

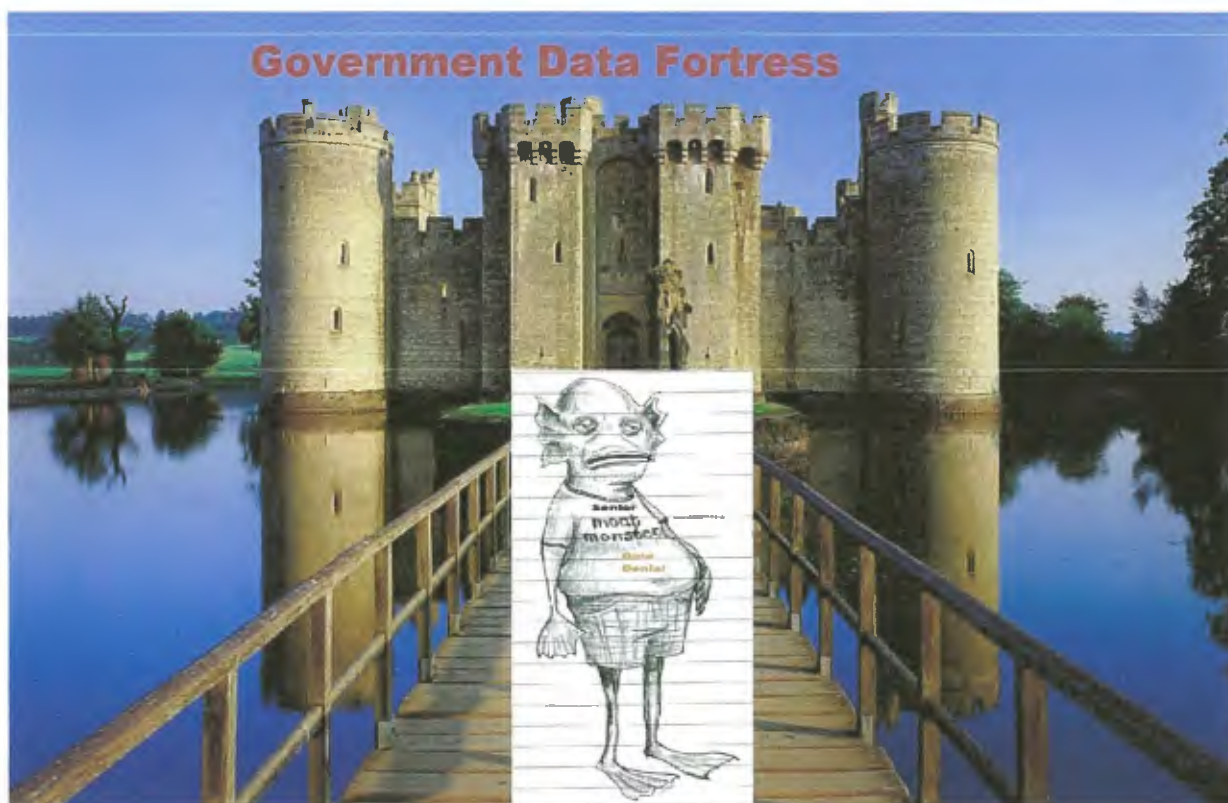
# **The Productivity Commission**

## **Enquiry into Data Access**

Big Data - Little Access - High Cost

Double Standards

Banish the Data Hoarding Moat Monsters



**Data Access Enquiry**

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## The Productivity Commission

### Data Access Enquiry - Introduction

#### Overview

There is a massive amount of data kept by government departments for all sorts of reasons and small and medium businesses are not allowed access to it as the laws stand currently here in Australia. Most of this data, probably 95%-98% plus is not of a National Security type nature – Its just everyday working data on people, businesses, govt transactions, potential staff, sub contractors and tradesmen etc etc. Things that could actually help small business – NOT HINDER THEM.

There needs to be a review of who can get access data for legitimate reasons – like chasing debt defaulters, bad tenants, motor vehicle accidents, implementing court orders etc etc.

Currently there seems to be a Govt wide culture of denial and inhibiting access.

There appears to be far too many varied opinions of the Privacy Act and how to interpret it within Govt Departments. Default position is to say no as this is SAFE.

Too little emphasis on the consequences of withholding data from business.

Govt is shifting the cost of chasing debt defaulters, civil and criminal malefactors onto the private sector

See attached - List of Departments and Agencies – Item 1

See attached - List of Service NSW – Item 2

### Double Standards and Hypocrisy in action

Currently huge double standards exist within Govt (Federal, State and Local) with their ability to access files and records, access Meta Data and allow or deny access to data they may hold.

ATO, Centrelink, Medicare etc etc seem to be able to do Data Matching if and when they want.

But you cannot find out the whereabouts of a Debt Defaulter or someone who has done a Runner.

CENSUS – You must complete the Census BUT you cannot have access to it.

## **Police Hypricrocy.**

Police will come to the Business premises and demand you hand over Private CCTV footage and threaten you and the business with a Search Warrant on some made up charges if you don't co-operate. The threat is "If you don't hand it over we will come back with a search warrant and pull the place apart" – Which means its days of work to clean up and re-organise the place – Like effectively a \$3k-\$5K fine for not co-operating.

Then when you present the Police with CCTV footage of theft of goods from the premises and identify the culprit they say "Its a Civil Matter – Go to a solicitor"

It is their job to chase a thief – Legal Aid tell us that the police have the discretion not to chase people if they don't want to do it. – This option needs to be removed and they have to follow up on a reported theft especially where the thief is identified.

You have to employ a Private Investigator to track the person from their home to place of work – BUT- The Govt has all of this information that they wont give you.

**ASIC will not do site visits** – so a lot of their records are in fact wrong.

Its in the form of address on Centrelink forms, Tax File info, ABN details for an individual, Medicare details etc etc.

Problem: Outstanding Private and Civil Debts are Ignored by Centrelink, Tax Office etc etc

Suggested Solution: Allow courts to treat the Civil Debt the same way as a Government Debt.

Same as a Federal Govt Debt, Same as a State Debt Recovery Office Debt or a Local council Debt.

This would help a great deal. IE: Garnish Centrelink type payments.- Example – We had to get an Examination Order on an Individual, take him to Goulburn St Courts only to find out he was earning over \$4,000 per month on Centrelink benefits, Rent Assistance, community housing assistance, Workers Comp, Renting out a spare room in a housing commission place for Cash in the Hand and doing cash Jobs under a private ABN -he was basically earning over \$5K per month and would not pay off his civil debts.

He was hiding behind the Privacy Act, flying under the ATO Radar - All while on Parole after serving 2 yrs of a 5 yr sentence for all sorts of robberies.

Basically he didn't want to take a lower paying job because he had a criminal record and would not be viewed favourably by the employer – SO End result the tax payer funds him and no one in the Government checks or cares !

Other people who escape under the radar and are protected by the Privacy Act are

**Shonky Tradesman** under an Individual ABN number – ATO will not release their address details so you cannot summon them to court. Their full address is not published.

**Tennants** who do a runner and leave damage and unpaid rent behind – Centre link has all the info as part of the rent assistance they are receiving but will not allow you access where they currently live – Pretty silly rules protecting the wrongdoers. Information for the Rental Bond Board may not be correct as they have moved out.

**Business Customers who suddenly do a Cut and Run** – They have had years of reliable trading history only to suddenly pack up and leave and disappear.

Again we see here that the Police, Centrelink, Medicare, ATO etc have details on there whereabouts but will not tell you. Very often their details on the ASIC or Fair Trading Register are not correct as they can use a mailing address but not their actual living address.

### **WARRANTLESS ACCESS TO METADATA – item 3 and 4**

See List of Agencies that have warrantless access to Meta Data.

Again – Massive Double Standard in play here.

**Problem: Govt** Agencies have access to Meta data on the Public – BUT the public cannot get meta data on say Debt Defaulters.

**Possible Solution:** Allow people with a Default Judgement or a Writ for Levy of Property against an individual to get access to meta data about them – this could be done with Court order or some form of a Court Oversight document.

### **Social Media and Google**

Currently much of the searching has to be done via Google and Social Media – This is very Hit and Miss and Time consuming for private business whilst all the data is guarded and protected by Public servants and government departments all paid for by the taxpayer.

### **MASSIVE COST to THE PUBLIC**

Just by looking thru the lists described above one could soon very quickly realise that this process is a massive cost to the taxpayer and all for questionable results. The housing of the data in servers, computer rooms, keeping copies, systems, software, networking, staff, expenses, building rents or leases et c etc – all a massive cost with questionable overall benefit.



**The MAN MONIS Terrorist case is an example** – The Govt had all sorts of information and tip offs on Man Monis but no one acted or cared to put all the pieces together – as no one or group seemed accountable. So he slipped thru the net.

### **Default Position is to say No !**

Our experience in small business has been that the standard response from 99% of Government agencies is to say no ! – It's a NO without thinking, really reading, listening or considering.

Everyone wants to quote The Privacy ACT – without really knowing if the current legislation is really applicable. Perhaps they are just scared of making a mistake whilst making a decision – so the default position is to say no ! and therefore do nothing ! – all at the Tax Payers expense.

See Item 5 and Item 6

**Suggested Solution:** There needs to be a procedure to Actually Release Information to small businesses – RATHER than the default position of withholding information for little known reasons.

Small businesses under \$3M turnover are meant to be exempt to some of the privacy act legislation but they actually are not.

### **ACCESS to COURT RECORDS – see Item 7,8,9**

Oh yes this is again an experience of the Default No response.

In this case the convicted criminal had his case plastered all over the Telegraph and News papers so its more than Public access – but still the Downing St Court records dept initially said no – and then after some additional emails then decided to release the info on his conviction for public access reasons.

### **Prime Minister Malcolm Turnbull is now suggestion that the Govt has access to Medical records and Criminal records** – See Item 13

Problem: The court cases are already public, you can go and see them if you have the time – Q: So why hide all the records when they were public in the first place ?

