

# Permanent Retention of Name-identified Census Records in Australia and New Zealand

Mary Neazor

**Mary Neazor** gained her BA (Hons) at Victoria University, Wellington, New Zealand, and an MA in history at Auckland. She worked at the then National Archives of New Zealand for six years in the late 1980s and early 1990s before leaving for Europe. There she taught English for two years in a technical school for car engineers near Gdansk, in Poland, before returning to archives and records management work in various international organisations. She returned to New Zealand in 2003 and worked for Archives New Zealand, first as a consultant to the appraisal section and then as acting manager of the Standards and Advice Unit. She has recently completed a MIMS (Masters of Information Management Systems) degree at Monash University, after eighteen months of full-time study.

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This article offers a comparative view of the treatment of name-identified census records in Australia and New Zealand, and issues around their possible permanent retention – in particular, the tensions between and within stakeholder groups. It begins with a short description of the collection and treatment of census forms and of the current socio-legal frameworks in both countries. The concept of the records continuum is then used to identify stakeholders as the records develop, as well as the stakeholders' needs and interests. The article concludes with a discussion of privacy issues as a special concern of many stakeholders, as well as a brief look at how community views can change over time – the example studied being Australian 'convict ancestors'.

## Definition of terms

The term census records potentially covers a wide range of documents and information, including the template census forms themselves, the material associated with their development, and records derived from data gathered during the census. For the purposes of this article, I propose to discuss only two categories of records:

- Name-identified census records – that is, records of either individuals or groups where the information given is linked to elements that permit personal identification of those to whom it relates – in particular, name and address.
- Anonymised reports (in whatever form) derived from this primary information.

This article will deal with both, since they are necessarily related: however, name-identified census records will be specifically identified as such throughout the discussion.

The concept of the records continuum was first elaborated in the mid 1990s by Frank Upward and others. It posits that records are facets of four dimensions: *creation* (the original act and actors, the documents recording the act); *capture* (in personal and corporate records systems); *organise* (organisation of recordkeeping processes into institutional memory); and *pluralise* (bringing archives into a larger framework – collective social, cultural and historical memory).<sup>1</sup> These dimensions are also aspects of ‘time-space distancing’ – that is, the record’s movement from ‘the immediate contexts of interaction’.<sup>2</sup> They are not hard and fast categories, and the organise and pluralise dimensions in particular may often blend into each other.

## Creation, collection and treatment of census records

This section looks briefly at how census records are created, collected and treated, since understanding these procedures is essential to understanding discussion around the records. The explanation is necessarily simplified and fuller versions can be found on the websites of the Australian Bureau of Statistics and Statistics New Zealand.<sup>3</sup>

In both Australia and New Zealand, a nationwide census of population is now carried out every five years. Questionnaires are prepared and

tested by the national statistical agencies. Certain questions remain constant from one census to another: others may be asked only at intervals, such as every ten years. New Zealand employs two forms (also known as schedules), the Individual and the Household;<sup>4</sup> Australia uses only one, the Household Form, which includes questions about each individual in the household on census night. Until recently, all forms were in hard copy only; both countries now intend to allow respondents the option of completing information online.

Forms are distributed and then collected locally, after which they are transported to data processing centres. Here imaging technologies are employed to produce information which can be stored in digital form. Checks are carried out to ensure that this information accurately reproduces what was written on the original hard copies. Although names and addresses are captured to assist in this process, after verification any data which could identify individuals is eliminated. In Australia, all paper forms are pulped and recycled once they are no longer required for processing. If respondents to the 2001 and later Censuses indicate that they wish their name-identified information to be permanently retained, the forms are microfilmed; this microfilm will become the permanent record, held at the National Archives of Australia. In New Zealand hard-copy records have been kept from the censuses of 1966, 1976 and 1986, but no others from the twentieth century (and none after 1850 in the nineteenth century). During the 2001 census, respondents were offered the choice of agreeing to the eventual transfer of their individual forms to Archives New Zealand (the option was not offered for household forms), to which slightly under sixty per cent of respondents did agree. In the census of March 2006, each individual form included the statement:

The Public Records Act requires census forms to be kept as historical records. After 100 years census forms may be made available for research that meets the confidentiality requirements of the Statistics Act.<sup>5</sup>

Statistics New Zealand will run a post-enumeration survey on census coverage issues in late 2006, which may yield some information as to whether this statement has had any impact on response.<sup>6</sup>

In both countries, what remains from each census is essentially a vast database or series of databases, which may be interrogated to produce a

wide variety of statistics and reports drawn from combinations of the information held. Such reports were, of course, issued from the nineteenth century onwards. However, the use of increasingly sophisticated software allows for finer, more complex and more varied results than could be produced previously. Some of these reports are issued by the Statistics offices in the normal course of business; others may be provided in response to specific requests from government agencies, the academic community or businesses. (Neither the Australian Bureau of Statistics nor Statistics New Zealand will provide reports which concern such small groups of the population that individuals could be identified by cross-checking the result with other information.)

