

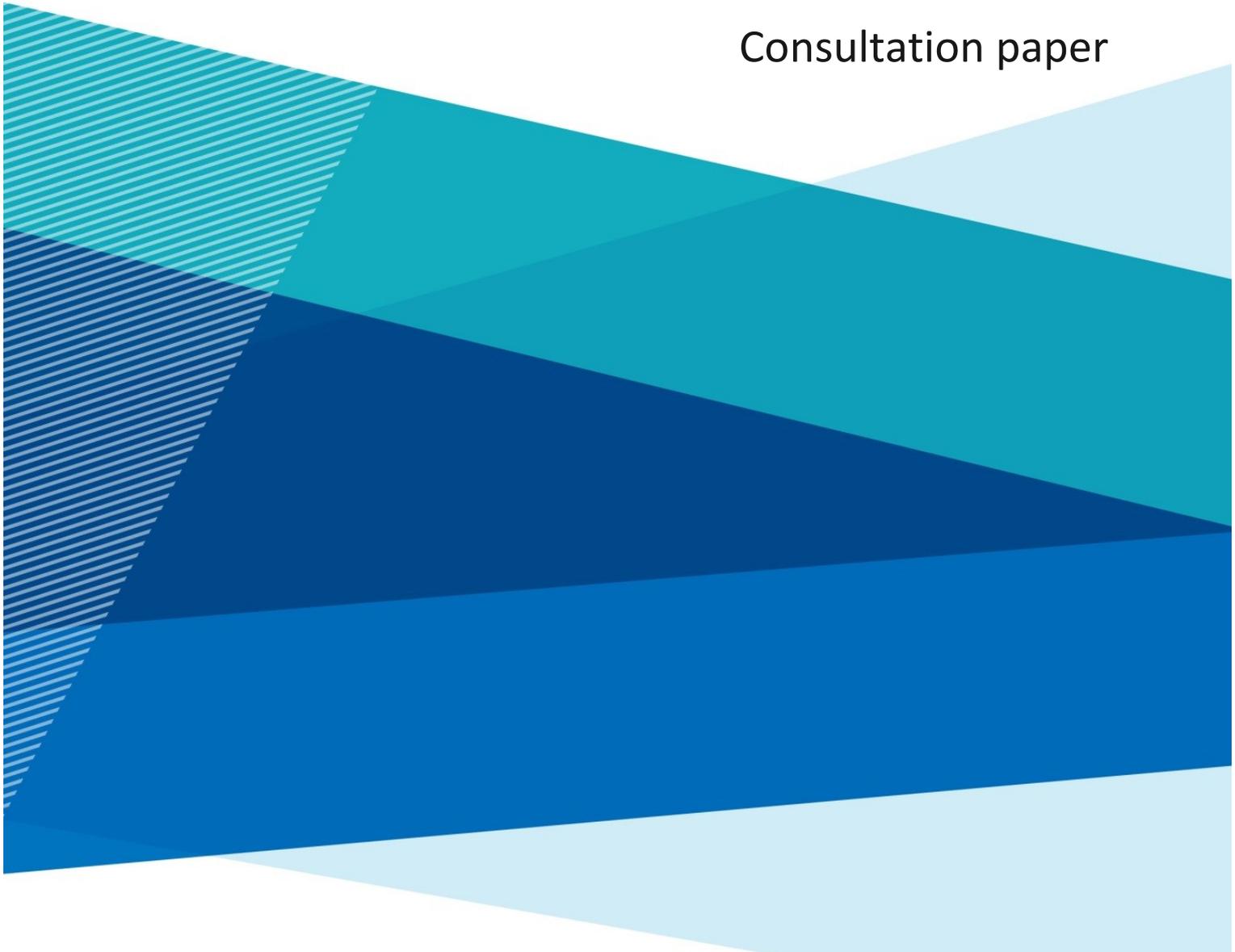


Australian Government
The Treasury

TSY/AU

Automatic sunseting of legislative instruments **Proposal to remake the Statistics Determination 1983**

Consultation paper



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Consultation Process

Request for feedback and comments

Interested parties are invited to lodge written submissions in response to this paper by 16 February 2017.

Submissions will be published on the Treasury website unless you clearly indicate that you would like all, or part of, your submission to not be published. Automatically generated confidentiality statements in emails do not suffice for this purpose. A request made under the *Freedom of Information Act 1982* for access to a submission will be determined in accordance with that Act.