Ray Hadley on radio station 873 2BG reads out various court cases over the radio – Before, During and After the case – ABC Radio National 702 AM also has a Court Reporter that talks about various cases that were heard during the day. Case in Point was the attempted bombing of the Merrylands Police Station.

So there is a high degree of transmitted public disclosure BUT hard to track down the records.

Solution: Make access to public records of court cases faster and cheaper – the current system is a complete hindrance and withholds justice and inhibits justice for very flimsy reasons

Make this data available to Business to track down the history of potential new employees and sub contractors.

**SA Attorney General John Rau wants us to consider a new tool to screen new partners criminal history.** – See Item 14

This is an excellent idea and should be extended to include Male, Female and all ranges of the LGBTI community. Domestic violence and Psychological violence covers a wide spectrum and another major cause of relationship breakdown is money and Debt related history and tendencies.

This should also be extended to include potential new employees and Sub Contractors as these people appear on your worksite and can create all sorts of problems.

NOTE: Potential new Government Employees are subject to a wide range of checks at the Taxpayers expense – Q: so why shouldn't it be available to small and large businesses as well ?

It needs to cover the history of ,

AVOs

Domestic Violence

Criminal records and convictions,

Medical History – AIDS, Hepatitis, STDs, etc

Driving History – drunk driving, licence suspension, fines etc etc.

Drug Use History

Mental Health History

Workers Compensation History – As some are prolific repeat offenders and conspirators

Welfare History - any history of Welfare Fraud, disability etc

Credit history – Defaults, Writs for Levy of Property, Repossessions etc

Gambling addictions

Smoking Addictions

Alcohol Addictions etc

Insurance Rejections and cancellations

Passenger No Fly Lists

Terrorism watch list

Bikie Gang associations

ABN History, ACN History

Dept Of Corrective services detention history

Partners children history made available if under the same roof.

### **USA legal System allows publication of cases in the local papers.**

Remembering my time in the USA I remember reading all the convictions for drink driving, drunk and disorderly, etc et c in the local papers – The name address, charge, conviction et cetc was all published in the local papers for all to see. They seemed to see it as helping to keep law and order and control.

**Suggestion: Do the same here in Australia**

### **PUBLIC SERVANTS SEEM RELUCTANT TO DISCLOSE THEIR NAMES, POSITION, BUILDING ADDRESS EMPLOYEE NUMBER AND IMMEDIATE SUPERVISOR DETAILS.**

There seems to be a reluctance or a process of keeping Public Servants details secret whilst demanding all the details of the private citizen.

See attached details from Child Support Agency.

The public servants will not and refuse to state their name, division or section, employee number etc even when they ring you up and harass you for payment. Even when you ask for it in writing.

Problem: This is an authentication problem - you really don't know who you are dealing with.

**Solution: Legislate that ALL public servants must state their name, number and address when asked – just like the police – This is fair and reasonable.**

### **Access into Investigations of wrong doing by public servants and police.**

### **Access to disciplinary recommendations of public servants.**

### **Q: How to find out ?**

If you have ever been on the receiving end of the wrong doing by a public servant or a member of the police it is nearly impossible to find out what has transpired. It all goes very Hush Hush and people refuse to answer their emails or questions.

There needs to be a process to actually access the info – NOT A PROCESS WHERE THE REQUEST IS DENIED. This can be another example of Data Denial.



## **FOI Requests are often Useless as they don't release all of the info required - Deliberately**

### **Q: Does a court Issued Examination order override the privacy act ?**

See attached item 10

It seems one way of trying to find out what is happening with a shonky tradesman or a debt defaulter is to issue them with an Examination Order – That's if you can eventually find them.

Then you have to actually get them into court and its all rushed and the magistrates really don't want to know as they are sick and tired of it all.

But the question remains does this actually override the privacy act ?

If so then that's good, If not then it all needs to be defined.

Your Credit History and status – This should be easily obtainable and there needs to be one version only of this – not multiple versions held by multiple institutions – ALL with their own slant on things.

Finding the credit history of Potential Customers.

This should be an easy process to find out the credit history of a potential customer.

### **Reporting of Welfare Fraud, GST Fraud seems to go no where and nothing is done.**

The whole process for reporting Welfare Fraud and GST fraud needs to be reviewed and fixed as currently no one in Government Departments seems interested – NOR is anything actually done.

You can report these things on line but you never hear back and the perpetrators are not punished.

There should be some form of feedback to the person reporting the crime – currently there is nothing. So people don't bother to report the problem and the Taxpayer pays for the failure in the process.

Solution: Review the complete process of Reporting Welfare fraud and the feedback to the good citizens who actually try to fix things.

## **Currently there is a failure of process and failure of legislation.**

### **The Balance is WRONG !**

As one can quite easily see the current laws and restrictions are actually helping criminals and debt defaulters get away with their crimes. This is clearly a failure of legislation and a failure of process.

Why are the current laws skewed towards protecting those who are evading paying their debts under the guise of various privacy provisions? Police and other Government agencies have full access to a person's whereabouts.

Even if you have the following in pursuing bad debtor.

1. A Default Judgement
2. A Writ for the Levy of Property.
3. Examination Order

People can still hide behind the various privacy laws, leaving small business out of pocket, when various Government departments have all the necessary information to track down defendant absconders.

### **Privacy ACT and Freedom of Information Provisions**

In New South Wales we have the GiPA Act (2009) most States have similar legislation, which was passed to encourage greater transparency and accountability of State Government Departments and agencies.

The GIPA Act:

- The Act authorises and encourages the proactive release of information by NSW public sector agencies
- gives members of the public a legally enforceable right to access government information
- ensures that access to government information is restricted only when there is an overriding public interest against releasing that information.

In reality the access is not guaranteed readily as to the original intentions of this legislation and in most cases access can be vetoed by the person who receives your request on the grounds of " An overriding public interest against releasing that information" .

### **Q: Exemptions for Political parties ?** see items 11 and 12

5. Why is it that political parties are except under the Australian Privacy Principals within the Privacy Act and thus from FOI requests on the data they are holding on their constituents? It is anomalous that political parties are exempt from rules that apply to the rest of us.

The recent Federal election has seen many complaints flood into The Australian Communications and Media Authority (ACMA) over numerous calls and text messages to those numbers on the Do Not call Register, especially the so called “ Robo-calling”, where potentials voters are targeted for automated voice message calls. Again this is a double standards applied by Governments and there agencies, if private sector companies did this they would face fines and a hearing at the ACMA. ( See attached article 13/07/16 ABC News)

There should be unified procedures across all Government and agencies in how a FOI is accepted and processed, there should be a standardised form, which clearly states why an application may not be approved and the process for appealing that decision.

#### Federated-Style Model

A national strategy based around a Federated model would offer the best solution to Data Availability, multiple private sector providers being able to offer services to help both businesses and individual's access information. This would enhance the provision of information to the non-

Government sector and would create an innovative and competitive market for Data sharing, while maintaining control over who is accessing the information.

It has been recently estimated that the MyGov gateway, a multiple Government services and agencies website will generate around \$547 million in efficiency savings and it has been anticipated

That giving greater access to data could deliver similar benefits to the private sector. Both the Murray Inquiry (2014) and the Harper Review of Competition policy (2015) recommended there

could be numerous economic benefits to increasing availability and use of Data. It could greatly assist in chasing debt defaulters, who are currently hiding behind Privacy provisions and leaving those businesses or individuals, who provided services or credit to bare the cost, even if you chase such people through the legal system, they can hide behind numerous privacy provisions and make a mockery of the legal system that is skewed in favour of the absconder and not the poor business owner or individual who is left out of pocket. In most cases Government Departments such as local motor registries, rental bond boards and councils would have access to the required information to track down a debt defaulter.

It was estimated by the Australian Securities and Investment Commission (ASIC) that \$1.2 Billion debt is outstanding to the private sector, whereas Government Debt can be claimed against Motor vehicle registrations or legally enforceable fines the private sector is left to cover the liability of most outstanding debt with little or no hope of reclaiming any or part of such debt.

Opening up Data availability along the lines of a Federated style model to commercial providers would open up a competitive market place for many providers, while managing and still maintaining control over who has access. The economic benefits to the economy would be very significant in assisting small businesses and individuals to track down bad debtors and it would also act as a deterrent to those habitual offenders who work their way through the system leaving a trail of debt in their wake and currently hide behind various privacy laws.

## **Laws have to potential to work against themselves**

### **Warning of Fake Census Backlash. See item 15 Daily Telegraph**

There seems to be a general feeling that the government is not helping you BUT is snooping on you and when you want information you cant have it as they hold all the cards and have the power in this dynamic.

End result is erosion of trust in the electorate as the BALANCE of power pendulum has swung too far in the governments favour – REMEMBER – Its all been paid for by the TAXPAYER

### **Australias New Small Business Minister wants Government to get out of the way of entrepreneurs and small business.** – See ITEM 16

Basically we agree with the new small business minister – its time the government got out of the way and started to help small business rather than hinder. A good start to this could be to start to SHARE THE DATA rather than hoard it.

#### **In conclusion**

Millions of dollars have been spent on both the Murray Inquiry and the Harper Review of Competition policy to come to a similar recommendation's that access to Data and sharing of Data could provide economic benefits to the Australian economy.

