

Public Policy Revolt: Saving the 2001 Australian Census

Stephen Mutch

First published in *Archives and Manuscripts* Vol 30 No 2 Nov 2002

Stephen Mutch is a former member of both the New South Wales Legislative Council and Australian House of Representatives, having served in parliament from 1988 to 1999. A lawyer by profession, he is currently writing a PhD thesis in the School of Politics and International Relations at the University of NSW on the question of public policy and religious fiscal privileges. He has been awarded an Australian Postgraduate Award Scholarship to undertake this research.

The Australian government legislated in 2000 to overturn the longstanding practice of destroying original household census returns after extracting statistical information from them. The Census Information Legislation Amendment Act 2000 allowed citizens to choose in the 2001 Census whether their personal details would be preserved on microfilm for future research purposes, after an embargo of 99 years to satisfy privacy considerations. For those who chose the information retention option, their personal information has become part of the Census Time Capsule Project. This change in government policy occurred as a result of a campaign conducted by family historians, who were able to enlist key parliamentary support to lobby for a parliamentary inquiry. It was through the vehicle of this parliamentary inquiry that decisive, bipartisan political support was won for preserving the census, against some strong departmental opposition.

Under the *Census Information Legislation Amendment Act 2000 (Cth)*, the Australian Government legislated to allow citizens participating in the 2001 Census, for the first time, to choose whether their personal details would be kept for future research purposes. For those who chose to participate, copies of their name-identified household returns were kept for preservation on microfilm, to be securely archived by the National Archives of Australia (NAA), for release after 99 years for research purposes. The Act overturned many years of bipartisan policy to destroy the original household returns after extracting statistical information from them.

The longstanding policy of census destruction was based on the belief that an undertaking to destroy the primary forms, containing personal details, would reassure the public of the confidentiality of the census process and thus facilitate honest responses. This policy was pursued vigorously by the Australian Bureau of Statistics (ABS) and consequently all national censuses conducted by the Australian Government up until 2001 were destroyed.¹

However, family history researchers, among others, successfully argued that the name-identified forms provide a unique snapshot in time of society, which is an irreplaceable primary source for historical research and should therefore be saved, after a suitable period of embargo to satisfy privacy

concerns. This view was supported in a study published by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1991, which included the 'census of the population' as one of four essential personal information record types that 'should be preserved by archivists'.² The study not only identified the census as the 'single most essential' research record for 'many disciplines and for genealogists', but also for 'providing the core demographic information vital to the design, delivery, and modification by the government of its own major programmes'.³ Many countries, for example the United States and the United Kingdom, save personal census details for release after a suitably long embargo.⁴

The new legislation is the successful public policy outcome of a hard fought battle between a network of family historians, led by prominent radio genealogist Nick Vine Hall, and the ABS; a struggle in which the result was never certain. The episode provides a fascinating case study of public policy making in a pluralist, democratic society. It reveals how a determined citizen, backed in the main by amateur family historians, was able to enlist key parliamentary support, which in turn persuaded the executive to transform their concern into a public policy debate. The vehicle for the public debate was a parliamentary inquiry, conducted by the House of Representatives Legal and Constitutional Affairs Committee. Ultimately, a fundamental change in longstanding government practice was achieved.

Shredding the census

The policy of census destruction continued from the date of the first national census in 1911, conducted under the *Census and Statistics Act 1905*, until and including the census held in 1996.⁵ Census destruction in Australia may have had its roots in a fear that family history research might reveal the stain of convict ancestry in family trees. If so, many would have had a motive to destroy the evidence, particularly those in official positions who might have gilded the lily about their family tree pretensions. However, anxiety about the 'convict stain' has long since been replaced with a fashionable pride in convict ancestry, with applications for membership of the Fellowship of First Fleeters, for example, swelling at the time of the bicentenary celebrations in 1988.⁶

There are competing claims about the level of public awareness of the destruction policy. Until 1971, the practice had developed of keeping the original household forms from the previous two censuses, despite the destruction policy, to enable 'new cross tabulations' which 'might appear after the initial analysis had been completed'.⁷ This practice had not occasioned public disquiet, because 'the public' was either not aware or did not care.

It was only when privacy concerns were raised by the fledgling Australia Party in 1971, and publicity about anti-census campaigns overseas emerged, that the destruction policy became entrenched. In response, the then Treasurer, Bill Snedden, directed that 'the census forms for the forthcoming

census be destroyed as soon as all the information within them had been transferred to magnetic tapes', minus the names and addresses on the forms.⁸ This act has been lamented by Michael Piggott, former Director of Disposal Policy with the NAA. He notes that 'the critical postwar series must still have existed in 1971 when the deliberate privacy inspired destruction policy began', and wonders why archivists, librarians, demographers, geneticists, historians and genealogists didn't campaign then to hold 'these records in trust for future researchers'.⁹

The National Archives of Australia and destruction

The role of archivists in the policy of destruction is particularly intriguing. Colin Smith notes that 'there have been two quite opposite views on the matter within the Australian and New Zealand societies of archivists and the Archives has been equivocal'.¹⁰ Even so, on each occasion that the question arose, the NAA concurred with destruction.