It can be seen from this brief description that throughout the twentieth century, in both Australia and New Zealand, name-identified census records have – with a very few exceptions – existed as such for only short periods of time. Once the destruction of both paper forms and electronic data identifying individuals is complete, their existence can only be *inferred* through other records which refer to them (for example, memoranda from the Australian Statistician) or are derived from them (databases containing anonymised information from each census). In terms of continuum theory, they are created and captured, but are then destroyed. What remains to be organised and pluralised are, in fact, records which are derived from data once contained in each census form.

## **Current socio-legal frameworks**

### ***The legal situation: Australia***

In Australia, privacy concerns are central to the publication of any information derived from the census. Section 12 of the *Census and Statistics Act 1905*, while permitting the publication of statistical information, states:

Publication etc. of statistics (1) The Statistician shall compile and analyse the statistical information collected under this Act and shall publish and disseminate the results of any such compilation and analysis, or abstracts of those results. (2) The results or abstracts referred to in subsection (1) shall not be published or disseminated in a manner that is likely to enable the identification of a particular person or organisation.<sup>7</sup>

Section 13 confirms this approach:

Release of information ... (3) Information of a personal or domestic nature relating to a person shall not be disclosed in accordance with a determination in a manner that is likely to enable the identification of that person.<sup>8</sup>

However, the success of the 2001 Time Capsule Project eventually led to significant amendments to other parts of the Act. The 2001 Census coincided with the centenary of Australian Federation, and to mark the event the Federal Government – following a recommendation from the Standing Committee on Legal and Constitutional Affairs – amended the legislation to permit retention of name-identified records from the Census if respondents had explicitly agreed to this. Fifty-four per cent of respondents did so, and it was eventually decided to make the Time Capsule option a feature of every census. The *Census Information Legislation Amendment Act 2006* has amended a number of laws, in particular the *Census and Statistics Act 1905* and the *Archives Act 1983*, so as to allow for the permanent retention of name-identified information. The relevant section of the *Census and Statistics Act* now reads:

SECT 8A – Transfer of Census information to the Archives.  
If: (a) a form is given to the Statistician or an authorised officer under section 10 in relation to the Census taken in the year 2001 or a later year; and (b) a person has consented, in accordance with the form, to the information contained in the form being transferred to the custody of the Archives under this section; the Statistician must transfer the information to the custody of the Archives in a form and manner agreed by the Statistician and the Director-General of the Archives.<sup>9</sup>

Section 19A, however, forbids either the Statistician or any officer of the Bureau to divulge information from these Census records to any court or tribunal.

Section 22B of the *Archives Act 1983* now sets the period of open access to name-identified information from any given Census as at the end of 99 years, which is to be dated from the day on which the Census was carried out. Section 30A (1) and (2) of the Act forbids disclosure of any information

from these records by any officer of the Archives, whether to another person or to a court or tribunal, before the records are in the open access period for that particular Census.

***The legal situation: New Zealand***

In New Zealand the situation was, until 2005, slightly different. Although the National Archives, as it was then known, was established by the *Archives Act 1957* to receive 'such public archives as are considered worth[y of] permanent preservation',<sup>10</sup> name-identified census information was one of several categories of public records specifically *excluded* from the provisions of the Act:

Section 3 ... Nothing in this Act shall apply with respect to ... (b) Any public record made or received by the Department of Statistics, if that record discloses any information which is required to be kept secret pursuant to the provisions of section 37 of the Statistics Act 1975.<sup>11</sup>

Under section 37, 'Security of Information', the *Statistics Act 1975* states:

(4) All statistical information published by the Statistician shall be arranged in such a manner as to prevent any particulars published from being identifiable by any person ... as particulars relating to any particular person or undertaking, unless (a) That person or the owner of that undertaking has consented to their publication in that manner, or has already permitted their publication in that manner ...<sup>12</sup>