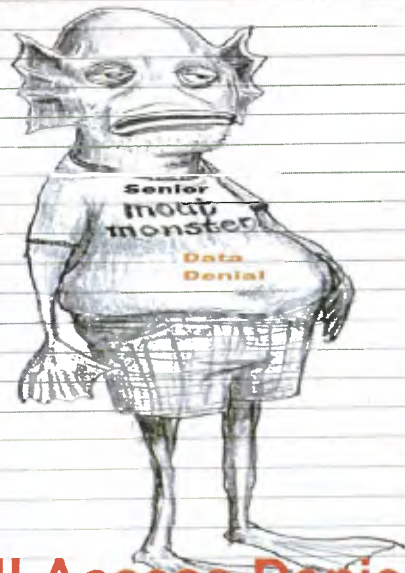
How it is in each case that these enquiries open for submissions, submissions are made for the reform of Data access and Privacy Laws to make this all possible. The recommendations are made by Government Committees qualified to advise the Government on overhauling procedures and the changes to policy, yet these recommendations never make it through to the necessary changes in Legislation, how many more enquiries will be required before this occurs.

1. Is this is an erosion of " due process" in our Parliamentary system, the necessary reforms have been identified and the changes needed to cure the problems have been outlined, by a multitude of people who are well qualified to advise the Government.
2. I would suggest this is also a failure of legislation; the Government is failing to act on the necessary reforms that are suggested time and time again.



# Gouvernement Data Fortress Castle Keep

Saved By  
The Privacy  
Act Again





















All Access Denied

# List of departments and agencies



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- > [ABC – Australian Broadcasting Corporation](#) 
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# Dozens of agencies want warrantless access to Australians' metadata again

More than 60 departments, councils and other agencies at all levels of government want their access to stored personal data back

Paul Farrell

Monday 18 January 2016 14.47 AEDT

More than 60 government agencies are seeking to regain warrantless access to Australians' phone and web metadata, in what appears to be a major pushback after the federal government restricted the number of agencies that could access it.

In 2015, the federal government succeeded in passing controversial news laws that vastly increased the amount of Australians' personal phone and web data required to be held by telecommunications companies.

As part of its review of the legislation, the government narrowed the definition of an "enforcement agency" that was eligible to access telecommunications data to a shortlist of law enforcement agencies, including the Australian federal police and state and territory police forces.

But it left open the potential for the list to be expanded if the attorney general, George Brandis, introduced a regulation to approve an agency's access, as part of the changes agreed to following the parliamentary joint committee on intelligence and security inquiry into the legislation.

On Monday Zdnet published the full list of agencies that are seeking access to stored metadata, in response to a freedom of information request it sent to the Attorney General's Department.

It appears to contain agencies that have previously sought access under the scheme, which sees hundreds of thousands of requests each year by government agencies to telecommunications companies for access to personal data.

Local councils, state-based wildlife organisations and environment and consumer protection bodies are all seeking to regain their access.

In a bizarre decision, the names of four agencies seeking access have been withheld by the Attorney General's Department on the grounds that releasing them would damage commonwealth/state relations.

"During consultation, these four agencies clearly indicated that disclosure of this information would damage the relationship between the department and the relevant agencies, and could affect any future cooperation with the department," the department told Zdnet.

- 33 Department of Justice and Regulation (Consumer Affairs) - Victoria
  - 34 Department of Justice and Regulation (Sheriff of Victoria)
  - 35 Department of Mines and Petroleum - WA
  - 36 [redacted]
  - 37 Department of Primary Industries (Fisheries) - NSW
  - 38 Environment Protection Authority - SA
  - 39 Greyhound Racing Victoria
  - 40 Harness Racing New South Wales
  - 41 Health Care Complaints Commission - NSW
  - 42 Legal Services Board - Victoria
  - 43 NSW Environment Protection Authority
  - 44 NSW Fair Trading
  - 45 Office of Environment and Heritage - NSW
  - 46 Office of Fair Trading - Queensland
  - 47 Office of State Revenue - NSW
  - 48 Office of State Revenue - Queensland
  - 49 Office of the Racing Integrity Commissioner - Vic
  - 50 Primary Industries and Regions South Australia
  - 51 Queensland Building and Construction Commission
  - 52 Racing and Wagering Western Australia
  - 53 Racing NSW
  - 54 Racing Queensland
  - 55 Roads and Maritime Service NSW
  - 56 Royal Society for the Prevention of Cruelty to Animals (RSPCA) - Victoria
  - 57 State Revenue Office - Victoria
  - 58 Taxi Services Commission - Victoria
  - 59 [redacted]
  - 60 Revenue SA
  - 61 Victorian WorkSafe Authority
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## Metadata spying by local councils on the rise

Hannah Francis

Published: June 19, 2015 - 4:54PM

An increasing number of local councils spied on residents by requesting access to their phone metadata without a warrant last financial year, with the number of requests from government agencies hitting an all-time high.

The Australian Federal Police also shared data and further disclosures to foreign countries, including Russia, in the period, the figures from the Attorney-General's department, released this week, reveal.

The telecommunications data available to government agencies under federal law, often referred to as "metadata", includes phone and internet account information, outward and inward call details, phone and internet access location data, and details of Internet Protocol addresses (though not the actual content of communications).

Although thousands of these authorisation requests were made by criminal law enforcement agencies, including police, a long list of other government agencies [have also accessed metadata without a warrant](#) to chase fines or to protect revenue, including a growing number of local city councils, Australia Post, the RSPCA, racing bodies and more. The data is also used by agencies to investigate leaks to the media.

In the year ending June 30, 2014, two new councils jumped on the bandwagon in an attempt to access citizens' metadata, including The Hills Shire council, covering the northern Sydney suburb of Castle Hill and surrounds, and Darebin City Council, in Melbourne's trendy inner north.

In a statement, the The Hills Shire council said it made a request to track down a roof cleaner who "left some hoses running in a resident's downpipe".

"As a result, a nearby creek turned orange," it said.

"Throughout investigations, council staff were only able to track the contractor's mobile phone number.

"As a result, council requested a telecommunications company provide the contractor's name and address so that a caution could be issued.

"However, before the request could be approved, Council identified the business and issued a caution."

A total of six local councils across the eastern states are now digging up residents' metadata to [chase minor infringements including unauthorised advertising, unregistered pets and littering](#).

The list also includes Bankstown council in Sydney; Knox and Wyndham councils in Melbourne; and Ipswich city council, south-west of Brisbane.

Darebin and The Hills Shire made only one metadata request each, however Ipswich made 21 requests in the year – more than any other council – up from six requests in the previous period.

In 2011-12, only two councils – Bankstown and Wyndham – were accessing metadata.

However, councils and other non-criminal law enforcement agencies' access to citizens' metadata may be curbed in the current financial year thanks to [mandatory data retention laws that passed in March](#).

Now, these agencies must first [gain authorisation from the Attorney-General](#) before they can begin accessing metadata.

The Attorney-General must consider a range of criteria when granting a request, including whether the agency has a binding



privacy scheme, and whether the functions of the agency include investigating "serious contraventions" of the law.

Police, however, retain the same level of access, and have been criticised in the past by privacy advocates for scooping up innocent people's data when [requesting large blocks of data from mobile phone towers](#) – known as a "tower dump" – when scrambling for leads.

Meanwhile, officials at Queensland Police began [accessing the private metadata of cadets](#) to determine whether they were sleeping with one another or faking sick days. This access was labelled by the state's police union as "disturbing" and "potentially unlawful".

The latest figures on telco metadata collection also reveal the Australian Federal Police shared metadata with Russia and a dozen other countries in the past financial year for the purposes of enforcing laws in those countries.

In 2013-14 the AFP authorised 19 metadata requests, followed by 17 more disclosures to foreign law enforcement bodies in France, Germany, Greece, Hong Kong, Hungary, India, Italy, Japan, Lithuania, Norway, Poland, Russia, Sri Lanka and Singapore.

Government agency requests for citizens' metadata from their telco providers leapt by 10,590 overall in the period, to an all-time high of 349,820.

*This story was found at: <http://www.smh.com.au/technology/technology-news/metadata-spying-by-local-councils-on-the-rise-20150619-ghs0dg.html>*



**Australian Government**

# **Information security management guidelines**

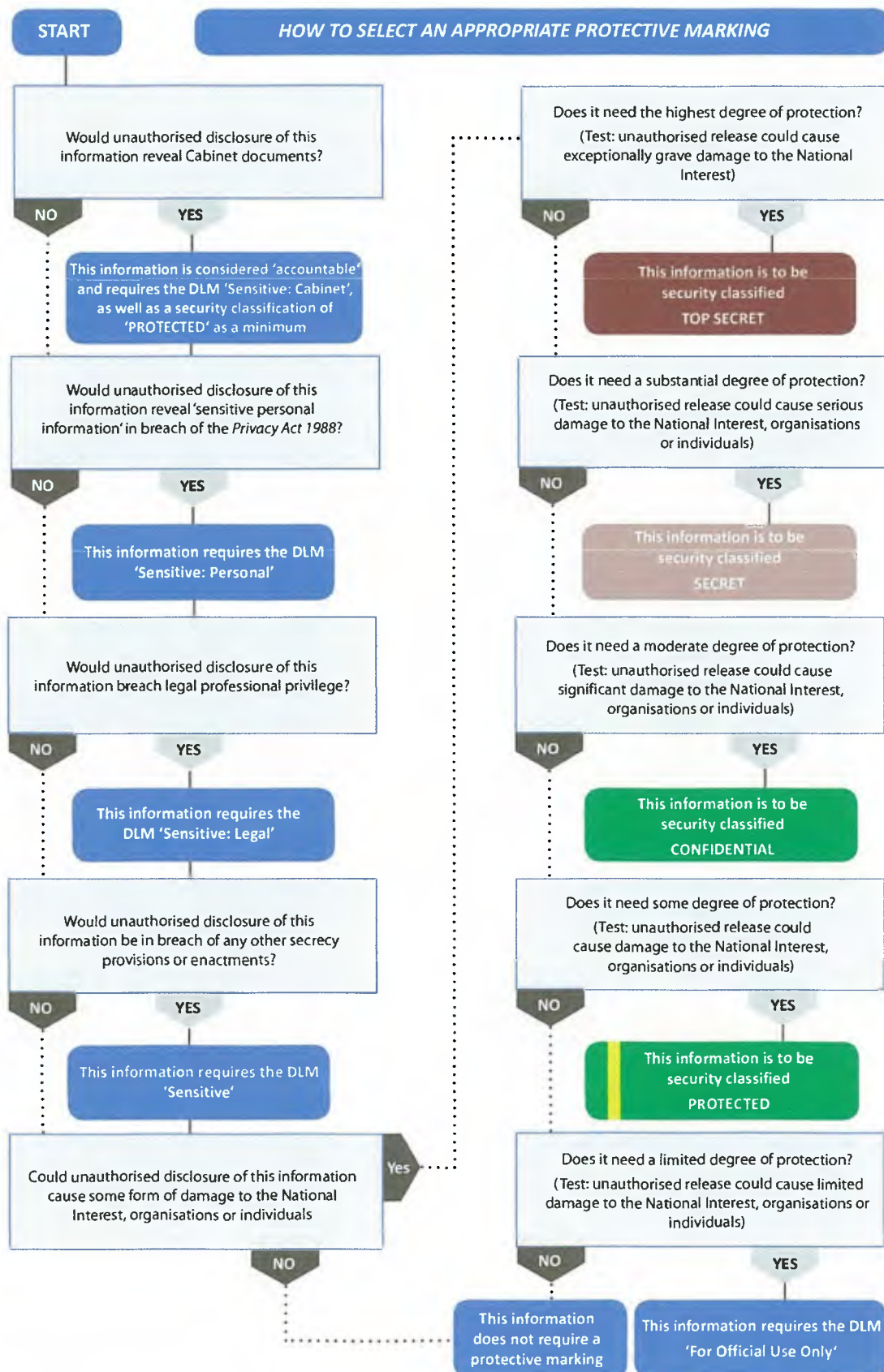
**Australian Government security classification system**