A great responsibility was imposed upon the NAA under the *Archives Act 1983*, whereby from that time it devolved upon the NAA to assess, as with any Commonwealth record, whether the census should be destroyed and to issue an authority to do so. The potential existed from that time for the NAA to demur in the issue of what family historians and others regarded as a death warrant.¹¹ However, as Piggott notes, 'were the government and the Archives to disagree, a power in the Act involving ministerial discretion might come into play'.¹² In other words, the Minister might have found it necessary to direct the Director-General of the NAA to authorise destruction in accordance with government policy.

The NAA appraisal for the 1986 Census, conducted after the government of the day had announced in parliament its decision to destroy the census, concluded 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"'.¹³ These 'other' considerations included the acknowledgement by the NAA in its appraisal for the 1986 Census, that 'name identified records did have value for a range of research uses', and in its evaluation for the 1991 Census, 'that there was a very good case, based on their residual value, for retaining original census records'.¹⁴ Nevertheless, authority was issued to destroy both censuses.

The cause of census retention suffered a further setback in the more limited appraisal for the 1996 Census, when the Director-General of the NAA, while again noting the 'considerable evidence produced of the research values of the records', signed not only an authority to destroy the 1996 Census, but a continuing authority to destroy all future censuses. Given the 'sweeping application' of the authority that was to follow, the limited nature of the appraisal conducted for the 1996 Census was strongly criticised by the House of Representatives Standing Committee on Legal and Constitutional Affairs,

which considered it to be 'inadequate', rendering the resulting disposal authority 'unsatisfactory' and not to be relied upon.¹⁵

While the ABS played throughout a partisan role as protagonist for destruction, the very body that might have provided a countervailing force, the NAA, adopted a more detached stance. The Archives Act 1983 provided to the NAA, the body with the greatest professional interest in preservation of records, the whip hand in the decision-making process. However, by placing it in the role of records umpire and executioner, the Act perhaps compromised the potential of the NAA to play the role of advocate in the sensitive, contested area of census retention. The studied impartiality of the Director-General, in his evidence before the parliamentary committee, reveals that he was not willing or not able to allow his department to assume that role. In his opening statement, Mr George Nichols was at pains to point out that the NAA 'does not seek to argue either for retention or destruction'.¹⁶

While many officers of the NAA were privately supportive of the 'save the census' campaign, they were under the apprehension that, at least publicly, their hands were tied. The apparent injunction against partiality can be discerned in a comment made by Steve Stuckey, the Director of Records Evaluation and Disposal at the NAA, who in a review of the UNESCO study which nominated the national census as 'the single most essential personal record' for research, tellingly noted, 'given my work position I make no comment on the last (census) category!'¹⁷ The responsibility therefore fell upon amateur historians to press the case for retention with the Government, a case that under different circumstances might perhaps have been made by the NAA.

Although he says that archivists as a profession were 'divided on the census issue', Piggott notes that in evidence before the parliamentary committee, 'argument from local archivists and the Advisory Council on Australian Archives supported retention'. He also notes that all archivists share a 'deep-seated unease with privacy protection as a ground for destruction'. On this point the Director-General of the NAA was prepared to be unequivocal, stating to the parliamentary committee, that 'the Archives does not accept that the only way to preserve privacy is to destroy public records. To accept this proposition would fly in the face of all we and other archives practise'.¹⁸

It is hard to reconcile the continued concurrence of the NAA in census destruction with the functions set out in Part II of the *Archives Act 1983*, even though it is arguable that the census has always been regarded as an exception to the general rule. That part of the Act charges the NAA with 'the conservation and preservation of the existing and future archival resources of the Commonwealth', to 'promote ... the keeping of current Commonwealth records ... in a manner that will facilitate their use as part of the archival resources of the Commonwealth'. It also requires the NAA 'to conduct research, and provide advice, in relation to the management and preservation of records and other archival material'. The whole tenor of the second reading

debate on the *Archives Act 1983*, which was cognate with the *Freedom of Information Amendment Act 1983* and the *Copyright Amendment Act 1983*, was that the Archives was to be placed in the pivotal management, leadership and educational role in an effort to preserve and protect Australian records, and in the prevailing spirit of freedom of information, to facilitate public access to them.

However, the Director-General of the NAA was in the unenviable and somewhat unfair position of having to make the decision for or against signing the authority for destruction. In this respect it should be kept in mind that the arguments for destruction were plausible, forcefully put by the ABS and had the imprimatur of the Government. The fervent nature of the commitment of ABS officers to destruction was brought home to the author at a meeting held in the office of the Parliamentary Secretary to the Treasurer, Senator Brian Gibson, on 28 May 1996, where they vigorously defended 'their' policy and would make no concessions. Afterwards, Vine Hall made the rueful comment, that 'the only way we are going to crack this problem is by political pressure ... downwards from God. They are not going to give one inch to any amount of evidence from the genies or the medical profession'.¹⁹

Furthermore, the practice of destruction had been promoted so intensively and had acquired such apparent legitimacy, that a change of policy was problematic. This point was made in evidence to the parliamentary committee by the Deputy Australian Statistician, Tim Skinner, who said; 'it would be impossible to unbundle the effects of the conditioning process that has been in place and the public relations campaign that we have conducted ever since 1976'.²⁰ This comment also reflected a very real fear that a change of policy might prove disastrous to the compliance rate.²¹

Enter the genies

The NAA appraisal for the 1996 Census, such as it was, stated that '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'. Indeed, family historians, or genealogists, affectionately known as 'genies', had been waging a long running campaign to end what its prominent spokesman, Nick Vine Hall, repeatedly described as 'historical vandalism'.