Section 37C permitted the disclosure of individual schedules (a term that includes but is not limited to census forms) to other Government departments for bona fide research or statistical purposes, *provided* name and address information was suppressed. Section 37D, however, did envision the transfer of some individual schedules to National Archives:

Notwithstanding section 37 of this Act, documents relating to individual schedules which have been the subject of an agreement between the Statistician and the Chief Archivist and classified as historical documents may be released to the Archivist by the Statistician after a period of 100 years.<sup>13</sup>

With the repeal of the 1957 Act and the passage in April 2005 of the *Public Records Act 2005*, the situation has changed somewhat. The only public records now excluded from the application of the Act are (section 6) ballot or voting papers from national or local body elections.<sup>14</sup> However, section 22 does allow for the deferral of transfer of public records and refers specifically to individual statistical schedules:

- (1) The requirement to transfer public records under section 21(1) [this section mandates the transfer of public records which have been in existence for 25 years or more to the possession of either the Chief Archivist or an approved repository, and in either case to the control of the Chief Archivist, unless the Chief Archivist has approved their destruction] ... does not apply (a) to public records that are individual schedules provided to the Statistician under Part III of the Statistics Act 1975 [this includes census records] ...
- (3) In the case of public records referred to in subsection (1)(a), the records (a) must be transferred to the control of the Chief Archivist and the possession of Archives New Zealand after a period of 100 years from the day appointed by the Governor-General [as Census day] ... and (b) are subject to sections 37 and 37DA of the Statistics Act 1975.<sup>15</sup>

The Schedule of 'Enactments Amended' as a result of the new legislation replaces the former text of section 37D as follows:

Section 37D - Disclosure of historical documents ... the Statistician *may* [my emphasis] authorise the disclosure, after 100 years, of individual schedules ... that the Statistician has classified as historical documents, after having regard to the advice of the Chief Archivist.

37DA - (1) Despite sections 37 and 37C, on and from the date of the transfer under section 22(3)(a) of the Public Records Act 2005 of individual schedules ... the Statistician *must authorise, solely for statistical purposes*, [my emphasis] the disclosure of those individual schedules. (2) An individual schedule must not be disclosed under this section unless (a) every person involved in the statistical project makes a statutory declaration [similar to other declarations of secrecy / non-disclosure required by the Statistics Act];

(b) the Statistician is satisfied that the security of the individual schedules and any information contained in them will not be impaired.<sup>16</sup>

That is to say, that while it is compulsory for the Statistician to disclose individual census schedules for 'statistical purposes', the release of individual schedules *as* individual schedules is discretionary (household forms are not mentioned). Furthermore, it could be argued that the statement on individual census forms already cited ('The Public Records Act requires census forms to be kept as historical records. After one hundred years census forms may be made available for research that meets the confidentiality requirements of the Statistics Act') implements only section 37DA, and that another formulation would be required to allow section 37D to be put into effect. A decision on the matter will probably have to wait until the mid 2060s, when name-identified census records gathered in 1966 will be eligible for examination by researchers.<sup>17</sup>

## Stakeholders

### *Identification of stakeholders*

I have identified groups of stakeholders with regard to census records in three ways: by following the process of the creation, capture, organisation and pluralisation of the records; through the report *Saving Our Census and Preserving Our History*, submitted to the Australian Federal Parliament in May 1998 by the House of Representatives Standing Committee on Legal and Constitutional Affairs; and through my own appraisal of name-identified census records in New Zealand in late 2003, undertaken on behalf of Archives New Zealand.<sup>18</sup>

In Australia, the Standing Committee received 291 original submissions and 56 exhibits and took evidence from 90 witnesses in public hearings. In the case of my own appraisal, although the primary appraisal process in New Zealand is not open to the general public, given the unique nature of the census records a number of stakeholder representatives were invited to form the Census Consultative Group in order to provide analysis and feedback as the appraisal progressed. The Group consisted of myself and the Manager Appraisal, Archives New Zealand; the Chief Historian from the Ministry of Culture and Heritage; the General Manager Census, from Statistics New Zealand; the secretary of the Professional Historians Association; a representative of the New Zealand Society of Genealogists;



and a member of the Maori Statistical Forum, a group advising the Government Statistician. I also had access to the records of an Archiving Advisory Committee which had been formed by Statistics New Zealand and met from 1997-2001: its membership had a similar make-up to that of the Consultative Group, with the addition of a well-known economic consultant. While I do not intend to recapitulate either the Standing Committee's report or my own in detail, both processes identified similar stakeholder groups / interests in their respective jurisdictions (although there did not appear to be any direct response from possible Indigenous stakeholders in the Australian case).