Submissions should include the name of your organisation (or your name if the submission is made as an individual) and contact details for the submission, including an email address and contact telephone number where available. While submissions may be lodged electronically or by post, electronic lodgement is strongly preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

Closing date for submissions: 16 February 2018

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

1. Introduction

The *Statistics Determination 1983* (the Determination) is due to sunset on 1 October 2018 and needs to be remade so the Australian Bureau of Statistics (ABS) can continue to provide detailed statistical information that helps to inform policy making.

This consultation paper proposes a number of changes to improve access to data for policy makers, researchers and academics. This will benefit the public and business by, for example, facilitating better targeted government programs, services and policies.

The proposed changes to the Determination do not substantially change its intent or the strict controls that govern the specific circumstances under which information can be released either to the public or on a limited basis.

Treasury is seeking the community's views on proposed changes to the Determination outlined in this consultation paper.

2. Background

The *Census and Statistics Act 1905* (the Act) provides the Australian Statistician with the authority to collect, compile and publish statistical information. Section 13 of the Act provides for the Minister to make determinations allowing for the release, with the approval in writing of the Statistician, of certain information¹ collected under the Act. Section 13 contains a provision that information of a personal or domestic nature cannot be released or otherwise disclosed in accordance with a determination in a way that is likely to enable the identification of a person.

The Determination is made under Section 13 and complements the Act by setting out additional circumstances under which the ABS may release statistical information collected under that Act. The Determination sunsets on 1 October 2018.

The Determination sets out:

- what information can be released;
- whether the information can be released publicly, or released to select recipients only; and
- any conditions that apply to how recipients may use that information.

The Determination enables the ABS to release detailed statistical information to a wide range of users for analysis and to input into the decision-making processes of governments, businesses and individuals. In specific circumstances, the Determination allows for the public² or limited³ release of statistical information that may identify a business or organisation, but this is done within a set of

¹ Under Section 13 of the Act, determinations may provide for '...the disclosure, with the approval in writing of the Statistician, of information included in a specified class of information furnished in pursuance of this Act.'

² A public release of information is done without restriction and can be used, re-used and on-disclosed for any purpose. Public releases include ABS publications, infographics and supporting commentary.

³ A limited release of information comprises any release of statistical information that is to select recipients only and may include restrictions on how that information may be accessed, used, re-used or on-disclosed to additional parties. Limited releases may be for a finite time only and depending on the circumstances, recipients may be specified individuals or entities, or may be any person who satisfies an assessment or suitability check. Limited releases include lists of business characteristics and confidentialised unit record files.

controls that will not be changing as a part of the remake. For example, the current Determination enables the ABS to release, to certain government entities only, lists containing certain business characteristics, such as names and addresses, provided that those entities use that information for statistical purposes only and do not on-disclose this information.

The Determination is a necessary and useful part of the ABS' legislative framework and needs to be remade in a new instrument prior to its sunset on 1 October 2018.

This consultation paper sets out proposed changes to the Determination to ensure it remains fit-for-purpose and is aligned with the Government's Public Data Policy Statement to:

*"...optimise the use and reuse of public data; to release non sensitive data as open by default; and to collaborate with the private and research sectors to extend the value of public data for the benefits of the Australian public."*⁴

The proposed changes to the Determination do not substantially change the intent or design of the current Determination or the strict controls that govern the specific circumstances under which information can be released on a public or limited basis. The proposed changes provide further enabling authority for the ABS to increase the value of statistical outputs pertaining to businesses and organisations.

3. Scope of consultation

The scope of this consultation is the new Determination to replace the current instrument, which is due to sunset on 1 October 2018.

This consultation does not cover other matters or other related legislation, such as the collection of information under the Act or the release of information of a personal or domestic nature in a way that is likely to enable the identification of a person providing that information.

4. What does the ABS use the Determination for?

The ABS holds a wide range of information about Australian businesses and organisations. This information is collected directly through ABS surveys as well as from other government agencies (for example, the Australian Taxation Office).

This information can be released on a public or limited basis in accordance with the Determination to support decision making by governments at all levels. It enables them to undertake their own information and evaluation activities, improve the efficiency and targeting of government services, and make policy decisions based on evidence.

Academics also utilise this information to undertake research and provide policy advice. Similarly, businesses, other organisations, and the public can access information in accordance with the Determination.

⁴ Australian Government Public Data Policy Statement, 7 December 2015, (www.pmc.gov.au).