In 1974, in response to a request by the ABS for comment on pilot forms drafted for the 1976 Census, Malcolm Sainty, a council member of the Society of Australian Genealogists (SAG), suggested that 'a submission be made to the appropriate Minister to retain the records for consultation after 2076, as is done in the UK and US'. In October 1974 the council of the SAG was advised that a letter from the ABS had been received, which stated that 'to maintain confidentiality of returns, standing instructions are that they must be destroyed'.²²

In 1978, the SAG made a submission to an inquiry being conducted by Mr Justice Michael Kirby of the Australian Law Reform Commission, on privacy aspects of the census. A Vice-President of the SAG, Richard d'Apice, was appointed as an honorary consultant to the inquiry, which in its 1979 report entitled *Privacy and the Census*, 'stressed that establishing a satisfactory level of confidentiality did not imply a requirement of actual destruction'.²³ In fact the recommendations of that report went a great deal further. It was found that 'identified information should not be destroyed, but should be transferred in an appropriate form to archives' and that 'access for most purposes should be forbidden for 75 years' except in the case of medical research. In that case 'the Director-General of Archives should have a discretion to allow access within the 75 year period, but unauthorised disclosures to third parties should be totally prohibited'. The then Treasurer, John Howard, rejected the recommendations and argued that 'there would be additional costs involved in recording the names and addresses on magnetic tape'.²⁴

In October 1978, Vine Hall was appointed part-time director of the SAG. In 1979 he was approached by historian Philip Geeves, to assist him in researching genealogical material for his weekly segment on Radio 2BL, with Caroline Jones. The attendant exposure, along with numerous cruises on board the P&O cruise liner conducting 'floating genealogy classes', contributed to a dramatic increase in the SAG membership, which would have greatly increased its lobbying potential.²⁵ Vine Hall also wrote the first of his many letters to the *Sydney Morning Herald* on census retention, taking up the baton for an issue that was to preoccupy much of his time for the next twenty years, particularly in the lead-up to each census, when the issue might be expected to receive media attention.

A successful lobbying precedent

Confirmed as full-time director of the SAG in March 1979, Vine Hall embarked on a campaign to persuade the New South Wales Government to release for public access the pre-1900 civil registration indexes for births, deaths and marriages. In 1982 he made representations to his state MP, Dr Terry Metherell, seeking advice and assistance from him. Metherell enlisted the aid of other Opposition MPs, including Nick Greiner, Peter Collins and Tim Moore, who joined the campaign supporting release. The cause was soon won. On 6 December 1982, Attorney-General Frank Walker launched the opening of the indexes in conjunction with the Registrar-General. As the then Premier Neville Wran could not attend the launch, he consented to pose for a photograph marking the occasion with Vine Hall, which later appeared in *Descent*, the journal of the SAG.

This successful conclusion to his first lobbying effort at the state level gave Vine Hall some valuable insights to be applied to his more ambitious federal undertaking, the campaign to save the census. It had also become apparent to

him that politicians could be made aware of the good news value of such heritage stories, something that might well be used to future advantage.

Of practical assistance was the relationship developed with Terry Metherell. In November 1984, Vine Hall wrote to Metherell seeking advice on how to advance the census cause. He noted it was not a state issue, but thought Metherell 'might have a few suggestions', having received a rebuff to his representation to the then Federal Treasurer, Paul Keating, seeking retention of the next census in 1986. Metherell suggested some lobbying options, including a letter writing campaign from genealogists to Federal MPs, approaches to specified journalists, a delegation of genies to seek an appointment with the 'new Federal Minister as soon as Caucus completes the election of the Ministry' and direct lobbying to some suggested federal MPs 'with a view to parliamentary questions'.²⁶ Metherell also suggested organising a deputation to the Minister 'while he's new and fresh', and to 'go softly in the media if you get a response'.²⁷ He also wrote a representation to the Minister assisting the Treasurer, in support of retention. The reply from Chris Hurford, which re-iterated the emphatic line against retention, led Metherell to write to Vine Hall, that 'it looks like a long and concerted campaign will be necessary to bring about a change of heart'.²⁸

Census Working Party

In 1978 the various genealogical societies around Australia had formed a peak body called the Australasian Federation of Family History Organisations (AFFHO), which initially concerned itself with organising conferences and co-ordinating research activities. At one such conference held in 1986, the Fourth Australasian Congress on Genealogy and Heraldry, Vine Hall moved a 'save the census' motion which was unanimously endorsed and an urgent telegram dispatched to the then Prime Minister, Bob Hawke, which met with the usual polite response. It was apparent that a more co-ordinated effort was required.

In 1991 the President of AFFHO, Malcolm Sainty, wrote to the presidents of affiliated societies outlining his views on the evolving purpose of AFFHO, which he believed was to serve as 'the political wing of genealogical societies ... to approach government, other organisations, companies etc, to lobby' for issues of concern to family historians and to 'have some input into setting standards of research, issuing awards and co-ordinating conferences etc'.²⁹ In March 1991 Sainty proposed 'that AFFHO form a sub-committee to lobby the federal Government to retain the Australian Census in full'.³⁰

In June 1992, an AFFHO Census Working Party was established under the Chairmanship of the SAG member Ken Muir. Due to ill health, Muir was soon replaced by Gene Herbert, another member of the SAG. Herbert, a hobby historian, had recently retired as Deputy Managing Director of CSR Limited and brought to bear all his corporate lobbying experience and contacts in an active four years as Chairman of the Working Party. The main focus of activities was the Census due in 1996. Vine Hall was invited to join the

Working Party in January 1996, became Chairman shortly thereafter and assumed leadership of the census campaign.