### ***Stakeholders within the records continuum***

In what follows, the records continuum model elaborated by Frank Upward<sup>19</sup> and described in the section 'Definition of Terms' above is employed as a structuring principle, rather than a rigid framework. It is not, of course, the only model which could be used to identify stakeholders and the nature of their interest in census records (whether name-identified or anonymised). However, I believe it is helpful in demonstrating that the same individual(s) may have a different role with regard to the same records, and a different interest in their use depending on 'where' in the continuum they are.

#### ***Create***

This is the dimension of the original act, the actor(s), and the documents which record the act. In this area, insofar as concerns the records under discussion, are:

- Individuals, completing household and / or personal census forms. They may be regarded as acting merely as individuals, or as citizens providing information that will ultimately be useful to themselves. The records thus created are name-identified.
- The Australian and New Zealand Statistics offices may also be in this dimension, since they create the census questionnaires which structure the records' creation (although the questionnaires are also, of course, evidence of those offices' business activities). For these actors, forms are produced as part of the entire census cycle, and are both the

culmination of one set of processes and the commencement of others.

### *Capture and Organise*

Name-identified census records move 'away' from the original moment of creation. Their treatment within the information systems of the statutory agencies responsible for the development and administration of the census may indeed result in their destruction, although the data they contain is extracted to become the basis of other records (eg statistical reports). Both name-identified census forms – if retained – and the records created *from* those forms are evidence of the agencies' activities, as well as becoming part of the agencies' institutional memories.

- The significant actors here are those charged with capturing, processing and storing the 'raw' information provided by the census forms – in current government structures, the Australian Bureau of Statistics and / or Statistics New Zealand. (As noted above, there are a number of stages in this processing.) This phase could also be regarded as a 'secondary creation', since what emerges from the processing is anonymised data which becomes the content for further groups of census records – or perhaps census-derived records would be a better term.

### *Pluralise*

The records are brought into the dimension of collective public memory. In this sphere they retain their function as institutional evidence and memory, while also being open to use beyond their original purposes. In the case of census records of the types under discussion, the only one now publicly available (including to most government agencies) is the various formulations of anonymised data. Among the stakeholder groups with an immediate interest in this type are:

- National (and in the case of Australia, State) governments. At a political level, population estimates provided by the Australian Statistics Bureau are used to determine representation entitlements in the Federal Government.<sup>20</sup>
- Records of this type are also fundamental to the operations of government as a group of public agencies. The Australian

Commonwealth Grants Commission uses information from the census to advise Government on the distribution of Commonwealth funds among the States and Territories. The Departments of Employment, Education, Training and Youth Affairs and of Social Security also use census reports – especially on relatively small groups such as recently arrived migrants, or Indigenous Australians and Torres Strait Islanders – to develop better advice to government and more accurate planning in their areas of activity.<sup>21</sup> Governments, as stakeholders, are interested in ensuring that census-derived records are as full, authentic and reliable as possible.

- Individuals, as the beneficiaries of Government programs, are also stakeholders in this area.
- Individuals, as taxpayers, wish to be confident that their monies are not being ‘wasted’ and that they are producing, if not definite material, then social good in the form of better quality of life, greater social solidarity, reduced levels of crime and so on.
- Individuals depend on census-derived records to ensure that they enjoy their full civil and political rights as citizens and voters.
- Ethnic or other minority communities – including but not limited to indigenous groups – have a special interest at this point, as for example, evidence of an increasing population may attract targeted government funding, the creation of special programs and so on.
- Specialised (eg population experts, medical researchers) or private (e.g. businesses) interests may request that individualised reports are created for them, drawn from census-derived information.
- Employees of various media (newspapers, TV) draw on census-derived statistics / records as either subject-matter or background for news stories. Their audiences are thus also, to some extent, stakeholders in these records.
- Politicians and other public advocates similarly use information from census-derived records to support or

condemn governing bodies' policies, laws and other regulations.

- Local communities (this term covers groups ranging from local government to 'civil society' representatives such as church and volunteer groups) use census data to support their own areas of work or interest.
- International organisations – eg the United Nations, the Organisation for Economic Cooperation and Development – which use comparative country data to draw up programs and allocate resources, draw on census-derived records to create their own.
- Historians use census-derived records in their research. This extends to specialist areas such as economic or social history.

