



**Australian  
Privacy  
Foundation**

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22 April 2012

Mr Brian Pink  
Australian Statistician

cc. Ms Denise Carlton, Assistant Statistician (A/g)

Dear Mr Pink

**Re: Compulsory Surveys**

I refer to our earlier letters of 3 and 13 February, replied to by Ms Carlton on 23 February, and to our subsequent letter of 9 March, replied to by Ms Carlton on 11 April.

Thank you for your agency's responses.

Unfortunately, the answers to many of the questions are not as clear as we had hoped.

In the attachment, we have:

- repeated APF's specific questions
- interpolated Ms Carlton's answers on behalf of ABS
- where necessary, indicated our interpretations of the ABS responses

Would you please advise within 7 days if you believe that any aspects of the attachment evidence misunderstanding on APF's part, or if you wish to provide further clarification.

Thank you for your consideration.

Yours sincerely

Roger Clarke  
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## APF's Questions of 9 March 2012, and ABS's Responses of 11 April 2012

### 1. The Scope of the Powers of Direction

- (a) It appears to the APF that s.5 of the Statistics Regulations empowers the ABS to demand a response by any Australian resident to any question that the ABS chooses to ask, under penalty of a criminal offence.

**ABS's Reply:**

*Not quite correct. See the Reply to 1(e) below.*

- (b) Further, it appears to the APF that all defences against such charges have been removed.

**ABS's Reply:**

*Correct, because it is "an offence of strict liability meaning that a person can be charged simply on the basis of their conduct, without the need to establish any intention".*

- (c) Further, it appears that ABS considers itself able to use these powers in relation to any survey that it conducts, for any client, and whether the activity is performed under a statutory power, or in accordance with an MoU or a contract.

**ABS's Reply:**

*Correct.*

- (d) Would you please advise whether you consider the interpretations in (a), (b) and (c) above to be reasonable.

**ABS's Reply:**

*Subject to the small qualification re (a), the interpretations are correct.*

- (e) If you believe any questions are precluded by s.5, would you please provide examples.

**ABS's Reply:**

*Although the scope of s.5 is extremely wide, there are a couple of categories of questions to which the ABS is not empowered to demand answers. These are specifically "questions about religion [and] ethical or political beliefs".*

### 2. Obligations under the FOI Laws

- (a) The APF contends that ABS has an obligation to provide far greater transparency than it currently does, and in particular to provide the public with convenient access to:

- (i) the s.5 authority
- (ii) all currently authoritative proposals that have been tabled in the Parliament

**ABS's Reply:**

*The obligations are satisfied by the ABS's Information Publication Scheme (IPS) plan, at <http://www.abs.gov.au/websitedbs/d3310114.nsf/home/information+publication+scheme>.*

*"[s.5] is already available from a few public sources, including the ComLaw website"*

**APF's Interpretation:**

*ABS fails to provide convenient access to the s.5 authority, and to ABS's interpretation of what questions that authority does and does not authorise ABS to demand answers to.*

*ABS fails to provide convenient access to all currently authoritative proposals that have been tabled in the Parliament.*

- (b) The APF specifically contends that reliance on the aph.gov.au web-site does not represent compliance with that obligation, because that site is not under the control of ABS, and is neither reliable nor convenient for the public.

**ABS's Reply:**

*"[ABS is] unable to provide ... direct links to [the relevant] documents"*

*"If you would like access to tabling documentation for specific surveys, we would be happy to provide them to you".*

*"I have now asked my team to establish a process for loading future documents to the ABS website".*

**APF's Interpretation:**

*ABS acknowledges that it is appropriate to provide the public with access to "the tabling documents for all ABS statistical collections".*

*However, ABS refuses to provide access to:*

- *the s.5 authority, and ABS's interpretation of what questions that authority does and does not authorise ABS to demand answers to*
- *the relevant tabling documents in respect of the current Surveys*

- (c) Using the ABS site, the APF has not been able to identify and acquire copies of the current tabled documents that relate to each of the compulsory surveys. We are accordingly requesting you to provide us with copies or direct URLs from which they can be downloaded.

