

EXPLANATORY STATEMENT

Statutory Rules 2004 No.

Issued by the authority of the Treasurer

Census and Statistics Act 1905

Statistics Amendment Determination 2004 (No. 1)

Section 13 of the *Census and Statistics Act 1905* (the Act) authorises the Minister to make Determinations providing for, and in relation to, the disclosure, with the approval in writing of the Statistician, of information included in a specified class of information furnished in pursuance of the Act. It is the responsibility of the Statistician to approve the disclosure of particular information. In doing so he is guided by an overriding concern to maintain the confidence and trust of the persons, businesses and organisations supplying information to the Australian Bureau of Statistics (ABS).

The purpose of this Determination is to amend the Statistics Determination to enable the Statistician to better meet the demand from users of statistical information whilst maintaining community confidence in the ability of the ABS to maintain confidentiality and respect for respondents' privacy. Section 13 of the Act specifically provides that identifiable information of a personal or domestic nature cannot be disclosed under authority of a determination.

Clause 6 of the Determination enables the Statistician to disclose a list of business names and addresses to a government department or authority, where the Statistician has been given a relevant undertaking by the receiving agency. The undertaking must state that the agency receiving the list will "use the list only for specified purposes which do not involve the enforcing of any obligation or liability applicable under any enactment" and the agency "will not release the list to another person or organisation". The undertaking may also impose any other conditions specified by the Statistician, which relate to the disclosure of the information.

The ABS releases lists in order to avoid duplication in establishing and maintaining registers of business and to encourage compatibility between statistics collected by the ABS and those of other government agencies, by providing a single source of statistical units with specified characteristics defined in accordance with standard classifications. Such releases may also result in a reduction in respondent load as a result of greater coordination in activity across government agencies.

At present the list may include the following information: the name of the business or organisation; the address of the business or organisation; the type of legal entity of the business or organisation; the type of activity or industry in which the business

or organisation is engaged; and an indicator of the size of the business or organisation.

The release of lists by the ABS is usually for the purpose of enabling other agencies to conduct their own surveys. Other agencies conduct these surveys where the focus of the survey is too limited or specialised to justify the ABS conducting the survey in accordance with its core responsibilities. As it is becoming increasingly common for surveys to be conducted by telephone interview, it would be useful if the ABS could include the telephone number of businesses and organisations as one of the specified items of information which can be disclosed under this clause. Accordingly the wording of Clause 6(2) is being amended to specifically provide for the inclusion of the telephone number of businesses and organisations in lists requested by agencies.

Clause 7 of the Determination enables the Statistician to release information in the form of unidentified individual statistical records which would otherwise be prohibited by subsection 19(1) of the Act. With all such releases, all identifying information such as name and address must be removed, the information which is released must not be likely to enable the identification of the particular person or organisation to which it relates and the applicant of each release must give an undertaking, before receiving the data, that the information will be used for statistical purposes only. The amendment will facilitate a better protected environment for the release of microdata.

The ABS practice in the release of unidentified unit records has been to reduce the number of items of information released, particularly items which significantly increase the risk of identification (eg geographic region) or which would facilitate matching to known administrative records (eg whether the person is in public housing), and to reduce the level of detail that is released by collapsing classifications (eg releasing broad age categories rather than single ages). These disclosure avoidance techniques have reduced the value of the unit data that is released to researchers for statistical analysis.

To address these concerns the Statistician has obtained legal advice confirming that the undertakings provided by applicants may be taken into account when determining whether a particular release of microdata meets the test imposed by the Act that the release is made in a manner that is not likely to enable the identification of the particular person or organisation to which it relates. The amendments to Clause 7 extend the range of persons who may be required to provide undertakings and allow the Statistician to take this enhanced protection into account when deciding what can be released, rather than having to rely only on the information content of the unidentified microdata. Any information released subject to these undertakings would be protected by Section 19, the secrecy provision of the Act, and a breach of such an undertaking would, therefore, be an indictable offence.

Currently, where information is disclosed to an organisation or official body, the Determination only requires that a relevant undertaking be provided by a responsible officer of the organisation or official body, or the responsible Minister of the official body. Disclosures contravening the undertaking by members of the

organisation or official body, other than the responsible officer or relevant Minister, are not caught by the sanction provided under the Act. With this amendment, the Statistician will be given the discretion to require each person within the organisation or official body who has access to the information to give a personal undertaking which will attract the sanction specified in the Act. The amendments will also provide for the Statistician, at his discretion, to impose a condition, that access to the information within organisations and official bodies can only be between individuals who have given an undertaking. Extending the sanction provided under the Act in this way will provide greater assurance that the terms and conditions of release are respected by all persons who have access to the data.

Microdata proposed for release under authority of this clause will continue to be subject to a range of statistical procedures designed to confidentialise the data and minimise the risk of identification of information relating to particular persons or organisations. The Statistician will also take these procedures into account when determining if particular sets of microdata can be released.

A mandatory condition included in undertakings given under Clause 7 is that "the information will not be disclosed to any other person or organisation" even though such other persons or organisations may have independently received the same information. This absolute prohibition on disclosure imposes a significant impediment to collaboration between researchers from separate institutions. The ABS recognises that there can be significant public benefit in collaboration between expert analysts and this amendment will provide for collaboration between nominated persons or organisations with the written approval of the Statistician, as long as both have provided a relevant undertaking.