As can be seen, the major and common interest shared by these and other stakeholder groups is that the records on which they base their own activities are full, reliable and authentic, as discussed in more detail below.

Insofar as name-identified census records in Australia or New Zealand have been retained, genealogists (as separate from general historians) are potential stakeholders in this dimension. 'Potential' because as matters currently stand – records are preserved but will not be publicly available for decades to come. Groups pressing for the retention of census schedules often consider, and present themselves as, stakeholders on behalf of the future.

### ***Perceived needs and interests of stakeholders***

In both Australia and New Zealand, the census is the largest and most comprehensive survey carried out in a national territory. The Australian Bureau of Statistics has stated that it wishes to use the census as a major source for reliable information, rather than having to supplement it with a host of less useful smaller surveys, and in this respect is apprehensive of adverse effects on the data quality of the census if respondents withhold or distort information.<sup>22</sup> An officer of Statistics New Zealand writes:

Statistics New Zealand's concern in considering the issue of archiving of name-identified census records is, firstly, to ensure the continued cooperation of all persons present in

New Zealand on census night in willingly completing their census schedules and in providing accurate information in doing so. Such cooperation enables the availability of quality aggregated census data, and the further analyses possible for the anonymised census data sets. These outputs are crucial to enabling New Zealand to be a self-aware society and economy, able to make well-informed decisions that will shape the course of the nation and its inhabitants. This outcome is what justifies the nation spending relatively large sums of money in conducting the census, and if it was not assured, there might not be a sound case for continuing with the census as we know it.<sup>23</sup>

Indeed, even a partial list of stakeholder groups such as those identified in the preceding section demonstrates the inherent tensions in this area. Many would share the concerns of the statistical offices. National governments and government agencies require records as complete and accurate as possible as a basis for creating policy and programs and delivering outcomes. Individuals, as citizens, taxpayers, and beneficiaries of government programs, have the same needs, as do researchers in many disciplines, as well as those who will benefit from their work. (This may apply particularly to members of indigenous and other minority ethnic or cultural groups.) Furthermore, as the capacities of computers and software grow, and as data can be matched more easily and in more ways, many would say that communities have a strong need for, and interest in having, guarantees on the confidentiality of their personal information (an issue discussed later in this article).

Some historians, and many genealogists, wish to retain name-identified census records in order to carry out complete research on individuals or small groups. In the 1998 report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, *Saving Our Census and Preserving Our History*, major points of interest identified by witnesses before the Committee included genealogy; the ability to obtain a wide range of personal information on individuals; and the ability to study particular groups of people in detail over time, especially for the purposes of medical research.<sup>24</sup> One witness, Professor Donald DeBats, told the Committee that he felt the retention of individual census forms would have resulted in the writing of a different kind of history in Australia:

It would be much more focused on the lives of ordinary people – men and women, black and white, immigrants and native-born ... Not only would this be a different history but I believe it would be a history in which ordinary men and women ... would be engaged in and involved in, to a much greater degree than they presently are. They would see that the real history of their nation is ... what happens in the ordinary lives of ordinary citizens each day.<sup>25</sup>

To further complicate matters, any individual may belong to more than one stakeholder group at the same time and, as such, feel competing interests over the same question. For instance, an individual may, as a taxpayer, expect of the Australian Bureau of Statistics that it be able to capture, organise and pluralise full and authentic records as a basis for the creation of government policy. In this case, if the knowledge that name-identified census records were to be retained led to the supplying of inaccurate data, the subject would expect the Bureau to oppose this measure. On the other hand, the same person might, as a genealogist, expect the Bureau to maintain and transfer the same records to the archives to make them accessible after any restriction period had passed.

Such tensions may never be fully reconciled or, indeed, reconcilable; especially when what is in play are – as the title of this section indicates – the *perceived* needs and interests of stakeholders (rather than who is objectively right or wrong). As matters stand, the systematic retention of name-identified census schedules is at an early stage in both Australia and New Zealand. Careful monitoring of this development on future census / statistical survey results is probably the most practical step for the moment, with further decisions to be taken depending on what results emerge over time.