The campaign undertaken by AFFHO for the 1996 Census was vigorous. It was well supported by Michele Stephens of the newly established *Family Tree Connections*, a ground breaking retail magazine. Targeting parliamentarians, letters and personal representations were made to every federal politician. The practice developed of listing in newsletters all those federal politicians in favour of retention, those against and those not willing to express a view either way. A great deal of lobbying was also undertaken by genealogical societies throughout Australia, mostly unsung, for this common cause.

Enlisting parliamentary support

Vine Hall was aware that the Society of Genealogists (SOG) had been established in London in 1911 to lobby for census access. In 1961 this campaign had been successful under the patronage of Lord Mountbatten, who became president of the SOG. He had noted that the SOG arranged for questions to be asked in parliament and that 'the same style of lobbying brought about the later release of the 1971 census', it then becoming 'an automatic release process every ten years after that'.³¹

Although at least one member of the House of Representatives, John Langmore, a member of the Australian Labor Party, had expressed support for census retention, this had not translated into a concerted parliamentary campaign.³² However, in 1994 Vine Hall achieved a coup when he was able to enlist the Australian Democrats to the cause through the then leader Senator Cheryl Kernot, who referred the matter to the portfolio spokesperson Senator Vicky Bourne.³³ These senatorial champions embraced the cause wholeheartedly. The issue was raised in the Senate and the Democrats organised the collection and tabling of petitions. At that time the enthusiasm of the Democrats was timely for Vine Hall, who had become uncharacteristically pessimistic, seeing himself as 'alone in the wilderness'. However, momentum was in fact growing. On 5 October 1995 Senator Bourne moved a motion noting that 8,500 signatures in support had been tabled and calling upon the then Labor Treasurer, Ralph Willis, to 'review the current policy' before the 'taking of the next census in 1996'.³⁴

Despite this activity, the objective of a breakthrough in government attitude at the executive level seemed as far away as ever. Although Vine Hall had managed to recruit enthusiastic supporters in the Senate, the case for a review had not excited any ministerial or major party attention. It needed the support of a protagonist in the House of Representatives, a point previously made in a note to Vine Hall from Mr Justice Michael Kirby, suggesting he 'try to enlist the support of a Federal Member who can make a fuss in Parliament! That may get a change of heart'.³⁵

This support was coming. In 1991, as a member of the NSW Legislative Council, and having been co-opted to the cause by Vine Hall, I had written to the Shadow Minister for the Arts, Heritage, Sport & Youth Affairs, Senator Michael Baume, asking that the Federal Opposition develop a 'reasonable policy resulting in the preservation of census material'. Baume responded courteously, but nothing further eventuated.³⁶

Then in 1995, having been pre-selected for a move to the Federal seat of Cook, I wrote to the then Leader of the Opposition, John Howard, to seek 'support for the retention of the census, or at the very least a review of the present policy'. The response from Howard was definite: 'I agree with the sentiments expressed by the former Commonwealth Statistician that the prospect of any identifiable material from the Census being retained would have an adverse effect on the quality of the information provided. Governments have a poor record in respecting and protecting the privacy of its citizens, and I do not wish to allow a situation to be created where a citizen's privacy can be trampled on by Government'. Peter Costello, the Deputy Leader of the Opposition and Shadow Treasurer, who had had the representation referred to him, responded in identical terms.³⁷

Despite the apparent intransigence of this position, it seemed to me that the continued policy of destruction was one that had been accepted and endorsed by Ministers in Government under the influence of the Chief Statistician, particularly the influential Ian Castles, who was Chief Statistician from 1986 to 1994 and a staunch advocate of destruction. I doubted that there had ever been a substantial policy debate on the issue in the caucuses of either major party, or for that matter any party room debate at all. It was therefore an issue I felt entitled to bring forward for discussion upon election to federal parliament in March 1996.

Private member's motion

Listing census retention in a shopping list of first term projects in my first speech,³⁸ I wrote to the Treasurer and the Minister for Communications advising them that I intended to raise the matter in the party room.³⁹ Consulting the Government Whip about how best to handle the matter, I was advised that such matters were not put to the vote in the party room, but that discussion there would give the Cabinet an indication of support for the matter. It was determined that the best way to advance debate on the issue would be to file a private member's motion seeking an inquiry, after announcing my intention in the party room, and ascertain whether the issue might attract some bipartisan support.

