

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 304

Subject - *Census and Statistics Act 1905*
Statistics Amendment Regulations 2010 (No. 1)

Section 27 of the *Census and Statistics Act 1905* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters and things which, by the Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 18(1) of the Act states that the Statistician, or an authorised officer may, at all reasonable times, enter any premises included in a prescribed class of premises for the purposes of supplying persons with forms, collecting forms that have been supplied to persons, and making inquiries for the purposes of the Act.

Subsection 18(2) of the Act states that premises means premises other than a dwelling-house (including a flat or home unit), or a part of any other premises that is separately occupied or used for the purposes of the residence or sleeping accommodation of a person or persons.

Paragraph 5A of the *Statistics Regulations* (the Principal Regulations) prescribe the classes of premises which Section 18 of the Act empowers the Statistician or an authorised officer to enter.

The Regulations will amend the Principal Regulations to address the increasing difficulties faced by ABS officers in gaining access to prescribed premises in order to collect statistical information, as authorised in its governing legislation.

The Regulations will also give effect to the existing right of access under the Act, by establishing a deterrent, in the form of penalties, to those residents and persons in charge of premises who may actively seek to prevent the ABS from gaining access to common areas of the premises.

The Principal Regulations will also be updated to conform with current drafting practice.

Details of the Amendment Regulations are set out in the [Attachment](#).

The Act specifies no conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Regulations will commence on the day after they are registered on the Federal Register of Legislative Instruments.

CONSULTATION

During the 2006 Census of Population and Housing, Census field staff attempted to visit every dwelling in Australia to ensure comprehensive coverage of the population. However, for a number of modern types of dwellings, such as secure apartments and dwellings in gated communities, Census collectors could not gain access to the front door of each dwelling without the assistance of the managing agent, body corporate or a resident. This was due to the high levels of security in these establishments. While many managing agents, bodies corporate and residents were willing to assist, some were reluctant to do so, and questioned their legal obligations. The ABS was unable to explicitly point to the legal obligations in its subordinate legislation, despite the Act providing for such authority. These amendments, and in particular the offences prescribed, provide this clarity.

Feedback from ABS interviewers conducting household surveys is consistent with that of Census collectors.

As explained earlier in this Explanatory Statement, it is expected that prosecutions under these offences would be rare, in keeping with current ABS policy, whereby any recommendations for prosecution under the new penalties in the amendment will generally be in those cases when an active refusal is likely to have an impact on a large number of dwellings in the area

STATISTICS AMENDMENT REGULATIONS 2010 (No. 1)

The main intent of the amendments to the Principal Regulations is to:

- a) Update the Principal Regulations to make them more precise about which areas of certain prescribed premises the Statistician or an authorised officer is empowered to enter. This is in recognition of the emergence of new dwelling types in Australia, such as secure apartment buildings and gated communities (see changes to Paragraph 5A in the Attachment).
- b) Give effect to the right to enter premises outlined in Section 18 of the Census and Statistics Act. Such effect will provide clarity and reassurance for ABS data collectors, respondents and persons in charge of prescribed premises about the rights of entry to prescribed premises that the ABS actually has, and about the legal obligations of residents and persons in charge of premises in assisting the ABS to gain entry (see additional Paragraph 5B in the Attachment).
- c) Provide a deterrent, in the form of penalties, to those residents and persons in charge of premises who may actively seek to prevent the ABS from gaining access to the premises it has a statutory right to enter in order to fulfil its legislated functions (see additional Paragraph 5B in the Attachment).

The need for these changes reflects the increasing difficulties faced by ABS officers in gaining access to prescribed premises, as authorised in its governing legislation, in order to collect statistical information (which is one of its core statutory functions). In particular, ABS field staff, such as Census collectors (in 2006) and interviewers involved in the ABS ongoing program of household surveys, need assistance from residents, the body corporate, or the managing agent in gaining access to the front door of some of the more modern types of dwellings, such as secure apartments and dwellings in gated communities. This is due to the high levels of security in these types of establishments.

While most managing agents, bodies corporate, security staff and residents are willing to assist, some are reluctant to do so, especially when the ABS cannot provide a direct statement about their obligations in this regard (often because they do not want to abrogate their clear responsibilities around building security). Because the numbers of these types of dwelling are increasing over time, and because they often contain large numbers of people in a local area, any refusals to assist with access can have a significant impact on the quality of the small area information produced in the Census. Further, for both the Census and ongoing household surveys, non-contact with a particular (and increasingly common) type of dwelling is likely to cause bias in ABS social statistics. As a result, the ABS is seeking to provide both field staff and the residents, agents and bodies corporate involved, with a clear position around the ABS statutory right to access premises and the obligations of responsible parties to assist the ABS in gaining this access.