### **Privacy – A special concern**

The privacy of the individual has been the main concern behind the destruction of most name-identified census records in Australia and New Zealand, and for using only anonymised data to create further records. There may, of course, be differences in outlook between the ‘average citizen’ and those professionally concerned with such matters. However, *Community Attitudes Towards Privacy*, a report prepared by Roy Morgan Research for the Office of the Federal Privacy Commissioner in June 2004

(which followed a similar study, titled *Privacy and the Community* in July 2001) gives some idea of the concerns of the Australian public, while a report carried out for the Office of the Privacy Commissioner by UMR Research and published in February 2006 quantifies similar concerns in New Zealand.

The survey on which the 2004 Roy Morgan report was based examined respondents' attitudes to use of personal information by both government bodies and private interests (eg Internet retailers). When asked to identify what they considered the most important elements of an organisation's privacy policy, 71% of respondents thought it was important or very important to know how the information would be used, and 37% thought it important or very important to know 'if and when the organisation will pass on my information'.<sup>26</sup> This is consistent with the findings of the 2001 study, in which the authors stated:

People were reluctant to provide [personal information, especially financial details, income, health information and home contact details] as they felt that often it was 'none of their business' ... Other reasons given for not wanting to hand over particular types of personal information included the belief that the information could be misused and/or used in a way that would result in personal financial loss, or passed on without their knowledge.<sup>27</sup>

Indeed, anxieties about non-transparent transfer and use of personal information recurred in many contexts – for instance, 61% of those surveyed were 'felt either angry and annoyed or concerned ... about where they got my details' when they received unsolicited marketing information from organisations they had never dealt with before.<sup>28</sup> On the other hand, 68% of respondents agreed with data-matching across government agencies as a fraud-protection measure.<sup>29</sup> (Possibly because they felt that this would not affect them personally but would prevent their tax monies being 'wasted'.) Respondents (53%) were in favour of the government issuing a unique identifier to clients accessing its services, which would allow departments to share information about an individual across organisational boundaries.<sup>30</sup>

Health service providers were felt to be the most trustworthy type of organisation. Next in order: financial institutions, government agencies,

charities and retailers.<sup>31</sup> This order remained constant from 2001 to 2004.

Nevertheless, despite their worries about privacy, relatively few respondents knew much about provisions for it: 60% knew that Federal privacy laws existed but only 23% knew which types of organisation the laws applied to; only 34% of respondents knew that the office of Federal Privacy Commissioner existed and 29% would not know to whom to report misuse of personal information.<sup>32</sup>

In New Zealand, high levels of concern were expressed about the security of personal details on the Internet (84% of those surveyed), the confidentiality of medical records (78%) and possible government interception of communications (72%). 'A plurality' were concerned about data sharing between government departments,<sup>33</sup> although as in Australia few seemed worried about activity which they may have felt would not affect them or would add to their personal security, such as random drug testing of employees or video surveillance of public space. Many respondents were concerned or very concerned about supplying information to a business for one purpose only to find it used, without authorisation, for another (89%). Similar worries appeared if a business different from the one originally dealt with obtains personal information (89%), if a customer was asked for information which didn't seem relevant for a particular transaction (85%), and if businesses monitored activity on the Internet without an individual's knowledge (85%).<sup>34</sup>

Although none of these reports specifically discussed the census, it seems evident that the general public in Australia and New Zealand is somewhat worried – though perhaps not particularly well informed – about privacy and the unauthorised use of personal information. This feeling has perhaps been heightened by the widespread use of computers in everyday life and the emergence of software applications such as 'spiders' which 'crawl' the Internet looking for email addresses which then receive spam mail, or are targeted for frauds of various kinds. It does seem likely, therefore, that despite the statistically positive response to the Time Capsule initiative, the retention and eventual release of name-identified census records will have to be approached sensitively.



## Concerns and change over time

This article has attempted to identify some of the parties to the debate around retention of name-identified census records (as against the retention of information derived from those records), and to explore some of the concerns which have been identified as affecting that debate, especially attitudes to personal privacy. Yet even in the most sensitive areas, attitudes can change over time, sometimes in radical and unexpected ways. A case in point is the reaction of Australian individuals discovering they descended from convict ancestors.