Approved 1 November 2014

Version 2.0



## Annex A: Classification and marking ready-reckoner chart





# Australian Privacy Policy Their Finest Hour

Saved By The Privacy Act Again

Rejected FOI Requests

Transport  
NSW  
Roads & Maritime  
Services

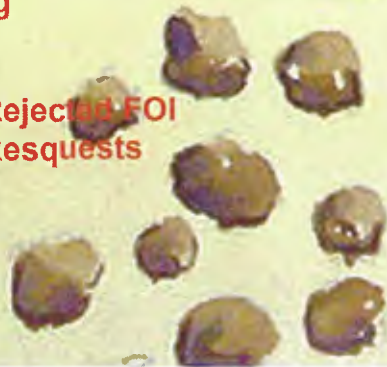
ANP  
Australia



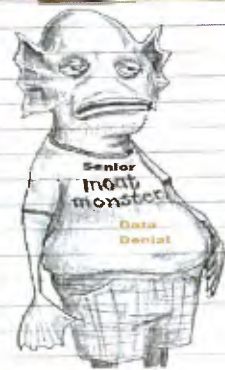
Small Business Owner Submitting an FOI Request



Rejected FOI Requests



" Never in the filed of Data Retention has so much been controlled by so many and shared with so few"







You are here

Home » Publications » For Your Information: Australian Privacy Law and Practice (ALRC Report 108) » 35. Federal Courts and Tribunals

## 35. Federal Courts and Tribunals

### Access to court and tribunal records

#### Individuals' access and correction rights

35.83 In Chapter 29, the ALRC recommends that the 'Access and Correction' principle in the model UPPs provide that, if an agency holds personal information about an individual, the individual concerned is entitled to have access to that personal information, except to the extent that the agency is required or authorised to refuse to provide access under the applicable provisions of any law of the Commonwealth, including the FOI Act.<sup>[125]</sup>

35.84 Access to, and correction of, personal information held by federal courts and tribunals would, therefore, continue to be subject to the FOI Act. The FOI Act, however, does not apply to any request for access to a document of a court; or a tribunal, authority or other body specified in sch 1 of the FOI Act, unless 'the document relates to matters of an administrative nature'.<sup>[126]</sup>

35.85 Under the ALRC's recommendations, therefore, where personal information does not relate to matters of an administrative nature held by a court or tribunal, authority or other body specified in sch 1 of the FOI Act, neither the *Privacy Act* nor the FOI Act provisions would apply. Access to the information, however, may be permitted, subject to court and tribunal rules. Where personal information relates to matters of an administrative nature, individual rights of access to, and correction of, personal information will be subject to the FOI Act.

#### Third party access to court and tribunal records

35.86 Where personal information relates to matters of an administrative nature, requests for access to personal information by third parties—that is, persons other than the individual to whom the information relates—will be subject to the 'Use and Disclosure' principle in the model UPPs, and to the rules of courts and tribunals.

35.87 Where personal information does not relate to matters of an administrative nature, requests for access to personal information by third parties will be governed primarily by court and tribunal rules. In the course of the Inquiry, a range of concerns regarding third party access to court and tribunal records were raised, and are discussed below.

#### Research access to court records

35.88 Particular concerns have been expressed in relation to access to court records for research purposes. Research access may be considered an aspect of open justice because 'research offers a more considered and sustained evaluation of the way courts operate'.

<sup>[127]</sup> Currently, no federal court rules specifically address the issue of researchers' access to court records. Researchers who seek access to court records that are not publicly accessible will be required to seek leave of the court, and in some cases show that they have a proper interest in searching court records and inspecting court documents.<sup>[128]</sup>

35.89 The Family Court of Australia has a detailed policy relating to the granting of research access to court records. The policy



contains a number of requirements, including: the preservation of confidentiality of information; obtaining informed consent from study participants; restriction of access to medical or other treatment records, or other client data collection systems, to qualified clinical investigators; and clearance from an appropriate and credible ethics committee for certain types of studies. Applications for research access are considered by the Family Court's Research Committee, which makes recommendations to the Chief Justice and the Chief Executive Officer of the Family Court on whether access to the court's resources should be granted.

35.90 In its discussion paper on access to court records, the County Court of Victoria proposed a detailed process for approval of academic or commercial research utilising court records.<sup>[129]</sup> In its report on access to court records, the New Zealand Law Commission recommended that there be a single entry point for all requests for access to court records by researchers, and that the process and criteria for considering all research proposals be articulated fully and published.<sup>[130]</sup>

### **Discussion Paper proposal**

35.91 In DP 72, the ALRC observed that research contributes to the understanding and improvement of the court system. The ALRC expressed the view that research should be encouraged, provided there are sufficient safeguards in place to ensure the proper handling of personal information.

35.92 One way of ensuring that safeguards are in place is by developing and publishing a policy on access to court records for research purposes. The ALRC noted that although the Family Court already had such a policy, it was not available on the Court's website. Other federal courts have not published a written policy in relation to access to court records for research purposes. The ALRC therefore proposed that federal courts that do not have a policy on granting access for research purposes to court records containing personal information should develop and publish such policies.<sup>[131]</sup>

### **Submissions and consultations**

35.93 Some stakeholders expressed support for the ALRC's proposal for the development and publication of policies on granting access for research purposes to court records.<sup>[132]</sup> The OPC submitted that the development of such policies could facilitate research in the public interest, while providing appropriate privacy protection.<sup>[133]</sup> National Legal Aid supported the proposal

as a means of encouraging research into legal service delivery and promoting the accountability of the court system, while maintaining the general exclusion of the courts' non-administrative functions.<sup>[134]</sup>

35.94 PIAC noted that 'the policy by the Family Court is particularly comprehensive and could serve as a model'.<sup>[135]</sup> The National Health and Medical Research Council (NHMRC) stated that it 'would be pleased to assist with the development of policies relating to access to health information contained in court records'.<sup>[136]</sup>

35.95 Some stakeholders expressed support for the ALRC's recommendation, in its report, *Keeping Secrets: The Protection of Classified and Security Sensitive Information* (ALRC 98),<sup>[137]</sup> that the Standing Committee of Attorneys-General (SCAG) should order a review of federal, state and territory legislation and court and tribunal rules concerning non-party access to court records, with a view to promoting a national and consistent policy.<sup>[138]</sup> One stakeholder opposed the recommendation, stating that 'absolute uniformity between federal courts is neither achievable nor desirable'.<sup>[139]</sup>

35.96 Privacy NSW noted that responsibility for privacy has been transferred from the portfolio of the Attorney-General's Department to the Department of the Prime Minister and Cabinet. It therefore suggested that the review of court and tribunal rules should be referred to the Council of Australian Governments (COAG) instead.<sup>[140]</sup> In this regard, the ALRC has been informed that, under the new administrative arrangements,<sup>[141]</sup> SCAG will continue to be the body to consider information privacy issues.<sup>[142]</sup> SCAG, therefore, remains the appropriate body to order a review of court rules concerning non-party access to court records.



## ALRC's view

35.97 The principle of open justice is consistent with the promotion of research, given that research contributes to the understanding and improvement of the court system. Therefore, provided there are sufficient safeguards in place to ensure the proper handling of personal information, research should be encouraged.

35.98 One way of ensuring that safeguards are in place is by developing and publishing a policy on access to court records for research purposes. The Family Court already has such a policy, but it is not available on the court's website. Other federal courts have not published a written policy in relation to access to court records for research purposes. The ALRC recommends that federal courts that do not have such a policy should develop and publish one. Such policies should address issues concerning the privacy of court users, such as confidentiality, the need for informed consent by participants, restricted access to sensitive information, and approval by ethics committees where appropriate. The policies could be developed in consultation with bodies that have experience in dealing with the privacy of personal information, such as the OPC, and the NHMRC in relation to health information.

**Recommendation 35-3** Federal courts that do not have a policy on granting access for research purposes to court records containing personal information should develop and publish such policies.