At the end of May 1996 I had buttonholed Peter Costello outside the House of Representatives chamber to explain to him the benefits of setting up an inquiry into retention. Just then Barry Jones MP ambled past. I called out, 'Barry, you are an educated man. What do you think about this issue of destroying the census?' He furrowed his brow in quick concentration, cupped

his chin in his hand and announced, 'we should keep it!'⁴⁰ I like to think that this moment of serendipity caused Costello to decide that whatever the eventual outcome, the issue deserved an inquiry. Barry Jones, who was then President of the ALP, subsequently seconded my private member's notice of motion form tabled with the Clerk, calling upon the Government to 'establish a public inquiry within 12 months of the 1996 census to examine and recommend on ... the appropriate means of achieving retention of the census data at minimum cost without compromising the integrity of the census and personal privacy'.⁴¹

The private member's motion entailed a set-piece debate for 30 minutes in which the Whips organised two speakers on either side. All four speakers were in favour of census retention. Although no vote results from such a motion, the debate evidenced a level of bipartisan support among at least some backbenchers. On the Government side, I had notified the chairman of the Legal and Constitutional Affairs Committee, Kevin Andrews, of the forthcoming debate and he spoke in support. The speakers for the ALP, Colin Hollis and Michael Langmore, were also most encouraging, offering their personal support and promoting a bipartisan reconsideration of the issue.⁴²

The next step was to finally persuade the Treasurer to authorise an inquiry. I wrote asking him to refer the matter to the Legal and Constitutional Affairs Committee, on which I served. I had also asked Kevin Andrews to approach him on the basis that the committee would welcome such an inquiry. Whenever I encountered a member of the Cabinet I extolled the virtues of an inquiry. The genies had also been busy. Vine Hall arranged for the hundreds of family historians living in Costello's electorate to be briefed on writing personal letters to him, addressed to his electorate office, on the basis that personal letters from constituents in his own electorate, as opposed to pro forma letters, would have some impact. Camped in my parliament house office, Vine Hall spent days visiting every parliamentarian who was prepared to see him, asking supporters to lobby for an enquiry and adding all the time to his published lists of supporters, antagonists and fence sitters. In addition, prominent genealogist Don Jewell, an influential member of the Liberal Party in Victoria, well known to Costello and his Cabinet colleague Peter Reith, made it his business to press personally for the inquiry.

All this interest proved persuasive. In his press release announcing the terms of reference for the inquiry, Costello noted; 'the Government has received a large number of representations requesting personal information be preserved as an historical resource'.⁴³ Even so, there is a suggestion that it was a near thing. Apparently the Prime Minister queried with Costello the need for an inquiry. However, despite his own previously expressed position, the PM was persuaded to allow the ball through to the wicket keeper. The inquiry was on. While it was lauded by the *Sydney Morning Herald* as a 'victory' over the ABS,⁴⁴ it would be more accurate to describe it as a major battle won. Although in retrospect the reference can be seen as a decisive moment, the confrontation over the substance of the issue was yet to come.

The parliamentary inquiry

An inquiry by a parliamentary committee is a unique form of inquisition. It is by no means a judicial process and what constitutes 'fair play' is an elastic concept. The chairman had already announced his view when speaking to the private member's motion and one other member of his Committee, namely myself, was an advocate for retention. It seemed hardly fair then to demur when it was suggested that an officer should be seconded from the Australian Bureau of Statistics to work on the inquiry as a member of the committee secretariat. In addition, some Committee members initially expressed reservations with or opposition to retention, so that the outcome was by no means pre-determined.⁴⁵

Nevertheless, the manner in which the ABS presented the case for destruction undermined its own position among Committee members. From the very first meeting of Committee members with officers of the ABS, it was apparent that they were intransigent, not willing or not permitted to make any concession or to entertain any suggestion for change to their modus operandi. Indeed, the tribal culture of the department was so ingrained that the Committee did not find an openly dissenting voice among bureau officers.

In his opening address to the parliamentary inquiry, in what appeared to be a pre-emptive strike, the Australian Statistician, Mr William McLennan, declared that 'new evidence shows that public opposition to the retention of census forms is very much higher than expected', a claim repeated in his concluding words. He was referring to 'recent research commissioned by the ABS and conducted by AGB McNair soon after the 1996 census'.⁴⁶

In subsequent exchanges between Committee members and the Australian Statistician, the manner of obtaining this 'new evidence' was strongly criticised. The chairman noted that the McNair survey involved seeking responses to a series of statements, 'starting with "Computers have increased the chances of breaches of privacy and confidentiality. Having names on computer records is a threat to privacy. Having addresses on computer records is a threat to privacy ..."' He made the point that 'in my days when I practised as a barrister I would have got pulled up by a judge for asking leading questions. It seems to me that these are leading questions. Aren't they questions which actually suggest a series of responses on the part of the respondents about the dangers involved in material being kept on computer records?' Later he said, 'to put it more bluntly: if a political party engaged in a poll like this, I would have thought their opponents would call it push polling'. Committee member Don Randall, a keen horseman, suggested that the polling company had 'got their riding instructions'.⁴⁷

In addition, the ABS circulated the results of this 'research' to other departments. Committee members saw this as an attempt to influence those departments to toe the ABS line on destruction - with many complying.⁴⁸

These factors damaged the overall effectiveness of the evidence of the ABS in the eyes of some Committee members. While the Bureau rallied with follow-up submissions, further polling (which was also criticised) and at another appearance before the Committee, the concerns of Committee members were not placated.