While the Act has controls in place to ensure that information is not released in a manner that is likely to enable the identification of a person, releasing statistical information that identifies a business or organisation is allowed by the current Determination in certain circumstances. For example, the ABS may release information about a business to limited recipients if the business has provided written consent and the recipients have signed a legal undertaking that dictates how they may use that information.

Outside these circumstances, the Act and the Determination restrict the ABS from releasing statistical outputs that may directly or indirectly identify a business or organisation.

Releasing statistics in a manner that is unlikely to enable identification has two aspects. The first is the manner in which the statistics are provided to a user and the second is whether identification is likely. The ABS uses a 'five safes' model for managing both aspects.

The 'five safes' model is adapted from international best practice and considers a range of factors including, but not limited to:

- the suitability, integrity and reputation of the user, whether they have completed training on security requirements, if they have signed a legally enforceable undertaking and what information the applicant can access outside of the ABS;
- whether the information will be used for an appropriate purpose, which must not include re-identification or compliance;
- whether the location or IT environment where the information will be accessed is safe from unauthorised access or disclosure, and has security measures to detect instances of inappropriate use;
- assessment of whether the information itself poses a disclosure risk, such as indirectly enabling the identification of an individual, or needs to be confidentialised prior to release; and
- assessment of whether the statistical results of the research will be released in a way that is not likely to enable identification or re-identification.

The first aspect, the manner in which the statistics are released, is managed by considering the project, person and settings by which the statistics are to be released. For example, is the user from a trusted organisation? The circumstance by which a user is accessing information is also something that is considered, including conflicts of interest. For example, a person may be from a trusted organisation but may be conducting research on behalf of a business or organisation that is attempting to exploit a competitor.

The second aspect, whether identification is likely or not, is managed by considering the actual data and outputs. For detailed unit record information, this includes considering whether the data to be released has been de-identified to manage risks of spontaneous recognition⁵. For aggregate outputs, consideration includes whether the information has been appropriately confidentialised and whether it can be re-identified if released. For example, are there sufficient numbers of businesses contributing to a statistic that the identity of a particular business cannot be deduced from that statistic?

The ABS has a strong reputation for employing best practice methods in order to ensure statistical outputs are released in a manner that is not likely to enable identification.

⁵ Spontaneous recognition is where a user inadvertently recognises a business or organisation in a dataset, without deliberately attempting to identify them.

5. Is the Determination still needed?

The Determination enables the ABS to produce detailed statistical outputs in response to demand from policy makers and the wider research community. The Determination is essential for the ABS to continue to deliver its existing suite of statistical information.

6. Why are changes proposed?

The Determination was last updated ten years ago. This is an opportunity to ensure that the information that the ABS is authorised to release, the level of detail, and who that information can be released to, keeps pace with community and government expectations.

The new Determination will be drafted in accordance with contemporary drafting principles. These principles will ensure definitions and concepts are consistent with other relevant legislation and any outdated prescription is removed.

The proposed changes which are being put forward will modernise the Determination and provide a more flexible scheme under which the ABS can release, on a public or limited basis, business information in sufficient detail to meet the analysis and decision making needs of governments, businesses and other stakeholders.

The proposed changes are underpinned by a policy position that the release of information about businesses and organisations should not be likely to adversely impact on their operations and are balanced against the desire of business and organisations to protect commercially sensitive business information. For example, the new Determination could provide the ABS with greater flexibility to publicly release information that might identify a business where that information is already publicly available. This could include, for example, published information identifying charities, which is similar to information published by the Australian Charities and Not-for-profits Commission.

The new Determination could also provide the ABS with the authority to release, on a limited basis, information about businesses and organisations where they could be identified but the users of the information are restricted in how they may access and use that information. This will enable users of statistics to access and analyse a greater depth of business information under controlled conditions such that the commercially sensitive information of an identifiable business cannot be on-disclosed, or otherwise released into the public domain, by any user.

For example, approved users may be carrying out broader research in the ABS' secure environment that may indirectly identify commercially sensitive dealings of a business, but those users are legally prohibited from extracting or otherwise on-disclosing that information from that environment. The ABS has security measures in place to detect and prevent users from extracting or on-disclosing identifiable and commercially sensitive information from that environment.

The proposal to change the Determination will not alter the requirement under the Act that personal or domestic information must not be released in a manner that is likely to enable the identification of a person.