## Other third party access

### Public access to court records

35.99 Court records may contain sensitive personal information such as criminal history, psychiatric and psychological reports, and other medical records. Information on court records relating to certain types of proceedings also may be particularly sensitive, for example, in family law, bankruptcy and criminal proceedings. In addition, children are considered to be particularly vulnerable and therefore the identification of children in court records raises specific privacy concerns.<sup>[143]</sup>

35.100 Although exempt from the *Privacy Act*, access to documents on file in court registries is regulated by other statutes or rules of court.<sup>[144]</sup> In the High Court, any person may inspect and take a copy of any document filed in the registry except: affidavits and exhibits to affidavits that have not been received in evidence in court; and documents that contain identifying information about a person where the disclosure of the identity of that person is prohibited by an Act, an order of the court or otherwise.<sup>[145]</sup>

35.101 In the Federal Court, a person can search and inspect documents specified in the *Federal Court Rules 1979* (Cth)—such as applications, pleadings, judgments, orders and submissions—unless the court or a judge has ordered that the document is confidential.<sup>[146]</sup> A person who is not a party to the proceeding may inspect certain other documents only with the leave of the court.<sup>[147]</sup> Leave will usually be granted, however, where a document has been admitted into evidence or read out in open court.<sup>[148]</sup>

35.102 In the Federal Magistrates Court, only specified persons may search or inspect the court's records without leave granted by the court or the registrar. Records relating to a family law or child support proceeding only may be searched or inspected by the Attorney-General, and other records related to a particular proceeding only may be searched or inspected by the parties, their lawyers or a child representative in the proceedings. Leave to search or inspect a record may be granted to a person only if he or she can demonstrate a 'proper interest'.<sup>[149]</sup>

35.103 In the Family Court, only specified persons may search, inspect or copy the court's records relating to a case without the permission of the court. The specified persons include: the Attorney-General, the parties and their lawyers, and independent children's lawyers. Permission to search, inspect or copy a court record may be granted to a person with a 'proper interest' in the case or the information in that particular court record.<sup>[150]</sup>

35.104 Access to court records may be affected by the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth). The Act enables information to be introduced during federal criminal and civil proceedings in an edited and summarised

form to facilitate the hearing of a case without prejudicing national security and the right of the defendant to a fair trial. A court exercising federal jurisdiction must hold closed hearings in certain circumstances,<sup>[151]</sup> and must not make a record of the hearing available to, or allow the record to be accessed by, anyone except specified persons or entities. The specified persons and entities include: the court hearing the appeal or reviewing the lower court's decision; the prosecutor in a criminal proceeding; the defendant's legal representative; an unrepresented party or a party's legal representative—provided that he or she has been given a security clearance at an appropriate level; and if the Attorney-General intervenes, the Attorney-General and his or her legal representatives.<sup>[152]</sup>

### Media access to court records

35.105 Media reports are how most members of the public are made aware of court proceedings. Such reports necessarily depend on journalists having access to proceedings, either directly by being permitted to be present at the proceedings, or indirectly by being allowed access to court records. In *Raybos Australia Pty Ltd v Jones*, Kirby P stated that:

The principles which support and justify the open doors of our courts likewise require that what passes in court should be capable of being reported. The entitlement to report to the public at large what is seen and heard in open court is a corollary of the access to the court of those members of the public who choose to attend ... the principles which support open courts apply with special force to the open reporting of criminal trials and, by analogy contempt proceedings ... <sup>[153]</sup>

35.106 Some legislation, however, recognises that certain proceedings may contain particularly sensitive information and should be subject to restricted media reporting. For example, s 121 of the *Family Law Act 1975* (Cth) makes it an offence, except in limited circumstances, to publish proceedings that identify persons or witnesses involved in family law proceedings.<sup>[154]</sup> Section 91X of the *Migration Act 1958* (Cth) provides that the High Court, the Federal Court and the Federal Magistrates Court must not publish a person's name where the person has applied for a protection visa or a protection-related visa, or had such a visa cancelled.

35.107 One stakeholder submitted that suppression orders, which prohibit the publication of certain information in court proceedings, were a restraint on the media's role of disseminating information to the public. It opposed the granting of suppression orders for the purposes of protecting a person from embarrassment.<sup>[155]</sup>

### Police access to court records

35.108 The Family Law Council submitted that police officers should have access to the Family Court's database so that officers could deal with cases of family violence that arise in the family law context.<sup>[156]</sup> The ALRC notes that police officers already are allowed to obtain access to the Family Court's database in particular types of matters under the *Family Law Rules 2004* (Cth). Under rule 24.13, with the permission of the court, a person is allowed to search, inspect or copy a document forming part of the court record, if he or she can demonstrate a 'proper interest' in the case or the information in the court record.

### Party and witness access to court records

35.109 Documents relating to a particular proceeding generally are accessible by parties to the proceeding and their legal representatives.<sup>[157]</sup> One commentator has asked whether this right should extend to witnesses, on the basis that they are identified in the record and have the right to know what information is held about them.<sup>[158]</sup>

35.110 Another issue is whether parties should have the right to correct or annotate inaccurate or irrelevant material on the record. It has been argued that, since both freedom of information and privacy legislation gives individuals the right to correct information held about them in public records, the same rule should apply to court records.<sup>[159]</sup>

35.111 One stakeholder submitted that witnesses should not be able to access court files because 'there is a real risk that the evidence and testimony of that witness may be affected by perusing the court file before giving his or her evidence'. Where access to court

records is restricted,

the information held on the court file, even if inaccurate, is not publicly available and is therefore unlikely to be able to be accessed by or used by someone in a position to adversely affect the witnesses' interests.<sup>[160]</sup>

35.112 It also was submitted that allowing parties to correct or annotate inaccurate or irrelevant information on the court record 'may contaminate the court record, which is meant to accurately reflect the material before the court rather than commentaries upon the evidence', and would represent a significant 'interference with the role and powers of Courts on appeal where additional evidence may be permitted, but only in limited circumstances'.<sup>[161]</sup>

35.113 Parties and witnesses to proceedings should not have the right to change or annotate court records. The purpose of court records is to reflect accurately the materials before the court for the purposes of the court's adjudicative functions. The nature of proceedings and the material collected in an adversarial system are inherently contentious. Allowing parties or witnesses to change or annotate court records would be a significant interference with the court's role as the arbiter of disputes. In addition, court records ought to reflect accurately the materials and evidence on which a court's decision is based, especially for the purposes of review on appeal.

35.114 Allowing witnesses to access court files during proceedings runs the risk that the evidence and testimony of witnesses may be affected before they give evidence. Witnesses are often required to stay out of court in order to avoid the possibility that their testimony changes as a result of what has been seen and heard in court.<sup>[162]</sup> Similar considerations should apply in relation to court records.

### Harmonisation of court and tribunal rules

35.115 In its 2003 strategy paper on the federal civil justice system, the Attorney-General's Department recommended 'that the courts continue to develop, where appropriate, uniform procedures for those areas of law in which the same jurisdiction can be exercised in more than one court'.<sup>[163]</sup>

35.116 The ALRC reviewed the issue of non-party access to court records as part of its inquiry into the protection of classified and security sensitive information. In ALRC 98, the ALRC identified a number of inconsistencies across state and federal court legislation and rules concerning public access to evidence and other court documents. Inconsistencies included: the types of document that may be accessed; when public access can be presumed; whether leave of the court is required for access; and the release of transcripts to non-parties.<sup>[164]</sup> The ALRC recommended that SCAG order a review of federal, state and territory legislation and court and tribunal rules relating to non-party access to evidence and other documents produced in relation to proceedings, with a view to developing and promulgating a clear and consistent national policy.<sup>[165]</sup>

35.117 In recent years, there has been some progress in the harmonisation of court rules in different areas of Australian law. The Council of Chief Justices and the Australian Institute of Judicial Administration have formed a Harmonisation of Rules of Court Committee. The Committee has harmonised rules of court in the areas of corporations law procedure, subpoenas, discovery of documents, and service of process outside the jurisdiction.<sup>[166]</sup> In 2001, the Federal Court and the Federal Magistrates Court completed a joint project to develop harmonised rules for bankruptcy proceedings.<sup>[167]</sup>

35.118 In DP 72, the ALRC observed that there were inconsistencies in legislation and court rules concerning non-party access to court records. For example, some court rules specify, in more detail than others, the categories of documents to which a non-party may have access, with or without leave of the court.<sup>[168]</sup> There also are differences between court rules as to whether there is a presumption for or against the granting of non-party access to court documents.<sup>[169]</sup> The ALRC stated that, to the extent that it is appropriate, consistency among rules of courts on non-party access to court documents can enhance clarity and efficiency of the justice system.



## Options for reform

35.119 The ALRC considered a number of ways in which non-party access to court records could be standardised. One option is to grant different levels of access for different types of information on court records. In its discussion paper, *Review of the Policy on Access to Court Information*,<sup>[170]</sup> the Attorney General's Department of New South Wales proposed a system whereby court information is classified as either open to public access or restricted public access.<sup>[171]</sup> Restricted access information, such as social security and tax file numbers and driver's licence and motor vehicle registration numbers, would be subject to legislative prohibition against media publication.<sup>[172]</sup> Restricted access information also would be subject to the provisions of the *Privacy and Personal Information Protection Act 1998* (NSW).<sup>[173]</sup>

35.120 A variation of this first approach is the recommendation in the report on access to court records prepared by the New Zealand Law Commission.<sup>[174]</sup> The New Zealand Law Commission recommended the enactment of a Court Information Act based on a presumption of open court records limited only by principled reasons for denying access,<sup>[175]</sup> including the protection of sensitive, private or personal information.<sup>[176]</sup>

35.121 Another option is to determine the level of access to court records by reference to the nature of the proceedings. In its discussion paper, *Access to Court Records*, the County Court of Victoria proposed that: non-party access to civil files generally be available unless the court orders otherwise; limited access to parties to criminal or appeal files, before and after the trial, at the discretion of the registrar on a case-by-case basis; and no access to criminal or appeal files by non-parties without an order of the court.<sup>[177]</sup>

35.122 A third option is to remove certain identifying information from the records before publication. In its report on privacy and public access to electronic case files, the United States Committee on Court Administration and Case Management (a committee of the Judicial Conference of the United States) recommended that civil and bankruptcy case files be made available electronically to the same extent they are available at the courthouse, provided that certain 'personal data identifiers' are modified or partially redacted.<sup>[178]</sup> In September 2003, the Judicial Conference of the United States further permitted remote public access to electronic criminal case files (with certain exceptions) if specified personal identifiers were edited.<sup>[179]</sup>

35.123 Recently, the Supreme Court of New South Wales issued a policy on the anonymisation of personal information recorded in transcripts and judgments. The stated purpose of the policy was to prevent identity theft and anonymise the identity of accused persons and witnesses where appropriate. The policy requires that certain information be anonymised in judgments and transcripts, such as street numbers, dates of birth, phone numbers, email addresses, tax file numbers and driving licence numbers.<sup>[180]</sup>

35.124 It may be costly for courts to remove identifying information from records before publication. The cost to the courts could be reduced, however, if the person who made the filing was required to file a redacted version of a document for the public record. This option was introduced in the United States by recent amendments to the *Federal Rules of Civil Procedure 2007* (US).<sup>[181]</sup> Electronic access to court records is discussed further in Chapter 11.