Jenny Gregory describes the attitude prevailing throughout much of the nineteenth and the first part of the twentieth centuries:

Out of sight, out of mind. Horrors will disappear if we ignore them. And so Australians hid their convict ancestry – it was the way they coped with the memories and the shame of the flogging triangle and the lash. A classic example of suppression of convict memories occurred in Western Australia in 1934, when members of an historical society suppressed letters, discovered in the wall of the old Toodyay Gaol, to a convict from his wife in England. Their argument was that Western Australia ‘was founded as a free colony by gentlefolk; the convicts came later and unwanted, and should not be associated with it’.<sup>35</sup>

Yet an article which was published in 1997 shows a very different attitude from that of 1934:

It is a long time since finding a convict ancestor was a cause for shame. Now it is more often a cachet, and it has the advantage of opening up access to the most detailed records that are available on any migrants to Australia. Not only is basic information readily available, there are details of the trial and sentencing ...<sup>36</sup>

Indeed, a website entitled *Convicts in Australia: tracing your convict ancestors* states in the first sentence on its homepage: ‘Most family historians in Australia regard a convict in their ancestry as enormously desirable’.<sup>37</sup> Anyone with this viewpoint would clearly look upon the discovery of a cache of letters to the said ancestor as highly desirable and a matter for celebration!

Under these circumstances, over-determining what use may be made of records in the future could become problematic. The *Australian Commonwealth Privacy Act 1988*, for example, states that:

Section 14 – Information Privacy Principles ... Principle 9 – Information to be used only for relevant purposes. A record-keeper who has possession or control of a record that contains personal information ... shall not use the information except for a purpose to which the information is relevant.<sup>38</sup>

Similarly, Principle 11 of the same Act (on disclosure of personal information) states that an agency possessing a record cannot disclose personal information without either the consent of the person concerned or in matters of urgency or under legal constraint. Sub-section 11(3) relates:

A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.<sup>39</sup>

Yet most records in archival institutions are now used for purposes other than that for which they were originally accumulated, and which might have been approved at that time. Archives New Zealand's indexes of assisted immigrants, for example, which were originally retained by the government to ensure repayment for the immigrants' subsidised passage, are now consulted by both genealogists and social historians seeking quite different information. It seems probable that the negotiation between concerns over privacy and the need for information is far from concluded, especially for name-identified census schedules and similarly sensitive records, but for others as well. In such a situation, archives and archivists can best act on behalf of a distant future by 'doing no harm' – taking practical steps (eg stipulating preservation formats, elaborating metadata) which will allow records to be carried forward through time until a final determination is reached.

## Conclusion

The discussion around the retention or otherwise of name-identified census records is a highly charged one. It impinges on areas such as concerns over privacy (a particularly contentious area in the current social and political climate) and the development of major government policies, as against views of history and sociology where examining the lives of 'ordinary' people can yield new insights into our understanding of the past – itself, in the post-colonial societies of Australia and New Zealand, debatable terrain. What is at stake is therefore felt to be, by many of those involved, of much greater import than the retention of any single group of records, however comprehensive. This article has not attempted to offer any resolution or solution to the problem – indeed, there may not be one. Rather, I have attempted to make some direct comparisons of the legal and cultural frameworks within which the debate is taking place in Australia and New Zealand, identify major actors and explore one of the thornier issues involved, in the hope of helping define the context within which the debate will, no doubt, continue.

## Endnotes

1 This description is derived from McKemmish, Piggott, Reed and Upward (eds), *Archives: Recordkeeping in Society* Wagga Wagga: Charles Sturt University, 2005, pp. 16-17.

2 *Ibid.*, p. 199.

3 Both provide links to Census information from their home pages, Australian Bureau of Statistics <<http://www.abs.gov.au>> and Statistics New Zealand <<http://www.stats.govt.nz>>.

4 Both are available in monolingual English and bilingual Maori/English versions.

5 Copy of individual New Zealand census form, retrieved August 3, 2006, from <<http://www.stats.govt.nz/NR/rdonlyres/D037BDBA-3875-4632-B33B-BB03BF1B9434/0/SampleEnglishIF.pdf>>.

6 Vince Galvin, General Manager, Integrated Data Collection, Statistics New Zealand, email of 1 September 2006 to the author.

7 Commonwealth of *Australia Census and Statistics Act 1905*. Retrieved June 1, 2006, from <<http://www.austlii.edu.au>> (website of the Australasian Legal Information Institute).

8 Commonwealth of Australia, *Census and Statistics Act 1905*.

9 Commonwealth of Australia, *Census and Statistics Act 1905*.

10 *New Zealand Archives Act 1957* (superseded), section 5. Retrieved May 20, 2006, from <<http://gpacts.knowledge-basket.co.nz/gpacts/reprint/text/1957/an/013.html>> (website of The Knowledge Basket: Legislation New Zealand).

11 *New Zealand Archives Act 1957*, section 3.

