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AUSTRALIAN ELECTORAL COMMISSION
MINISTERIAL BRIEF

Special Minister of State

18 July 2012

AEC: Representations by the Member for Fowler relating to Mr Tony Fitzgibbon and Data Zoo Pty Limited – Access to the Commonwealth electoral roll for identity verification

Timing: Urgent as requested by your office.

Recommendation:

That you **note** the contents of this Brief.

Key Points:

The *Commonwealth Electoral Act 1918* (Electoral Act) was amended by the Howard Government to allow for a range of businesses involved in financial reporting matters to access the Commonwealth electoral roll for verification of identity purposes under the *Financial Transactions Reports Act 1988* (FTR Act) and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). Section 90B of the Electoral Act was amended to require the Australian Electoral Commission (AEC) to provide prescribed persons and organisations with the publicly available roll information (name and address only) for the verification of identity purposes.

2. Both the FTR Act and the AML/CTF Act are administered by the Attorney-General's Department. Customer identification and verification of customer identity is one of the key requirements of Australia's anti-money laundering and counter terrorism financing legislative framework. However, despite the claims by Mr Fitzgibbon, the AEC has been provided with no information from the Attorney-General's Department that there is any actual need for a further company to be involved in the verification of identity checks for financial institutions under either the FTR Act or the AML/CTF Act.

3. The list of the "prescribed person or organisation" under subsection 90B(4) to whom the AEC is authorised to release roll information is set out in regulation 7 of the Electoral and Referendum Regulations 1940 and includes the following six companies:

- Experian Asia Pacific Pty. Ltd.;
- Perceptive Communications Pty. Ltd. (trading as FCS OnLine);
- Veda Advantage Information Services and Solutions Limited;
- ACXION Australia Pty. Limited;
- The Global Data Company Pty. Ltd; and
- Betfair Limited.

4. The AEC is aware that several of the above companies have previously lobbied the government to obtain additional information from the Commonwealth electoral roll - in particular, sex and date of birth information.

5. The AEC understands that neither Senator Faulkner nor Senator Ludwig had previously agreed to such action. There are two reasons for this. First, the privacy issues raised in the Australian Law Reform Commission (ALRC) Report No. 108 entitled "For Your Information: Australian Privacy Law and Practice". Second, the concerns raised by the Australian National Audit Office (ANAO) in Performance Audit Report No. 28 2009-10.

6. Recommendations 16-3 and 16-4 of the ALRC Report No.108 seek the review of appropriate privacy protections for the roll and the development of protocols that address the collection, use, storage and disclosure of the rolls and questions whether "the use of the electoral roll by reporting entities for the purpose of identification is appropriate". The Government Response (dated October 2009) to the ALRC Report stated that there is a need to establish strong privacy protections for the personal information contained in the roll and that the "Government will consider the issues raised in this recommendation in its review of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*". The Attorney-General's Department has previously advised that it was scheduled to carry out a review of the AML/CTF Act in December 2013.

7. The ANAO Report on the 2007 election contained a recommendation that the AEC and the Office of the Privacy Commissioner "assess the extent to which broad use of electoral-roll information by non-government entities may be impacting on the willingness of Australians to enrol to vote".

8. The AEC is currently undertaking a range of work for mobilizing the franchise and attempting to identify and address issues that result in a disincentive to eligible Australians applying to be on the electoral Roll. The AEC remains concerned that adding additional companies to the list of third parties who are given access to the Commonwealth electoral roll for the purposes of identity verification under the FTR Act and the AML/CTF Act will have the potential to introduce additional disincentives to eligible persons complying with their obligations to enrol to vote, exacerbating the already evident trend of a declining participation rate and therefore increasing the task facing the AEC to introduce additional measures to redress this decline.

9. In the ALRC Report No.108, the ALRC also considered options to facilitate the electronic verification of identity under the AML/CTF Act. The options considered included access to date of birth on the electoral roll, access to the document verification scheme and access to credit reporting data.

10. Of the options considered, the ALRC recommended that, provided appropriate privacy protections were implemented, 'the use and disclosure of credit reporting information for electronic identity verification purposes to satisfy obligations under the [AML/CTF Act] should be authorised expressly under the AML/CTF Act' (Recommendation 57-4). The government agreed in principle to the recommendation and undertook a Privacy Impact Assessment (PIA) in October 2009 to investigate appropriate privacy protections.

11. On 11 November 2010 the Minister for Home Affairs and Justice, the Hon Brendan O'Connor MP, announced that the government would be releasing exposure draft legislation that introduces amendments to the AML/CTF Act and the Privacy Act 1988 to enable reporting entities to use credit reporting data to verify the identity of their customers.

12. The AML/CTF Act was amended in 2011 to alter the information sources that could be used by companies and entities to facilitate the electronic verification of identity. These amendments were contained in the *Combating the Financing of People Smuggling and Other Measures Act 2011* (Act No. 60 of 2011). The Government therefore agreed with the ALRC recommendations which led to the amendments to the AML/CTF Act so that reporting entities were able to use credit reporting data to verify the identity of their customers. These new provisions commenced on 28 June 2011 and were aimed to specifically reduce any use of the Commonwealth electoral roll for these purposes.

13. A further issue relates to exactly where Data Zoo Pty Limited will locate the "personal information" from the Commonwealth electoral roll if it was to be provided. The information currently provided by Mr Fitzgibbon indicates that he has two companies, one in Australia and one in New Zealand. The proposal refers to a business model which provides "a combined AML/CTF solution for Australia and New Zealand". The address provided by Mr Fitzgibbon for contact is located in Auckland New Zealand. This raises an issue of the possible application of the requirements contained in the Privacy Act which limit the transborder flow of "personal information". This limitation currently exists in National Privacy Principle (NPP) 9 and is also reflected in the new Australian Privacy Principles which are currently before the Parliament (see APP 8) which provides that:

"(1) Before an entity discloses personal information about an individual to a person (the **overseas recipient**):

- (a) who is not in Australia; and
- (b) who is not the entity or the individual;

the entity must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information".

Impact on the Budget:

14. Nil.

Consultation:

15. N/A.

4 [Redacted]

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Information Act 1982

4 [Redacted]

GARY GRAY

27/7/12

Released under the Freedom

REDACTION CODES

- 1 Personal Information (name) redacted.
- 2 Personal Information (date of birth) redacted.
- 3 Personal Information (photograph) redacted
- 4 Personal Information (facsimile of signature) redacted.
- 5 Personal Information (facsimile of manuscript initialling) redacted.
- 6 Personal Information (Individual's address) redacted.
- 7 Personal Information (individual's telephone number) redacted.
- 8 Personal Information (individual's opinion) redacted.
- 9 Personal Information (opinion about individual) redacted.
- 10 Personal Information (employment history) redacted.
- 11 Personal Information (qualifications) redacted.
- 12 Personal Information (health) redacted.
- 13 Business information (Bank Account details) redacted.
- 14 Business information (Billing Account details) redacted.
- 15 Legal Professional Communication redacted.
- 16 Deliberative material redacted.
- 17 Irrelevant material redacted.

Released under the Freedom of Information Act 1982