Table 1 outlines the proposed changes to the current Determination. Each proposed change identifies the limitations in the ABS' current operating environment, followed by the details of the proposed change and who the change may impact.

All other elements of the proposed Determination will remain as per the current version, including that information of a commercially sensitive manner must not be released into the public domain if it identifies the business or organisation, and that information released under the Determination may not be used for law enforcement purposes without the business' consent.

Table 1: Proposed changes to the Determination

The proposed changes will modernise the Determination by enabling statistical information to be accessible in sufficient detail to meet the analysis and decision making needs of stakeholders. These changes have been carefully balanced with the expectations of businesses and organisations that the ABS will continue to protect their commercially sensitive information.

Minor modernisation change options	
Proposed change	<p>a)</p> <p>Release of information already available to the public (Clause 3)</p>
Who does the change affect?	Businesses and organisations
Intent of the change	<p>Current Determination:</p> <p>The current Determination restricts the ABS from releasing information already in the public domain, relating to businesses or organisations, unless it is represented as a statistical value or output.</p> <p>Proposed change:</p> <p>The proposal is to enable the ABS to use publicly available information to provide enhanced information and commentary to support ABS statistical products. For example, commentary that accompanies retail trade statistics could provide a detailed analysis on the impact of a new product release.</p> <p>The proposal will provide users with explicit references to drivers of statistical change, enhancing the value of statistics produced by the ABS and enabling more meaningful analysis by providing statistics that are relevant to the current market environment.</p> <p>There is no change proposed to the handling or release of personal information, this proposal relates to business information only.</p>
Who can the information be released to?	<p>Current Determination:</p> <p>Authority to release publicly.</p> <p>Proposed change:</p> <p>No change to who information can be released to.</p>

Proposed change	<p>b i)</p> <p>Release a greater range of business characteristics to a broader range of recipients in the form of a list of businesses (Clause 6)</p>
Who does the change affect?	Businesses, organisations and governments
Intent of the change	<p>Current Determination:</p> <p>The current Determination limits both the types of business characteristics⁶ that are able to be included in a list of businesses and the types of organisations who these lists can be released to. For example, the ABS is currently restricted from including the Australian Business Number (ABN) of a business in a list, even though this information is readily accessible, and can release the list to Departments or Authorities only.</p> <p>Proposed change:</p> <p>The proposal is to:</p> <ul style="list-style-type: none"> a) Replace the specified business characteristics with a flexible approach that enables the release of all business characteristics that are collected. b) Enable the release of lists of business characteristics to a broader group of users including the research sector. <p>The proposal to include additional characteristics will enable the ABS to respond to future user demand, reduce duplication of work regarding registers across governments and the research sector, and enable governments and the research sector to produce more timely and high quality outputs.</p> <p>There is no change proposed to the handling or release of personal information, this proposal relates to business information only.</p> <p>There is no change proposed to the allowable scope of use of a list once it has been provided, i.e. a list can only be used for statistical purposes and cannot be used for compliance or enforcement purposes.</p> <p>It will remain a criminal offence for a person to breach these conditions and may attract penalties including a fine, imprisonment, or both.</p>
Who can the information be released to?	<p>Current Determination:</p> <p>Authority to release to government departments and authorities only.</p> <p>Proposed change:</p> <p>Authority to also release on a limited basis to universities and other researchers who are approved by an ABS delegate.</p>

⁶ Characteristics include information that describes a business, such as its name, address, type of legal entity and its size as well as the activities and industries that the business engages in. An indicator of size is typically determined in the context of what the list is being used for. For example, if the list will be used by another department to survey business employment satisfaction, the indicator of size could be based on the number of employees in a business. If the list is being used to survey retailers, the indicator of size could be based on turnover.

Proposed change	b ii) Simplify the current notification process (Clause 6)
Who does the change affect?	Both Houses of Parliament
Intent of the change	<p>Current Determination:</p> <p>The current Determination requires the ABS to table, before both Houses of Parliament, a description of each list that is to be released. The tabling is only for the information of Parliament, cannot be disallowed by Parliament and does not require Parliament's approval.</p> <p>Proposed change:</p> <p>The proposal is to publish the description of each list (<u>not</u> the details in the list) directly on the ABS website only and will not impact on the transparency of lists that the ABS releases.</p> <p>There is no change proposed to the handling or release of personal information, this proposal relates to business information only.</p>
Who can the information be released to?	<p>Current Determination:</p> <p>Authority to release publicly.</p> <p>Proposed change:</p> <p>No change to who information can be released to.</p>