35.125 In DP 72, the ALRC noted submissions by some stakeholders that one set of principles for access to court records would be problematic.<sup>[182]</sup> One stakeholder submitted that uniform rules on access to court records may fail to take into account the nature and function of specialist courts and tribunals and could have an adverse impact on the interests of persons involved in or affected by litigation.<sup>[183]</sup> Another stakeholder submitted that the balance between access to, and disclosure of, court records and judgments could not be resolved by one set of principles of general application. It was suggested this was an area where it would be appropriate for the Privacy Commissioner to prepare codes of practice or guidelines.<sup>[184]</sup>

## ALRC's view

[139] Confidential, *Submission PR 377*, 5 December 2007.

[140] Privacy NSW, *Submission PR 468*, 14 December 2007.

[141] See Commonwealth of Australia, *Administrative Arrangements Order*, 25 January 2008 [as amended 1 May 2008].

[142] Australian Government Attorney-General's Department, *Correspondence*, 12 February 2008.

[143] The identification of children in court records is discussed in Ch 69.

[144] *High Court Rules 2004* (Cth) r 4.07.4.

[145] *Ibid* r 4.07.4.

[146] *Federal Court Rules 1979* (Cth) o 46 r 6(1), (2).

[147] *Ibid* o 46 r 6(3)–(5).

[148] Federal Court of Australia, *Public Access to Court Documents* <[www.fedcourt.gov.au/courtdocuments](http://www.fedcourt.gov.au/courtdocuments/publicdocuments.html)  
([http://www.fedcourt.gov.au/courtdocuments](http://www.fedcourt.gov.au/courtdocuments/publicdocuments.html)  
/publicdocuments.html> at 1 May 2008.

[149] *Federal Magistrates Court Rules 2001* (Cth) r 2.08.

[150] *Family Law Rules 2004* (Cth) r 24.13.

[151] *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) ss 25, 27, 28, 38G, 38H.

[152] *Ibid* ss 29, 38I.

[153] *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47, 55, 58.

[154] The restriction does not apply to the publication of accounts of proceedings that have been approved by the court, but the ALRC has been advised that the Family Court has adopted a policy and practice for the anonymisation and pseudonymisation of personal information contained in court records.

[155] The Herald and Weekly Times Pty Ltd, *Submission PR 568*, 11 February 2008.

[156] Family Law Council, *Submission PR 269*, 28 March 2007.

[157] Some exceptions may apply. For example, in the Federal Court, a party to a proceeding must not search for or inspect specified documents in the court registry without the leave of the court or a judge. These documents include a transcript of the proceeding and a document filed in the proceeding to support an application for an order that a document, evidence or thing be privileged from production: *Federal Court Rules 1979* (Cth) O 46 r 6(5).

[158] C Puplick, 'How Far Should the Courts be Exempted from Privacy Regulation?' (2002) 40(5) *Law Society Journal* 52, 55.

[159] *Ibid*, 55.

[160] Confidential, *Submission PR 214*, 27 February 2007.

[161] *Ibid.*

[162] *R v Bassett* [1952] VLR 535; *R v Tait* [1963] VR 520, 523; *Moore v Registrar of Lambeth County Court* [1969] 1 All ER 782, 783; *R v Lister* [1981] 1 NSWLR 110, 114.

[163] Australian Government Attorney-General's Department, *Federal Civil Justice System Strategy Paper* (2003), rec 4.

[164] Australian Law Reform Commission, *Keeping Secrets: The Protection of Classified and Security Sensitive Information*, ALRC 98 (2004), [7.25], [7.36].

[165] *Ibid.*, Rec 7–1. This recommendation has not been implemented.

[166] Australian Government Attorney-General's Department, *Federal Civil Justice System Strategy Paper* (2003), 67.

[167] Federal Magistrates Court of Australia, *Annual Report 2005–2006* (2006), 13, 18.

[168] Compare, eg, *Court Procedures Rules 2006* (ACT) rr 2903, 4053; *Supreme Court (General Civil Procedure) Rules 2005* (Vic) r 28.05; *Supreme Court (Criminal Procedure) Rules 1998* (Vic) r 1.11.

[169] For presumption in favour of non-party access to documents, see, eg, *Rules of the Supreme Court 1971* (WA) O 67 r 11; *Supreme Court Rules 2000* (Tas) r 33; *Court Procedures Rules 2006* (ACT) r 2903. For presumption against access, see, eg, Supreme Court of New South Wales, *Practice Note: Supreme Court—Access to Court Files (No SC Gen 2)* (2006), [5], issued pursuant to s 15 of the *Civil Procedure Act 2005* (NSW).

[170] New South Wales Government Attorney General's Department, *Review of the Policy on Access to Court Information* (2006). The options suggested in the paper do not appear to have been considered further or adopted.

[171] *Ibid.*, proposal 3.

[172] *Ibid.*, proposal 7.

[173] *Ibid.*, proposal 10. A prescribed agency may be authorised to obtain specified categories of restricted document provided that the agency is bound by protocols addressing the retention, use and security of the document.

[174] New Zealand Law Commission, *Access to Court Records*, Report 93 (2006). The New Zealand Government has referred the report to the Justice and Electoral Select Committee of the New Zealand Parliament for inquiry: New Zealand Government, *Government Response to Law Commission Report on Access to Court Records* (2007).

[175] New Zealand Law Commission, *Access to Court Records*, Report 93 (2006), rec R6.

[176] *Ibid.*, rec R11.

[177] County Court of Victoria, *Discussion Paper: Access to Court Records* (2005), [14], [16], [18], [20]. A new privacy policy outlining the procedures followed by the Court regarding the disclosure of information held in its records was posted on the Court's website and took effect on 1 March 2008: County Court of Victoria, *Privacy* <[www.countycourt.vic.gov.au](http://www.countycourt.vic.gov.au)> (<http://www.countycourt.vic.gov.au>) at 30 April 2008.

[178] Social security cases are to be excluded, however, from electronic access: Judicial Conference of the United States—Committee on Court Administration and Case Management, *Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files* <[www.privacy.uscourts.gov/Policy.htm](http://www.privacy.uscourts.gov/Policy.htm)>

(<http://www.privacy.uscourts.gov/Policy.htm>) at 1 May 2008.

[179] United States Courts, *Judicial Privacy Policy—The Judicial Conference Policy on Privacy and Public Access to Electronic Case Files* <[www.privacy.uscourts.gov](http://www.privacy.uscourts.gov)> (<http://www.privacy.uscourts.gov>) at 1 May 2008. The Judicial Conference of the United States approved specific guidance for the implementation of the amended criminal policy in March 2004: United States Courts, *Judicial Privacy Policy—Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files* <[www.privacy.uscourts.gov](http://www.privacy.uscourts.gov)> (<http://www.privacy.uscourts.gov>) at 1 May 2008.

[180] Supreme Court of New South Wales, *Identity Theft Prevention and Anonymisation Policy* (2007).

[181] Federal Rules of Civil Procedure 2007 (US) r 5.2.

[182] Confidential, Submission PR 214, 27 February 2007; Legal Aid Commission of New South Wales, Submission PR 107, 15 January 2007.

[183] Confidential, Submission PR 214, 27 February 2007.

[184] Legal Aid Commission of New South Wales, Submission PR 107, 15 January 2007.

[185] Australian Law Reform Commission, *Keeping Secrets: The Protection of Classified and Security Sensitive Information*, ALRC 98 (2004), Rec 7–1.

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For Your Information: Australian Privacy Law and Practice (ALRC Report 108)

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## News

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## Fooled by this hi-tech robber

- by: Brittany Stack
- From: The Sunday Telegraph
- May 29, 2011 12:00AM

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TAB on George st, Haymarket, which has recently been robbed. Picture: Tim Hunter

Source: The Sunday Telegraph

**A MAN** posing as a phone technician embarked on a two-month crime spree, robbing hotels, travel

**agencies, TABs and even the RTA, a court heard yesterday.**

Dressed in a blue chambray shirt and hat bearing the logo of a telecommunications company, work pants and white shoes, John Paul Gerard Sheargold, 43, of Kings Cross allegedly used his disguise to fleece businesses of thousands of dollars.

Telling staff the phones needed fixing, he then monitored their movements, before stealing property and cash, Parramatta Bail Court heard.

Since early April, Sheargold allegedly targeted clubs, travel agencies, and betting agencies throughout Sydney's CBD, eastern suburbs and lower north shore.

On April 4, police allege Sheargold stole cash from Club Bondi Junction in Gray St.

He also allegedly stole money from the TAB on George St, Haymarket, in May, then struck again on May 17 at the Ticketek store in Park St, in the city.