**ABS's Reply:**

*"[ABS is] unable to provide ... direct links to [the relevant] documents"*

*"If you would like access to tabling documentation for specific surveys, we would be happy to provide them to you".*

**APF's Interpretation:**

*Despite an explicit request, ABS has still failed to provide copies or URLs.*

### **3. Obligations to perform PIAs**

- (a) The APF contends that all compulsory surveys are highly intrusive, into the privacy of personal behaviour, and into the privacy of personal data (and, in at least the case of the Health Survey, into the privacy of the physical person as well).

**ABS's Reply:** *None.*

- (b) The APF accordingly contends that It is untenable for the ABS to design such surveys without first conducting a PIA.

**ABS's Reply:**

*"Where appropriate, PIAs are undertaken"*

**APF's Interpretation:**

*ABS refuses to acknowledge its responsibility to conduct PIAs on all compulsory Surveys.*

### **4. The Serious Inadequacy of Public Consultation**

- (a) The APF contends that the obligation to conduct public consultation cannot be satisfied by focus groups, because they are a research tool, not a consultative tool.

**ABS's Reply:**

*None. ("The ABS engages in a range of research and testing for our new surveys")*

- (b) The APF further contends that the obligation to conduct public consultation cannot be satisfied through discussions with members of the public alone, unless members of the public are sufficiently well-informed about all aspects of the subject-matter.

**ABS's Reply:**

*"The ABS ... actively engages directly with the public on a range of issues and has greatly valued the contributions of participants. We have found that members of the public who respond to the consultative process are both intelligent and well-informed. Furthermore, they represent the very people who will be selected in ABS surveys to provide information. On this basis, I disagree with your assertions on this matter".*

- (c) The APF further contends that ABS surveys generally, but especially compulsory surveys, raise issues far too broad and deep to be appreciated by members of the public without the direct involvement of representative and advocacy organisations with specific expertise in civil liberties generally and privacy in particular.

**ABS's Reply:** None.

**APF's Interpretation:**

*ABS, beyond refusing to conduct PIAs for every compulsory Survey, is refusing to engage with civil society, whether within the context of a PIA or otherwise.*

- (d) Would you please advise whether you consider the interpretations in (a), (b) and (c) above to be reasonable.

**ABS's Reply:**

*ABS failed to respond to (a), explicitly disagrees with (b), and implicitly disagrees with (c).*

## **5. Serious Concerns About Collection Practices**

- (a) The APF has evidence that the practices of ABS's collectors are seriously privacy-invasive.

**ABS's Reply:**

*None. ("We are committed to investigating issues raised as a matter of priority. I encourage you to make any specific complaints directly to the Survey Participant Liaison Officer ...").*

- (b) It would appear that some of the problems are arising from errors made by collectors (indicating inadequate training), and others because of the instructions provided by ABS.

**ABS's Reply:** None.

- (c) The APF accordingly contends that a Privacy Impact Review is essential and urgent, into all aspects of the ABS's compulsory surveys, and particularly the collection practices.

**ABS's Reply:**

*None.*

**APF's Interpretation:**

*Because ABS refuses to accept that it must conduct a PIA on each compulsory Survey prior to implementation (see 3(b) above), and has failed to respond to this point, it is reasonable to infer that ABS also refuses to conduct a Privacy Impact Review on the current Surveys.*

- (d) The APF further contends that the Privacy Impact Review needs to involve public consultation as discussed immediately above.

**ABS's Reply:**

*None.*

**APF's Interpretation:**

*Because ABS refuses to recognise the need to engage with civil society in the context of PIAs (see 4(c) above), and has failed to respond to this point, it is reasonable to infer that ABS also refuses to engage with civil society in relation to Review of the current Surveys.*