More significant change options

Proposed change	c) Release of information about government businesses (Clause 2)
Who does the change affect?	Government Business Enterprises (Commonwealth and state equivalents)
Intent of the change	<p>Current Determination:</p> <p>The current Determination does not enable the ABS to release identifiable information about Government Business Enterprises in the same manner as it releases identifiable information about other government entities. For example, the ABS is authorised to release information which may identify a government entity (such as the Department of Infrastructure and Regional Development), but not a Government Business Enterprise (such as the Australian Rail Track Corporation).</p> <p>Proposed change:</p> <p>The proposal is to enable the ABS to release identifiable information about Government Business Enterprises in the same manner as can be released about other government entities, unless a Government Business Enterprise objects to its information being released in such a manner.</p> <p>In effect, this change will result in a shift from a default position of non-disclosure unless the Government Business Enterprise consents to a default position of disclosure unless the Government Business Enterprise objects to a specific release of information.</p> <p>The proposal will allow users to improve their understanding of how these entities contribute to the Australian economy.</p> <p>There is no change proposed to the handling or release of personal information, this proposal relates to business information only.</p>
Who can the information be released to?	<p>Current Determination:</p> <p>Authority to release publicly.</p> <p>Proposed change:</p> <p>No change to who information can be released to.</p>

Proposed change	d i) Release of detailed business information with <u>consent</u> (Clause 5 (1)(b))
Who does the change affect?	Businesses, organisations and governments
Intent of the change	<p>Current Determination: The current Determination authorises the ABS to release identifying information about a business or organisation if that business or organisation has provided consent for it to do so, but for limited releases restricts the ABS to releasing this information to Departments or Authorities only.</p> <p>Proposed change: The proposal is to enable the ABS to release, on a limited basis, information that may identify a business or organisation to a broader range of users across governments, universities and the research sector, so long as that business or organisation has provided consent for that information to be released to that user.</p> <p>Similar to privacy requirements, prior to providing consent the ABS will inform businesses and organisations of what information is proposed to be shared, to whom, and for what purpose.</p> <p>There is no change proposed to the handling or release of personal information, this proposal relates to business information only.</p> <p>It will remain a criminal offence for a person to breach these conditions and may attract penalties including a fine, imprisonment, or both.</p>
Who can the information be released to?	<p>Current Determination: Authority to release publicly or on a limited basis to government departments and authorities, depending on the nature of the consent received.</p> <p>Proposed change: If consent has been provided, authority for the limited release of information to additional entities including universities or other researchers who are approved by an ABS delegate.</p>

Proposed change	d ii) Access to an increased range of de-identified ⁷ unit record level business information (Clause 7 (1) (b))
Who does the change affect?	Businesses, organisations and governments
Intent of the change	<p>Current Determination:</p> <p>The current Determination authorises the limited release of unit record business information, so long as it is not likely to enable the identification of an organisation. For example, this authorises the release of Confidentialised Unit Record Files (CURFs) to anyone who is approved to access this information. For business information, a CURF is often so confidentialised that the value of analysis based on the CURF is severely limited.</p> <p>Proposed change:</p> <p>The proposal is to enable the ABS to release, on a limited basis, more detailed unit record level information that is de-identified but may still enable the indirect identification of a business or organisation. This access would be through an ABS controlled environment only, where a user may conduct analyses but cannot extract statistics from the environment if that information directly or indirectly identifies a business or organisation.</p> <p>When compared to small and medium enterprises, large entities have a higher likelihood of being indirectly identified or spontaneously recognised due to their size, nature and higher levels of public awareness.</p> <p>Under the proposal, the ABS will continue to have the authority to impose a number of conditions (including limiting the purposes for which access is provided, the location where information may be accessed, and denying any on-disclosure of any identifying information) on users of this information.</p> <p>The proposal will improve the availability of detailed information for policy development and evaluation, statistical research purposes and decision making for all users including businesses. There is no change proposed to the handling or release of personal information, this proposal relates to business information only.</p> <p>It will remain a criminal offence for a person to breach these conditions and may attract penalties including a fine, imprisonment, or both.</p>
Who can the information be released to?	<p>Current Determination:</p> <p>Authority to release on a limited basis to any user if their application meets ABS legislative and policy controls.</p> <p>Users currently include businesses, all levels of government, universities and the research sector.</p> <p>Proposed change:</p> <p>No change to who information can be released to.</p>

⁷ De-identification means removing identifiers such as name, address and ABN.