On May 19, Sheargold allegedly targeted the Returned Serviceman's Club on Military Rd, Mosman, followed by the RTA on York St later that day.

He also allegedly robbed Abbots Hotel in Waterloo and the Erskineville Hotel on May 20, and stole property worth \$3800 from Flight Centre in York St on Thursday.

Sheargold was arrested at Kings Cross Railway station on Friday morning by officers attached to Operation Cobra 2. Police allege he was in possession of a large sum of cash at the time.

Sheargold was taken to St Vincent's Hospital for medical treatment and later interviewed at Kings Cross Police Station where he was charged with a number of aggravated break, enter and steal offences, plus assault police and resist arrest offences.

Police later searched a property in Potts Point and allegedly found clothing bearing the logo of a telecommunications company and a falsified technician identity card.

Sheargold was charged with seven counts of aggravated break and enter and commit serious indictable offence, larceny and resisting an officer in the execution of his duty.

Police have urged any other businesses who believe they have been a victim of the scam to contact them, as they continue their investigations.

Sheargold was refused bail. He will appear via video link in Central Local Court on July 19.

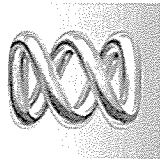
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ITEM 11

# Election 2016: What political parties know about you and how they know it

By Luke Royes

Posted Fri 17 Jun 2016, 8:18am

## How much do you think Australia's political parties know about you?

They are not legally obliged to disclose the amount of information they keep on voters and one thing the three main parties have in common is their reluctance to discuss what details they collect and how they record them.

Their databases are used to store everything from individuals' voting intentions to information about which issues which are likely to swing votes so the parties can target households with specific election material.

After contacting Labor, the Coalition and the Greens, here is what we have been able to find out.

## What information do political parties collect on voters?

All candidates are entitled to copies of the electoral roll containing every voter's name, age, address, occupation and whether they are a Justice of the Peace.

Labor's Queensland state secretary Evan Moorhead said the party's Campaign Central database — run by MPs and councillors' electorate offices — combined those details with contact information it purchased from Sensis and records of interactions about electorate-related enquiries, issues and door-knocking campaigns.

The Coalition did not answer the ABC's questions about what information it kept, saying only: "During this election the Liberal National Party will be communicating with ... voters about our plan for a strong new economy."

However Dennis Jensen, who has held the WA seat of Tangney as a Liberal MP since 2004 before losing preselection this year, confirmed the party's controversial Feedback database was used to collect the same kind of information Labor recorded.

A spokeswoman for Greens leader Richard Di Natale said its members "only have the electoral roll" and "details from door knocking and voters who want to hear more about Greens' policies", without elaborating.

Political parties are exempt from the Privacy Act, however, their privileged access to electoral roll data is curbed by the Electoral Act.

Parties are only allowed to use the information for certain purposes, including campaigning and maintaining the accuracy of the roll.

Last month 7.30 revealed Former NSW Labor secretary Jamie Clements had been charged with two counts of disclosing personal information for a purpose not permitted under the Parliamentary Electorates and Elections Act. He has denied the allegations.

## What do they do with it?

Exactly how parties and politicians use the information they collect is unclear — even to some MPs.

Mr Moorhead said most of the information on an individual's "file" was "publicly available" and the database combined details of people who interact with the party in a professional capacity, for example as journalists and consultants, with their personal electoral roll information.

He said the information allowed parties to target their message to voters.

"Campaigning over the last 20 years has been gradually evolving and we've been moving away from big broadcast messages to very targeted messages," he said.

"If you say to me you're concerned about climate change, there's no sense in me coming to talk to you about the future of the mining industry and jobs in the resources sector."

Dr Jensen, who is running as an independent candidate in his seat at the July 2 election, said the Feedback database worked in a similar way but electoral offices also "tagged" voters by "voting intention" and issue of concern for mail-out purposes.

He said all correspondence between a politician's office and a constituent was scanned or digitally added to the database, and at least some of the recorded information could also be accessed by Liberal Party headquarters.

"I think people expect that when they go to a member's office they'd have information recorded in some way or another ... what they wouldn't expect is that they'd have voting intentions recorded and I certainly don't think they would expect that it would go further than the electorate office," he said.

A copy of the Feedback "workbook", obtained by the ABC, tells staff not to publicly discuss the program and explains how staff are trained to elicit and record voter information.

Dr Jensen said the warning not to discuss the program showed the party was sensitive about revealing how it worked.

"Clearly the parties know that even if it's not illegal, it's certainly highly unethical — if it wasn't they wouldn't have a concern about that being discussed," he said.

University of New South Wales' Cyberspace Law and Policy Community co-convenor David Vaile said political parties' exemption from the Privacy Act removed voters' right to know what information was being kept and how it was being used.

Mr Vaile said while Australian political parties' analytics programs were "probably perhaps not at the absolute peak of the massive commercial data aggregators" they were "probably some way along the line".

## How securely is the information kept?

Dr Jensen said staff at the company behind Feedback, Liberal Party-owned firm Parakeelia, were difficult to contact and he was not sure what measures were in place to secure information about voters.

"It's very much a black box," he said.

For Labor's part, Mr Moorhead said: "It's all in an encrypted and verified database and it's only given to people who need to use it for their local work."

Former Labor staffer Skye Laris, who headed the party's digital campaign unit ahead of the 2013 election, said she was aware constituent information was being kept and analysed to determine campaign issues, but was not privy to details.

"There are frequent discussions about the security of information and keeping it on Australian servers and all sorts of things," she said.

"So there is a high level of awareness that this is important and necessary and [there is] a high level of awareness that

Mr Vaile, a vice-chair of the Australian Privacy Foundation, said in the age of cyber hacking it was impossible for anyone to say data was completely protected from possible breach.

"The motivated intruder only has to find a hair's breadth crack in the defences," he said.

"Basically, the realistic thing to say is, we can't protect your data. We'll do our best, we'll protect you from weak, incompetent intruders, but anyone who's seriously motivated and sophisticated – it's quite possible that they could get through."

## What is the future of data collection?

There seems to be little doubt that down the track parties' use of the information will become more sophisticated.

Ms Laris, who now runs a digital campaigning consultancy business, said it was "inevitable" Australian parties would follow the United States' lead and integrate more data to enhance their campaigns.

"I would argue that over time it would actually strengthen democracy because the risk is there is a disconnect ... if you are true to your job as a member of parliament and representing your local area, it actually is really important understanding how those people are feeling and I think that ought make them better at it," she said.

"It's important people be informed and understand how that information is used."

She said in the future the public could also expect political parties to use a cache of digital data — including social media analytics and cookies — to respond to voter concerns and better target their messages online.

Mr Moorhead said: "It's getting more sophisticated because there's more you can do with data in terms of who we send mail to and that's how we primarily use it."

However, he said Australian parties would not follow the lead of their US counterparts' "big databanks" which comprise purchased financial information and even magazine subscription details.

Mr Vaile said as technology rapidly expanded to allow data collection and retention, it was crucial laws kept pace to ensure transparency.

He said the growing sophistication of analytics tools and technology could raise the spectre of subliminal political messaging.

**Topics:** federal-elections, elections, government-and-politics, political-parties, australia



ITEM 12

# Election campaign 'robo-calls' prompt flood of complaints to communications watchdog

7.30 By Pat McGrath

Updated Wed 13 Jul 2016, 6:59am

**Australia's telecommunications watchdog has been flooded with complaints about politicians "robo-calling" voters during the election campaign.**

The Australian Communications and Media Authority (ACMA) says it has received 244 complaints about election-related telephone calls during May and June, and 214 of those complaints related to "robo-calls".

"The actual may figure may be higher, but there was insufficient information in a number of complaints received to be able to clearly state that the calls related to election/political matters," an AMCA spokesperson said.

A robo-call is an automated telephone call that delivers a recorded voice message.

The spike in campaign calls and text messages sent to voters during the election has prompted privacy advocates to call on the major political parties to explain where they are sourcing people's private phone numbers.

On Sunday, Prime Minister Malcolm Turnbull said he was interested in looking into tighter regulation of robo-calls during elections.

## No refuge on Do Not Call Register

Australia's privacy laws allow political parties to call and send text messages to telephone numbers on ACMA's Do Not Call Register.

Political parties are also allowed to campaign directly to voters who have opted for their telephone numbers to not appear on directories.

ACMA says it received 37 complaints about text messages containing the word "Liberal" during the election campaign, and 36 complaints about messages containing the word "Labor".

Some text messages targeted voters living in particular electorates.

One sent to voters in the Queensland seat of Bonner from "Malcolm" campaigned on behalf of the local Liberal member.

"A vote for Ross Vasta LNP = Stable Govt. & a Plan delivering jobs. An Ind/Green/ALP vote means chaos. Together, lets see it through. Best, Malcolm Turnbull."

Mr Vasta's office said it was not involved in sending out the message, and referred 7.30 to the Liberal Party's campaign headquarters.

A party spokesperson did not return calls.

In Victoria, messages from the Greens before the election also targeted voters in specific seats.

"Tomorrow, stand up for what matters. Vote 1 Adam Bandt for a strong independent voice for Melbourne," read one text to a Melbourne voter, passed on to 7.30.

Voters in the Melbourne electorate of Higgins also reported receiving texts from failed Greens candidate, Jason Ball



ITEM 13

# Malcolm Turnbull says Government could probe terror suspects' links to mental illness, past criminal behaviour

By political reporter Caitlyn Gribbin and national affairs correspondent Greg Jennett

Updated Fri 22 Jul 2016, 11:13am

**Prime Minister Malcolm Turnbull has indicated the Federal Government may want access to the mental health files of individuals suspected of terrorist activity.**

The Government's top anti-terror adviser has been asked to investigate Australian terror suspects' potential links with mental illness and past criminal behaviour.