The introduction of penalties is largely to give effect to the ABS's existing rights under Section 18 of the Act. These penalties would be used in a similar manner to those which exist under Section 14 of the Act which are associated with not providing information requested under sections 10(4) or 11(2) of the Act. These existing penalties are rarely enforced. Consistent with

its current policies, any recommendations by the ABS for prosecution under the new penalties proposed in this amendment will generally be in those cases when an active refusal to assist is likely to have an impact on a large number of dwellings in an area, and therefore on the quality of the resulting data for that area. This means that, in effect, it is likely that only bodies corporate or managing agents would ever incur a penalty as a result of this amendment.

However, given the increasing impact of this issue on its ability produce high quality social statistics, the ABS can't afford to not have residents (who are the most likely to be on site) share in the legal responsibility to assist the ABS with its statutory right to access premises for the purposes of the Act. Without their inclusion, it would not be possible to provide residents with a clear statement about their responsibilities under the Act. This is the primary intent of the amendment in relation to residents (i.e. not the prosecution of residents who may be reluctant to open a door or gate shared by many residents for a Census collector or ABS interviewer).

The ABS requires changes in the Principal Regulations to address the unique issues associated with these new types of dwellings, and believes that clarifying the legal obligations around access to premises in the Principal Regulations, combined with the introduction of penalties, will be a powerful deterrent to refusing assistance when it is requested. Decades of field experience by the ABS attests to this.

At the same time, the ABS will also continue to minimise the likelihood of penalties actually being incurred, through its longstanding policies and procedures aimed at gaining the willing cooperation of both respondents, and those legally responsible for access to prescribed premises. These include:

- media saturation around Census night, and the use of special field procedures for secure apartment buildings involving mail contact with the bodies corporate and managing agents prior to Census night for the Census of Population and Housing;
- the use of various combinations of approach letters, hand delivered call-back cards, reminders, the availability of a contact telephone number, and official photographic identification, for both the Census and the ABS ongoing household survey program; and
- the provision of information to respondents of all ABS collections about the use of the data and its importance to informed decision making in the community when they are approached to participate in a statistical collection.

DETAILS OF THE STATISTICS AMENDMENT REGULATIONS 2010 (No. 1)

Regulation 1 specifies the name of the Regulations, as the *Statistics Amendment Regulations 2010 (No. 1)*.

Regulation 2 provides that the Regulations will commence on the day after registration.

Regulation 3 provides the amendments to the *Statistics Regulations* as set out in Schedule 1.

Schedule 1

Item 1 (Regulation 1) in Schedule 1 changes the name of the Regulations to conform with current drafting practice. The Regulations would be called *Statistics Regulations 1983*.

Item 1 (Regulation 2) in Schedule 1 substitutes 'Interpretation' with 'Definitions' and add an definition of 'prescribed premises'.

Item 2 in Schedule 1 provides additional information that allows for access by the Statistician or an authorised officer to the foyer, any reception area, any corridor, and any other area that is generally open to the public of a hotel or motel.

Item 3 in Schedule 1 provides additional information that allows for access by the Statistician or an authorised officer to the common area of a building that contains flats or units that is generally open to the public.

Item 4 in Schedule 1 removes the full stop at the end of paragraph 5A (k), replacing it with a semi-colon, to allow for an additional premise to be specified.

Paragraph 5A(l) in item 5 in Schedule 1 additionally allows for access by the Statistician or an authorised officer to the common area generally open to residents of a housing development that is not open to the public.

Paragraph 5A(m) in item 5 in Schedule 1 additionally allows for access by the Statistician or an authorised officer to the land surrounding premises prescribed in paragraph 5A (a) to (l), to the extent that the land, in accordance with subsection 18(2) of the Act, is not separately occupied and not used for the purposes of the residence or sleeping accommodation of a person or persons.

Paragraph 5A(n) makes the same arrangement for the land surrounding a dwelling-house (including a flat or home unit).

Subregulation 5B(2) in item 5 (Failure to arrange for entry) creates an offence if a person described in subregulation 5B(1) fails to make arrangements that would allow an authorized officer to enter premises for the purpose of supplying persons with forms, collecting forms that have been supplied, or making inquiries for the purposes of the Act. The offence exists only if the person has been given reasonable notice that the authorized officer is to visit. The subregulation is based on the possibility that an authorized officer may be unable to exercise the statutory right of entry because of a gate or door that has been left locked and unattended, and may be unable to make contact with persons inside the premises to obtain assistance.

Subregulation 5B(3) in item 5 (Refusal of entry after request) creates an offence if a person described in subregulation 5B(1) does not allow an authorised officer to enter premises for the purposes of supplying persons with forms, collecting forms that have been supplied, or making inquiries for the purposes of the Act. The offence exists only if the person has been given reasonable notice that the authorized officer is to visit and the authorized officer has identified himself or herself as an authorized officer. The subregulation is based on the possibility that an authorized officer may be unable to exercise the statutory right of entry despite making contact with the relevant to obtain assistance.