7. Benefits of the proposed changes

The ABS envisages that enabling a wide range of users to access more detailed statistical information will provide ongoing benefits on all levels including through greater understanding of market barriers, more detailed analyses on markets, evidence based decision making and policies, informed delivery and evaluation of policies and research opportunities. Access to detailed statistical information in particular paints a clearer picture of where we have been, where we are, and where we are heading.

The proposed changes are designed to deliver net benefits to businesses and organisations. That is, the changes will not introduce any provisions that will adversely impact on or release commercially sensitive information in a manner that could be exploited by another party. The proposed changes will not impact on existing controls that protect businesses and organisations from having their information used for enforcement purposes (including enforcement of any obligation or liability under any law).

Direct and indirect benefits are expected across the Australian community, in particular:

- **Businesses** will benefit from the greater availability of information to inform planning, government services, and programs that affect their business.
- **The public** will benefit from more evidenced research, better targeting of programs and policies, and more efficient spending of public money.
- **Governments** will benefit from better information to make decisions, evaluate programs, inform infrastructure projects, target services, and direct industry assistance
- **Researchers** who are approved to access information will benefit from improved access to detailed statistical information for research, policy and other purposes.

Case Study: Existing solutions for releasing detailed statistical information are limited

During the Productivity Commission's Data Availability and Use inquiry, the submission from the Department of Infrastructure and Regional Development noted that for an ABS survey on road freight movements (*Road Freight Movements, Australia, 9223.0*), which was jointly funded by Australian, state and territory governments, issues arose in that '*ABS confidentiality legislation restricted the level of geographic detail available to clients to Statistical Area Level 3 (SA3), which was useful in informing large scale freight corridor issues, but did not have the resolution to inform local infrastructure issues.*'

To test the utility of emerging, granular data sources to develop statistics at a fine level of geography, subsequent to the release of the road freight movements data the ABS and the Bureau of Infrastructure, Transport and Regional Economics (BITRE) embarked on a joint study to collect telematics information for freight transport, including vehicle GPS information. This information was collected by the ABS with the consent of businesses to release, on a limited basis, potentially identifiable information to government. The results have generated a range of experimental freight performance measures, including identifying congested network locations for freight, average freight travel times and travel time reliability for key freight routes and utilisation of truck rest and service stops, with the potential to contribute to the National Freight Performance Framework.

The detailed statistical information released from the study can provide businesses with a range of potential benefits, including improvements to efficiency and productivity, and the easing of congestion through better informed infrastructure policy.

Under the current Determination, the experimental estimates were only able to be released on a limited

basis by the ABS following receipt of written consent of all data providers to make available to BITRE to a level of detail, including geographic detail, which met BITRE's information requirements. However, this process of seeking consent is very resource intensive and burdensome on providers, so is not a practical option for the ABS to apply to most studies.

Case Study: Denying detailed information inhibits research outcomes

Academic researchers have attempted to analyse business information to determine how difficulties in accessing financial and credit markets affects small and medium enterprises' (SME) decisions on employment practices, wages, entry and exit.

The study examined a range of business datasets held by the ABS and included information sourced from other government agencies.

Under current legislation, the researchers could only access the business information once the data had been sufficiently protected so that it was provided in a manner not likely to enable identification of a person, business or organisation. Practically this meant that the ABS withheld all information on a range of businesses, including those that:

- had less than \$75,000 in turnover;
- had more than 200 full time employees; or
- were in a number of sectors, including finance and insurance, safety, education and training, healthcare and social assistance

The impact of the ABS confidentialising the information was that the value of the business information diminished and, without feasible alternatives, limited the ability for the researchers to analyse and publish detailed insights into how certain factors affected SME's decision making.

The current Determination provides no practical solution to enabling this research to access more detailed statistical information.

Faced with situations such as this, researchers and other users will often look at business datasets from other countries, which can be accessed at a level of detail required to undertake a thorough, quality analysis. While researchers can infer similarities between Australian and foreign businesses and their operating environments, it is impossible to accurately capture the nature of the Australian economy and operating environment. As a result, research findings from such studies may have limited effectiveness when applied to Australian policy or business decisions.