The Prime Minister's request to counter-terrorism coordinator Greg Moriarty is part of a full "lessons learnt" review of Australia's defences against so-called "lone wolf" attacks, such as those carried out with a truck in Nice, an axe in Germany and guns in Orlando.

Mr Turnbull has told Macquarie Radio the Government wants to protect people's privacy, but that needs to be balanced with national security.

"I think it's important that we are all mindful of the new environment in which we're operating and that is why we've got to look at it very carefully," Mr Turnbull said.

Mr Turnbull conceded accessing the files would be a "huge step".

"Yes it would be, and that's why it's important to speak with some precision.

"You've got a number of important interests to balance here. Mental health alone, leaving aside issues of terrorism, is a gigantic challenge."

Mr Turnbull said he valued Australia's "very significant" privacy protections, but his priority was to keep people safe.

"It is critical too that people feel and know that when they go to [youth mental health organisation] Headspace, for example, they do so confidentially.

"That is why it has to be approached carefully, but my most important obligation, my most important responsibility as the Prime Minister of Australia, is to keep the people of Australia safe."

## Extreme narrative luring Australians to terror: Turnbull

In ordering the review, Mr Turnbull wrote to Mr Moriarty, noting "the extremist narrative and ISIL's slick propaganda are clearly luring some Australians to support terrorism, but we need to ensure that we are actively looking at all the areas of potential vulnerability".

The coordinator was specifically tasked with checking "the full range of persons of interest who we are watching" as part of terrorism investigations "to see if there is a significant connection with mental health concerns or ... patterns of criminal behaviour".

Mr Turnbull said Australia would have to reassess how gatherings of large people are protected and be mindful of the changing threat level.

"We will certainly have to rethink the way in which we design and protect places where large numbers of Australians are



ITBM 14

## Clare's Law: SA public asked to consider tool to screen new partners for criminal history

By Nicola Gage

Updated Sun 24 Jul 2016, 12:20pm

**A disclosure scheme that reveals a person's violent history to a new partner is among measures the South Australian Government wants considered to help prevent domestic violence.**

It today released a Domestic Violence Discussion Paper asking for public feedback on the measure, based on Britain's Clare's Law, which allows partners to access that information.

SA Attorney General John Rau said the first step in addressing domestic violence was to expose it.

"Domestic violence is everybody's business," he said.

The paper used police statistics to reveal the extent of domestic violence in SA.

There were more than 8,400 reports of domestic violence in SA last year, with nearly 80 per cent of those victims female.

Almost half of all assaults, homicides and homicide-related offences involved domestic violence.

Mr Rau said the paper highlighted possible areas that could be reformed.

"The discussion paper shines a light into the dark corners, providing unprecedented levels of information and analysis in South Australia," he said.

A number of measures surrounding domestic violence have been implemented in South Australia in recent years, following an inquest into the 2010 murder of Zahra Abrahamzadeh by her estranged husband.

SA Status of Women Minister Zoe Bettison said it was unacceptable that a significant number of women did not feel safe.

"As a Government and as a community we must work hard to eliminate domestic violence," she said.

"I urge South Australians to be part of the solution."

Mr Rau said the paper's measures would create a framework for authorities and the community to work from.

"Success will hinge on the measures [chosen] being appropriate, efficient and effective, qualities that require community support," he said.

Public consultation on the paper will run for six weeks.

**Topics:** domestic-violence, community-organisations, charities-and-community-organisations, community-and-society, law-crime-and-justice, adelaide-5000, sa

First posted Sun 24 Jul 2016, 11:25am



# Warning of a fake census backlash

KELLY BURKE

PRIVACY experts claim people may list false information on next month's census because their names and addresses will be kept as part of the data.

Previously identifying information was destroyed once the other census data had been recorded but it will now be kept until 2020.

An Australian Bureau of Statistics spokesman yesterday said all personal information would be stored "securely and separate" but the NSW Council for Civil Liberties warned that some people's concerns over how the government might use the information could cause a backlash of false information, from income bracket to religion.

"If people know their information will be identifiable and retained by the government, then it is very likely some people may choose not to answer all the questions honestly," president Stephen Blanks said.

"We now have some politicians calling for discriminatory action against people of a particular faith, for example. It wouldn't be unreasonable for them to think twice (before filling out the survey)."

For the first time in the 100-year census history, the ABS will retain personal data obtained on August 9 "for the purpose of richer and more dynamic statistics and more efficient statistical operations".

Australian Privacy Foundation vice-chair David Vaile said the census "has gone from a valuable anonymous snapshot to an identifiable longitudinal dossier on Australians, with technology now capable of crossmatching and analysing people's private information".

An ABS spokesman confirmed all census information collected next month would be held until 2020 but after initial processing all names and addresses would be removed and stored separately from other personal and household data.

"Australians have willingly co-operated in the census for more than 100 years, including accurately providing names and addresses, which demonstrates their support and understanding of the importance of the census and their trust of the ABS," the spokesman said. "The ABS is confident Australians will continue to participate fully and truthfully."

Providing false or misleading information on a census form can attract a \$1800 fine.





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## Australia's new small business minister Michael McCormack wants government to get "out of the way" of entrepreneurs



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© Provided by Private Media Operations Pty Ltd. Michael McCormack

Australia's new small business minister says his top priorities are ensuring the effects test becomes law and government gets "out of the way" of the nation's entrepreneurs.

Michael McCormack told *SmartCompany* after being sworn in he is "very pleased" to be the first Nationals MP to hold the small business portfolio.

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"I'm also really pleased for the Riverina, it gives us such an important voice not just in the ministry, but such an important portfolio which previously had city-based MPs in the role," McCormack says.

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"It's a good fit for the National Party. Life in regional Australia is transforming."

Despite talking up his love for regional Australia, McCormack also points out small businesses in the cities and suburbs will also receive some "TLC".

"Whilst I'm a regional Australian ... and lived all my life in Wagga Wagga, I'm certainly not going to forget there are very vibrant chambers of commerce in Melbourne, Sydney, Brisbane and elsewhere. Capital city businesses are going to get a lot of attention as well."

#### Effects test high on McCormack's list of priorities

After the Nationals pushed hard for competition law reform, part of McCormack's job will be to ensure legislation to introduce the effects test sails through the 45th parliament.

The newly appointed small business minister is disappointed Labor does not support the introduction of an effects test, arguing Labor has "never seen a small business they've never wanted to put a picket outside of".

However, McCormack is optimistic the Coalition will be able to work with Greens and crossbench senators to give small businesses and primary producers greater protections against big companies doing the wrong thing.

"We've got some good senators ... who are very good negotiators and good at enunciating a position, whether it's about small business or about the effects test," he says.

"I think we're going to see some really good things in this parliament."

#### The Nationals MP will draw on his personal experience for his new role

As *SmartCompany* previously reported, McCormack owned and operated his own small business – a small publishing company he sold in 2010.

"The paperwork was always an issue, and finding the time to have a good work-life balance," he says.

"Small business people do it tough. They need a government to, in some ways, get out of their way and let them get on with the job they do very, very well, which is creating innovation and creating jobs both directly and indirectly in their communities.

"I'm really glad I can draw on that experience, some of the highs and some of the pitfalls, in the next parliament."

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# What are the secrecy provisions of the Border Force Act?

*Posted Wed 27 Jul 2016, 10:23am*

**Today, a group of doctors are launching a High Court challenge against laws that were passed last year which they say prevent them from speaking out about the conditions they witness in immigration detention centres.**

## What is the Border Force Act?

The Australian Border Force Act 2015 established the Australian Border Force (ABF), the government agency which took over immigration, customs and border protection responsibilities on July 1, 2015.

The act outlines the command structure of the ABF as well as restrictions on the people working for it.

## What are the secrecy provisions?

Anyone who gains "protected information" during their employment or service for the Border Force is barred from revealing this information without authorisation.

The penalty for doing so is **two years in prison**.

"Protected information" is information gained by someone in their capacity as an immigration and border protection worker. This doesn't just include public servants; it covers anyone whose services are made available to the Border Force, including people who have been hired by contractors.

Under the Border Force Act, disclosures of protected information are authorised in certain situations; for instance, when it's required by federal or state law, or when it's ordered by a court or tribunal.

## Why did the Federal Government include them?

The Coalition, which passed the Border Force Act with the help of Labor, has previously said the laws are necessary for protecting sensitive operational information.

It says similar provisions exist in other Commonwealth legislation, and the provisions are not there to prevent people from expressing their views on border protection policy.

## Has anyone been charged?

**No.**

Earlier this year, Professor David Isaacs, a paediatrician who visited Nauru in December 2014, challenged the Prime Minister to prosecute him for speaking out about "torture-like conditions". But no charges were forthcoming.

## Why are Doctors for Refugees concerned?

Dr Barri Phatarfod, the convenor of Doctors for Refugees which is bringing the High Court challenge, told ABC's 7.30 the lack of charges so far is beside the point.





She says the laws are having a **"chilling effect"**:

The fact that we can have a law silencing people flies in the face of free expression in democracy."

There has also been international attention on the laws.

Last year, the United Nations special rapporteur on the human rights of migrants Francois Crepeau cancelled a visit to Australia because the Federal Government would not guarantee detention centre workers could speak freely to him without being at risk of sanction under the Border Force Act.

This threat of reprisals with persons who would want to cooperate with me on the occasion of this official visit is unacceptable.

"The act prevents me from fully and freely carrying out my duties during the visit, as required by the UN guidelines for independent experts carrying out their country visits."

## What is the legal argument?

The case isn't about the merits of Australia's offshore detention system. Instead, it's about whether the laws break the implied constitutional right to freedom of political communication.

Meghan Fitzgerald from Fitzroy Legal Service, which is providing free legal advice for the case, says doctors should have the freedom to engage in political discussions if that means disclosing information they witness in offshore or onshore detention.

The case is partly being funded by activist group GetUp.

**Topics:** immigration, human, doctors-and-medical-professionals, australia

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