12 *New Zealand Statistics Act 1975*, Retrieved on June 4, 2006, <<http://www.legislation.govt.nz>>, (Public Access to Legislation Project).

13 *New Zealand Statistics Act 1975*.

14 *New Zealand Public Records Act 2005*. Retrieved June 2, 2006, from <<http://www.legislation.govt.nz>> (Public Access to Legislation Project).

15 *New Zealand Public Records Act 2005*.

16 *New Zealand Public Records Act 2005*.

17 I must thank Greg Goulding, Group Manager, Government Recordkeeping at Archives New Zealand, for clarifying the distinction between the sections for me in an email of August 2, 2006.

18 Mary Neazor, 'Appraisal of Census Forms. Appraisal report for Archives New Zealand', file reference 2003/2807, December 2003. (It should be noted, however, that the groupings suggested are far from exhaustive; and that, over time, even 'established' stakeholders may come to identify new interests, whether from old or new record types).

19 *op.cit.*, McKemish, Piggott, Reed and Upward, pp. 199-204 for discussion; see particularly Figure 8.2 on p. 203.

20 House of Representatives Standing Committee on Legal and Constitutional Affairs, 1998, 'Saving Our Census and Preserving Our History', sections 3.49-3.64. Retrieved May 20, 2006, from <<http://www.aph.gov.au/house/committee/laca/Inquiryincensus.htm>>. Although New Zealand's electoral districts are also based on population, its mixed-member proportional voting system means that political parties can place 'list' MPs in the single-chamber national Parliament without their having been directly elected.

21 House of Representatives Standing Committee on Legal and Constitutional Affairs, sections 3.69-3.80.

22 House of Representatives Standing Committee on Legal and Constitutional Affairs, sections 3.26-3.43 in particular.

23 Vince Galvin, General Manager, Integrated Data Collection, Statistics New Zealand, email of 1 September 2006 to the author.

24 House of Representatives Standing Committee on Legal and Constitutional Affairs, Chapter 5, 'Research value of name-identified census records', sets out the case for the retention of such records at length – although in many cases, such records would have to be used in combination with others to obtain the most complete or richest information.

- 25 Professor Donald DeBats, in *ibid*, section 5.41.
- 26 Roy Morgan Research, 2004, *Community Attitudes towards Privacy*, Report prepared for the Office of the Federal Privacy Commissioner, section 6.6. Retrieved May 25, 2006, from <<http://privacy.gov.au/publications/rcommunity/index.html>>.
- 27 Roy Morgan Research, 2001, *Privacy and the Community*, Report prepared for the Office of the Federal Privacy Commissioner, Executive Summary. Pages unnumbered but correspond to pp.6-7 of PDF version. Retrieved May 26, 2006, from <<http://privacy.gov.au/publications/rcommunity.pdf>>.
- 28 Roy Morgan Research, 2004, section 6.4.
- 29 Roy Morgan Research, 2004, Executive Summary, 'Interactions with Government Organisations'.
- 30 Roy Morgan Research, 2004, section 7.
- 31 Roy Morgan Research, 2001, section 4.5; Roy Morgan Research, 2004, section 5.
- 32 Roy Morgan Research, 2004, Executive Summary, 'Community Knowledge'.
- 33 UMR Research [for Office of the Privacy Commissioner, New Zealand]. *A Summary Report*, February 2006, p. 5. Retrieved September 1, 2006, from <<http://www.privacy.org.nz/filestore/docfiles/24153322.pdf>>.
- 34 *ibid.*, p. 4.
- 35 Jenny Gregory, 'Working Together: Shared Standards for the Future', April 1999, keynote address at 1999 State Heritage Convention Report, Midland, Western Australia, 28th to 30th April 1999. Retrieved June 2, 2006 from <<http://www.ntwa.com.au/heritage/convention99-together.shtml>>.
- 36 Patricia Clarke, 'Family History and Beyond'. Article originally published in *National Library of Australia News*, June 1997. Retrieved June 1, 2006, from <<http://www.nla.gov.au/events/private/clrknews.html>>.
- 37 Convicts in Australia. Retrieved June 3, 2006, from <<http://members.iinet.net.au/~perthdps/convicts/>>.
- 38 *Commonwealth of Australia Privacy Act 1988*, Section 14, Principle 9. Retrieved June 1, 2006, from <<http://www.austlii.edu.au>> (website of the Australasian Legal Information Institute). 'Personal information' is defined in Section 6 of the Act as 'information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

39 *ibid.*, Principle 11(3).

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