Case Study: Benefits of releasing more business characteristics

The ABS maintains a register of all organisations which undertake economic activity in Australia, which is used primarily to facilitate most ABS economic collections. Information is stored on the ABS Business Register, and is sourced from the Australian Business Register (ABR), the Australian Taxation Office (ATO), and from other maintenance and updating activity, such as obtaining information directly from the business or organisation.

Under the current Determination, the ABS provides lists of business characteristics (comprising of certain prescribed characteristics such as name, address, phone number, type of activity and industry, type of legal entity, and an indicator of size) across governments for a range of statistical purposes. The most common use of these lists is for another agency to conduct their own surveys based on a current, informed sample of businesses that fall in scope of their study.

While the current Determination provides a platform for other agencies to build their own survey frames, the types of characteristics that can be provided are very limited and agencies will often match the business information with other available information sources in order to further refine their survey frame and minimise the burden placed on businesses in completing their surveys. For example, the current Determination does not permit a list to include an ABN, which is a public identifier for most businesses or organisations and is stored on the Australian Business Register along with additional information about that entity.

The ABS would be able to provide a more complete, effective and efficient service if the Determination provided a more flexible, enduring authority to release non-sensitive business characteristics, and to a wider range of users. Such a change would reduce duplication of work and improved targeting of surveys across governments and the research sector.

8. What will the proposed changes enable?

The proposed changes to the Determination will support greater access to information about businesses and organisations in a safe and responsive way, consistent with the Australian Government's Digital Transformation Agenda and public data policy, by enabling:

- a. greater flexibility to publish aggregate statistics⁸ in certain circumstances (for example, with the consent of the business or organisation that provided the information);
- b. improved capacity to release, either publicly or to limited recipients, information already in the public domain (for example, where it has already been published on a public website or is readily obtainable in a publicly available annual report); and
- c. enhanced access, in ABS controlled environments, to detailed information about businesses and organisations (for example, enabling academics access to a greater range of economic information for statistical and research purposes through an ABS controlled environment, but cannot extract, publish or otherwise on-disclose statistics from that environment if it is likely to directly or indirectly identify a business).

⁸ The statistical information in this circumstance is the combination of related categories to provide information at a broader level to that at which each detailed observation were taken (OECD Glossary of Statistical Terms, www.stats.oecd.org).

The proposed changes will provide net benefits to businesses without compromising the secrecy of their commercially sensitive information.

The proposed changes will not alter how the ABS manages information of a personal or domestic nature, in that it will continue to ensure that the ABS cannot release information of a personal or domestic nature in a manner that is likely to enable the identification of a person.

9. Comparable disclosure schemes abroad

Demand for greater access to business statistics is not unique to Australia and globally there are a number of statistical agencies that operate disclosure schemes involving detailed business information. Some schemes have been in effect for a number of years and have proven successful in delivering benefits to statistical users whilst continuing to protect business information.

Notable examples of disclosure schemes that are directly comparable with the proposed changes are listed below.

The United Kingdom's national statistical agency, the Office for National Statistics (ONS) administers an Approved Researcher Scheme⁹ which provides access, for statistical research purposes only, to statistical information that cannot be openly published without releasing identifiable information of a business. The scheme provides the ONS with the ability to permit researchers to access business records in full detail while inside a secure environment. The scheme sets out a range of conditions and considerations that a researcher must satisfy prior to their access request being approved. Outputs from the environment are reviewed to ensure that no identifiable information, including commercially sensitive information, is released publicly.

Statistics Canada is the national statistical agency of Canada and operates Research Data Centres¹⁰ across the country to provide a secure university setting for researchers with approved projects, and who are sworn in as 'deemed employees', to access detailed population and household survey information. Statistics Canada operates a similar setting, located at their headquarters, for researchers to access detailed business information and produce analytical results which are vetted by Statistics Canada staff to prevent identifiable information from leaving the secure environment or being released into the public domain.

Statistics New Zealand (Stats NZ) is New Zealand's national statistical agency and under their legislation they are authorised to release de-identified records to other government agencies. Stats NZ operates two large databases, an Integrated Data Infrastructure (IDI) containing microdata about people and households, and a Longitudinal Business Database (LBD) which complements the IDI with microdata about businesses. Stats NZ operates a number of secure environments through which the IDI and LBD can be accessed and researchers who have satisfied the relevant access principles¹¹ can access this information in accordance with established guidelines¹².