Before the Committee, the Australian Statistician was dismissive of submissions seeking the use of census forms for medical or historical research, saying 'it seems to me that the cases presented in submissions to this inquiry are not substantial in number nor in their content'.⁴⁹ In taking this view, he seems to have underestimated his 'opposition' (an appropriate term to use in view of the adversarial tone of the debate). In fact 'numerous submissions along with some 900 "form letters" from individuals interested in family history' were received throughout the course of the inquiry, which perhaps reflected a further mobilisation of support by AFFHO and the family history network upon the announcement of the inquiry.⁵⁰

Although the Australian Statistician was adamant that in the written submissions 'no substantive case has been made for the use of census forms for genealogical research which demonstrates substantial social and community benefit',⁵¹ at least in hearings before the Committee, impressive academic support was given for the social history research case put forward by the genies, who turned out in force to appear before the Committee at its interstate hearings. Persuasive evidence was also given by academics from a number of other disciplines. It was clear that many academics, particularly in the social sciences and humanities, but also geographers, sociologists, those involved in population studies and other disciplines, believed that research in Australia had suffered considerably by comparison with other countries because of the paucity of census and other records preservation.

In addition, a number of medical and scientific experts, including environmentalists, were moved to write submissions or accepted invitations to give evidence before the committee. As it turned out, the evidence presented for preservation was impressive enough to lead to unanimous support from Committee members, not only for retention under embargo for historical and other research for all future censuses, but for contemporary use in epidemiological research under strict protocols developed by the National Health and Medical Research Council.⁵² The recommendations reinforced the view taken by the Kirby Law Reform Commission report in 1979.⁵³

Conclusion

In evidence to the Committee, the Australian Statistician pointed out that 'in the lead-up to the 1996 Census no demands were put to the ABS for the use of census forms for medical or historical research, even though the ABS explicitly sought submissions in its consultation processes'.⁵⁴ Contrary to this experience, the parliamentary enquiry was able to elicit substantial responses

of high quality and was able to gather evidence from individuals of good standing in these fields.

From this it might be observed that the form of political inquiry facilitated by a parliamentary committee can be an excellent vehicle for bringing out such evidence and having at least some recommendations acted upon, particularly if bipartisan support can be achieved. It might well be that the authoritative nature of a parliamentary inquiry gives an imprimatur to proceedings that helps attract good witnesses.⁵⁵ In addition, the fact that members of parliament are intimately involved with the evidence gathering process augurs well for the possibility that these, now well-informed political players, will follow up recommendations with their ministerial colleagues. While the 1979 judicial inquiry had also managed to elicit some good evidence, it did not have the benefit of producing such committed, bipartisan, well-informed support from parliamentarians.

The successful lobbying effort, and tactics of the genies outlined above, should be noted by other interest groups aspiring to effect changes in longstanding public policy.⁵⁶ In this case perseverance paid off. The key to success was identifying and targeting individuals (in this case Government politicians) who were in a position to transform an almost invisible issue into one that commanded public attention through the vehicle of a parliamentary inquiry.⁵⁷ Nevertheless, the support of a network of genies was crucial to ensuring that federal politicians throughout Australia were 'educated' in the issue before being confronted with counter arguments based on genuine concerns about privacy issues. In other words, the genies did their homework.

A tactic of particular interest in this regard was the cumulative publication of lists of federal politicians, indicating their individual position on the issue. In Australia, politicians in the major political parties are protected by caucus solidarity from having to indicate their personal position on many issues. Because of the strong party discipline on divisions, it is generally only on the occasionally designated 'conscience' issues that politicians are forced to declare a personal position, often to their great discomfort.

Because there had been little or no extant party room debate on the issue of census retention, the genies were able to approach the issue in a manner similar to that taken on a conscience vote, but without the heat and embarrassment of mainstream media attention that often accompanies conscience votes on so-called 'moral' issues. In this respect the 'low profile' nature of the issue was an advantage to the lobbyists, particularly at the stage where parliamentary supporters lists were being compiled. By the time the issue had surfaced to the level of public debate, a critical mass of parliamentary supporters from all parties had been compiled, including members of the Ministry and their Opposition counterparts. This list gave 'comfort' and encouragement to those politicians remaining undeclared to indicate their support.

In this respect the ethical nature of the campaign conducted by the genealogists should be noted. Politicians were made aware of the merits of the privacy argument and subsisting rationale behind the long history of census destruction. Full disclosure was an important attribute of the campaign, as politicians would not hesitate to withdraw from the supporter's list if they felt they had not been fully informed. The lists were compiled on the tenuous but necessary basis of verbal indications. This avoided the hurdle of signature gathering. While a politician would balk at a written commitment, a list based on verbal support provided two advantages. First, the supporters lists were published in family history magazines representing free, positive publicity to a potential voting constituency and secondly, the verbal commitment was always subject to 'plausible deniability' if circumstances changed, or for the less cynical a change of opinion based on additional information.

It is also worth noting the role that a committed parliamentarian can play in the promotion and acceptance of a public policy proposal. My own role was generously commended by my then colleague and political opponent, Robert McClelland MHR, in the debate on the adoption of the Committee report. He said, 'this is an example of what a lowly backbencher can achieve. The Member for Cook was instrumental about a year ago in advocating that census records should be retained, and he lobbied hard, as I understand it, to have the issue referred to the Standing Committee on Legal and Constitutional Affairs. While I regarded his views initially as being those of a well-meaning eccentric, after listening to the arguments, he persuaded all members of the Committee, and this is a unanimous report'.⁵⁸

Although the Government did not adopt the important recommendation of the Committee relating to contemporary medical research, the decision to retain census information for research after one hundred years is indeed a remarkable victory for the family history network and its key lobbyists. It is interesting that these amateur lobbyists, who were operating outside the decision-making process, were finally invited inside the tent. Nick Vine Hall, as Chairman of the AAFHO Census Working Party, was invited by the ABS to contribute to the *Census Time Capsule Project*, which formed part of the marketing campaign for the 2001 Census. On receiving this invitation he wryly remarked to the author: 'before we couldn't even get a dry biscuit; now it's scones with jam and cream'.

