bureau of Statistics, *Submissions*, p. S387.

closed access period, the records are released by Archives for genealogical and other purposes.<sup>48</sup>

2.63 Professor Donald DeBats has commented that the absence of comparable records in Australia is a major impediment to historical research in Australia:

You simply cannot do the work that you can do in the US or in Canada or in France or in England, or in any country which preserves its census, because there you can go back and layer this and you can write a different kind of history.<sup>49</sup>

### **United Kingdom**

2.64 Censuses in the United Kingdom are held every ten years. Original census forms in the United Kingdom are held indefinitely, although there are no specific provisions in the census Act to do so.<sup>50</sup>

2.65 The records for England and Wales are closed to public inspection for 100 years. Similar arrangements apply in Scotland. Under current law, access is not provided to census forms in Northern Ireland. No Northern Ireland census records are as yet more than 100 years old.

2.66 In England and Wales, returns for censuses prior to 1901 are held by the Public Record Office. The returns for the 1901 and 1911 censuses are also held by the Public Record Office on behalf of the

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48 Australian Bureau of Statistics, *Submissions*, pp. S387–S388.

49 *Transcript*, p. 112.

50 Australian Bureau of Statistics, *Submissions*, p. S386.

Registrar General. Although these are closed to the public, limited access in certain circumstances is granted.<sup>51</sup>

2.67 The returns for post-1911 censuses, with the exceptions of the 1931 and 1941 censuses, are held by the Office for National Statistics and no access whatsoever is granted.<sup>52</sup>

2.68 In Scotland, similar limited access to the returns is granted for the censuses of 1901-1931. All subsequent records are kept closed.

2.69 In Northern Ireland, the census forms are not retained by the Registrar General but are handed over to the Public Records Office after processing has been completed. They are kept closed.

2.70 In the 1991 UK census, the public was advised by the Registrar General that 'the forms will be kept securely within my Office and treated as confidential for 100 years'. This form of words covers the selection, within the Office for National Statistics, of a sample of identified census records, based on birth dates, that is matched over time with various administrative files such as birth, death and marriage records. The resulting file of unidentified individual records is released for epidemiological research.<sup>53</sup>

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51 Australian Bureau of Statistics, *Submissions*, p. S386.

52 The 1931 census returns were accidentally destroyed by fire during the Second World War. There was no census taken in 1941 because of the Second World War.

53 Australian Bureau of Statistics, *Submissions*, p. S386.