⁹ <https://www.ons.gov.uk/aboutus/whatwedo/statistics/requestingstatistics/approvedresearcherscheme>

¹⁰ <http://www.statcan.gc.ca/eng/rdc/index>

¹¹ http://www.stats.govt.nz/about_us/legisln-policies-protocols/microdata-access-protocols.aspx

¹² http://m.stats.govt.nz/about_us/legisln-policies-protocols/microdata-access-gdlns.aspx

10. Protecting commercially sensitive information

The ABS is a trusted provider of information for Australia, producing a large number of statistical products each year to inform Australia on the economy, society, environment, and the population. In order to collect the information that contributes to these high quality statistical products, the ABS relies upon the high level of trust placed in it by the Australian community, government and business sectors. The ABS is committed to considering the balance of user demand for statistical information with the expectations that information provided to the ABS will be treated in a responsible and safe manner.

The ABS relies on legislated and policy controls in order to protect commercially sensitive information when releasing information under the Determination. The proposed changes will not impact on these controls.

11. Legislative controls to protect information

The Determination authorises the ABS to release, with the written approval of the Statistician, identifiable business information only in specified situations, and can legally-bind recipients of that information to appropriate conditions on the use of that information. Failure to comply with legally-bound conditions is an offence under the Act and can attract criminal penalties of a fine, imprisonment, or both.

For example, the current Determination enables to the ABS to publish statistics that might identify a business, such as information relating to the agriculture or building and construction sectors. It also enables the ABS to release, to other government entities only, lists that identify a business or organisation provided that the recipients do not use this information for compliance or enforcement purposes.

Another control for commercially sensitive business information is that the authority in the Determination for the ABS to release statistics to any person, organisation or government is discretionary, not compulsory. The authority for the release of information under the Determination is vested with the Australian Statistician and approved delegates only. These officials will not approve the release of information if they believe that it is inappropriate to do so.

For example, if an organisation is seeking access to information and it is clear that the information may reveal commercially sensitive information of a competitor, the ABS delegate will refuse that access request.

12. ABS policies to control and protect information

The ABS uses a number of policies to establish a clear, consistent approach for ABS delegates to consider when assessing whether it is appropriate to release statistics under the Determination to any person, organisation or government.

As noted above, a primary control the ABS uses to protect information is the use of the ‘five safes’ model to assess information before it is released to any user. The ‘five safes’ model is adapted from international best practice and the ABS further supports this model with a number of ABS policies to ensure a consistent, rigorous approach is employed prior to releasing information.

Prior to being made available for users, the ABS’ Disclosure Review Board assesses limited releases of information to ensure that it satisfies ABS legislative and policy requirements. The Disclosure Review Board includes senior ABS officers with statistical, methodology, legislation and policy expertise.

For more detailed information, the users are only permitted access to information in an ABS controlled environment¹³. Access to the controlled environment requires users to sign a range of conditions, including a legally-binding undertaking, demonstrate their experience in analysing and handling statistical information, and attend training. The controlled environment has a number of safeguards in place that control against a user who breaches the conditions of use.

A key safeguard is the monitoring, logging and auditing of how a user is analysing information. This can detect when a user is analysing information that is not necessary for the purpose of their work, and when a user is attempting to isolate and deduce information about a particular business or organisation.

All information that a user requests to extract from this environment is reviewed and recorded by ABS staff in order to ensure that the statistics produced by the user is unlikely to identify a business or organisation – both at that point in time and into the future.

13. Protections for individuals and sole traders

Protecting the secrecy of individual persons, including sole traders, is a core value of the ABS and is required by the Act.

The Determination must remain consistent with the Act and cannot enable the release of personal or domestic information in a manner that is likely to enable identification of a person. In addition, the ABS adheres to the requirements of the *Privacy Act 1988* to protect personal information¹⁴.

The ABS has safeguards in place to ensure non-personal, non-domestic information is only provided for appropriate uses and in circumstances where it is not likely to lead to the identification of a particular person. In certain situations, the Determination may restrict the ABS from releasing the business dealings of a person. The proposed changes to the Determination will not change how the ABS manages these circumstances.

¹³ [http://www.abs.gov.au/websitedbs/D3310114.nsf/home/CURF:+About+the+ABS+Data+Laboratory+\(ABSDL\)](http://www.abs.gov.au/websitedbs/D3310114.nsf/home/CURF:+About+the+ABS+Data+Laboratory+(ABSDL))

¹⁴ Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not (*Privacy Act 1988*).