Postscript

It should be noted, that once the decision had been taken to provide Australian citizens with the option to preserve their personal information for future research purposes, the ABS responded most professionally to the policy change. Indeed, they marketed the Time Capsule Project in a positive manner, to raise awareness of the value of the census and the value to future generations of participation in it.

The Australian Census was conducted on 7 August 2001. On 20 June 2002 the results for Question 50, the optional retention question, were announced in a joint media release from the ABS and the NAA. It was noted in the release that 'a total of 9,998,428 people or more than half the people recorded in last year's Census of Population and Housing chose to have their name identified census information stored in the 2001 Centenary of Federation Time Capsule ... for Australia as a whole the participation rate was 52.7%'. Anne-Marie Schwirtlich, the Acting Director-General of the NAA, said that 'the Time Capsule Project had made census history. "All this valuable data will be a rich lode of sociological information for our descendants 99 years from now"'.

Further information later released revealed that 31.9% had answered 'No' and that 15.4% had declined to answer, which was recorded as a 'No' vote. The results in favour of retention for each State and Territory were; the Australian Capital territory 60.2%, New South Wales 53.3%, Victoria 52.4%, Queensland 51.2%, South Australia 52.1%, Western Australia 52.7%, Tasmania 57.7% and the Northern Territory 48.9%.⁵⁹ Commenting on this, NAA officer Steve Stuckey wrote, 'if this was a referendum it would have been passed by a majority of Australians, as well as a majority of Australians in ALL States! These are compelling figures and make a point about how correct the approach was by the lobbyists'.⁶⁰

ENDNOTES

¹ National censuses have been held in 1911, 1921, 1933, 1947, 1954, 1961 and every five years since. Kevin Andrews, *Saving Our Census and Preserving Our History*, House of Representatives Standing Committee on Legal and Constitutional Affairs, AGPS, Canberra, May 1998, p. 13.

² The other essential personal record types listed were those proving civil status, land registration records and certain court and legal records.

³ Terry Cook, *The Archival Appraisal of Records Containing Personal Information: A RAMP Study with Guidelines*, UNESCO, Paris, 1991, p. 6. Available at www.unesco.org/webworld/ramp/html/r9103e/r9103e00.htm.

⁴ Andrews, pp. 29-31. In the United States the closed access period is 72 years while in the United Kingdom the period is generally 100 years.

⁵ Andrews, p. 13.

⁶ According to Peter Christian, current President of the Fellowship, in conversation with the author.

⁷ Andrews, p. 14.

⁸ Andrews, pp. 14-15.

⁹ Michael Piggott, 'Statistics versus History: The Destruction of Census Forms', *Current Affairs Bulletin*, vol. 74, no. 6, April-May 1998, p. 17.

¹⁰ Colin Smith, 'Review Commentary: Saving Our Census and Preserving Our History', *Archives and Manuscripts*, vol. 26, no. 2, November 1998, p. 411.

¹¹ Smith observed that paper census records were being 'capitally punished' because of the potential misuse of information in 'virtual' or computer format, p. 414.

¹² Piggott, p. 16.

¹³ Andrews, p. 19.

¹⁴ Andrews, pp. 19-20.

¹⁵ Andrews, pp. 22-3.

-
- ¹⁶ Standing Committee on Legal and Constitutional Affairs, 'Reference: Treatment of Census Forms', *Official Hansard Report*, Canberra, 2 September 1997, p. 25.
- ¹⁷ Steve Stuckey, 'Review Commentary', *Archives and Manuscripts*, vol. 20, no. 2, November 1992, p. 253.
- ¹⁸ Piggott, p. 16.
- ¹⁹ Nick Vine Hall, 'Census Papers to 2001', record of meeting, 28 May 1996.
- ²⁰ Standing Committee on Legal and Constitutional Affairs, p. 8.
- ²¹ This fear proved to be overrated. Although there was a marginal rise in the non-contact rate for 2001, this is likely to be attributable to an increasing difficulty in gaining access to dwellings, due to enhanced security measures, or changing work patterns. Some ABS officers have remarked privately that the retention campaign probably had a positive effect on compliance. However, direct refusals increased from 3,100 in 1996 to 7,414 in 2001. The under-enumeration rate as measured by the Post Enumeration Survey increased from 1.6% to 2.2% (preliminary). Non-contact dwellings (where the form left for the householder has not been returned), increased from 0.9% to 2.0% (these are not included in the PES). Statistical information provided by Paul Williams, Head of the Census Project, ABS, in emails to the author, 23 & 26 August 2002.
- ²² Nick Vine Hall, 'Census Papers to 2001', chronology of events.
- ²³ Andrews, p. 19.
- ²⁴ Malcolm Sainty, 'The Census Questions – Privacy vs Historical Value', *Historic Australia*, January 1982, p. 56.
- ²⁵ Membership of the SAG rose from 1,176 in 1977 to 6,100 in 1981. Nick Vine Hall, 'Establishing an Identity', *Golden Jubilee History: Society of Australian Genealogists 1932–1982*, Wentworth Press, Sydney, 1982, p. 87.
- ²⁶ Nick Vine Hall to Terry Metherell (handwritten), 21 November 1984; Chris Hurford, Minister Assisting the Treasurer, to Vine Hall, 30 May 1984; and Metherell to Vine Hall, 11 January 1985.
- ²⁷ Nick Vine Hall, 'Census Papers to 2001', handwritten note of conversation, 14 December 1984.
- ²⁸ Metherell to Hurford, 6 December 1984; reply from Hurford, 3 January 1985; and Metherell to Vine Hall, 11 January 1985.
- ²⁹ Malcolm Sainty to Presidents of 'each full member Society of AFFHO', 1 January 1991. He claimed in the letter that AFFHO then represented more than 50,000 genealogists.
- ³⁰ Nick Vine Hall, 'Census Papers to 2001', two-page typed document of supporting notes for motion to be considered at AFFHO meeting of 10 March 1991.
- ³¹ Nick Vine Hall, 'Census Papers to 2001', chronology of events.
- ³² House of Representatives, *Parliamentary Debates*, Canberra, 18 September 1985.
- ³³ Vicki Bourne to Vine Hall, 13 April 1994.
- ³⁴ Senate, *Parliamentary Debates*, Canberra, 5 October 1995, p. 1627.
- ³⁵ Michael Kirby to Vine Hall, 16 July 1997.
- ³⁶ Stephen Mutch to Michael Baume, 17 April 1991, and reply, 24 April 1991.
- ³⁷ Mutch to John Howard, 12 October 1995, and reply, 18 November 1995; Peter Costello to Vine Hall, 12 December 1995.
- ³⁸ House of Representatives, *Parliamentary Debates*, Canberra, 20 May 1996, p. 902.
- ³⁹ Mutch to Costello and Richard Alston, 19 May 1996.
- ⁴⁰ Nick Vine Hall, 'Census Papers to 2001': Vine Hall records that the author advised him this exchange occurred on 27 May 1996.
- ⁴¹ House of Representatives, 'Private Members' Business', *House of Representatives Notice Paper*, Canberra, no. 25, 22 August 1996, p. 788 & no. 36, 10 October 1996, p. 1353. The words 'and personal privacy' were suggested by Barry Jones MP.
- ⁴² House of Representatives, 'Private Members' Business', *Current House Hansard*, Canberra, 14 October 1996, pp. 5190–2.
- ⁴³ Peter Costello, 'Census Forms', Press Release no. 38, Canberra, 7 May 1997.
- ⁴⁴ Sydney Morning Herald, 'Census Win', Editorial, 26 June 1997, p. 16.
- ⁴⁵ There were 14 members of the Committee, 9 Government (including the Chairman) and 5 Opposition. Three were replaced during the course of the inquiry.

⁴⁶ Standing Committee on Legal and Constitutional Affairs, pp. 4, 5, 8. The Australian Statistician also warned of possibly adverse effects on electoral distributions, the distribution of grants, the planning, delivery and evaluation of services as well as business and community group research, if the destruction policy were to change, pp. 6, 7.

⁴⁷ Standing Committee on Legal and Constitutional Affairs, pp. 14, 15, 21. This was incorrectly recorded as 'writing instructions'.

⁴⁸ A number of departmental submissions merely re-iterated the ABS line and referred to the polling, not evidencing to any extent independent reasons for supporting the policy of destruction.

⁴⁹ Standing Committee on Legal and Constitutional Affairs, p. 7.

⁵⁰ Andrews, p. 5.

⁵¹ Standing Committee on Legal and Constitutional Affairs, pp. 7-8.

⁵² Andrews, p. 139.

⁵³ Michael Kirby, *Privacy and the Census*, Law Reform Commission Report No. 12, AGPS, Canberra, 1979.

⁵⁴ Standing Committee on Legal and Constitutional Affairs, p. 7.

⁵⁵ A parliamentary committee can compel witnesses to attend and produce documents, but these powers hardly prove necessary. The fact that parliamentary privilege applies to proceedings is an added inducement for witnesses to be forthcoming. In addition, the government is formally required to respond in parliament to committee recommendations.

⁵⁶ A list of published sources relating to the campaign conducted by family historians is to be found in Appendix 4 of Nick Vine Hall, *Tracing Your Family History in Australia: A National Guide to Sources*, 3rd edition, Nick Vine Hall, Mt Eliza, 2002, pp. 819-20.

⁵⁷ It has been noted that 'there is a crucial moment in the policy cycle, a point at which a private concern is transformed into a policy issue. Suddenly, it commands the resources of government while a myriad of others languish as merely private matters'. Peter Bridgman & Glyn Davis, *The Australian Policy Handbook*, 2nd edition, Allen & Unwin, St Leonards, 2000, p. 34.

⁵⁸ House of Representatives, *Parliamentary Debates*, Canberra, 25 May 1998, p. 3536.

⁵⁹ Figures supplied by Ted Ling, Director, Legislative and Accessibility Projects, NAA, in email to Nick Vine Hall, 23 July 2002.

⁶⁰ Email from Steve Stuckey forwarded to the author, 7 August 2002.