



Australian Government  
The Treasury

**TSY/AU**

# Proposal to remake the Statistics Determination 1983

Summary of consultation paper submissions

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## PROPOSAL TO REMAKE THE STATISTICS DETERMINATION 1983: SUMMARY OF CONSULTATION PAPER SUBMISSIONS

### 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.

The Determination is a key legislative instrument under the *Census and Statistics Act 1905* (the Act). It sets out the circumstances under which the ABS may release statistical information collected under the Act, including:

- what information can be released;
- who the information can be released to; and
- any conditions that apply to how recipients may use that information.

The Government is consulting on the changes to the Determination to ensure it remains fit-for-purpose, necessary and relevant. This paper summarises the consultation undertaken to date, responses to issues raised and next steps in the process to remake the Determination.

### Consultation to date

On 7 December 2017, Treasury released a [consultation paper](#) seeking the community's views on proposed changes to the Determination to modernise it and improve access to data for policy makers, researchers and academics.

The changes proposed in the consultation paper (referenced in the parenthesis with regard to the 2017 consultation paper and clauses in the current Determination respectively) relate to:

- the release of business related information already in the public domain (proposed change (a) – Clause 3);
- broadening the business characteristics contained in lists, and broadening who lists can be released to (proposed change (b-i) – Clause 6);
- simplifying the current notification process supporting the release of lists (proposed change (b-ii) – Clause 6);
- bringing reporting of Government Business Enterprises (GBEs) in line with other Government departments (proposed change (c) – Clause 2);
- increasing the range of users who business data can be released to with the consent of businesses (proposed change (d-i) – Clause 5(1)(b)); and
- increasing access to business data for trusted users through a controlled environment (proposed change (d-ii) – Clause 7(1)(b)).

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The consultation period closed on 16 February 2018.

In total, 18 submissions were received, including:

- eight from businesses and industry groups;
- six from government agencies and government organisations;
- two from GBEs; and
- two others.

One letter of support from a government agency was also received.

The submissions are now publicly available on the Treasury website.

Treasury and the ABS also held discussions with a number of stakeholders on issues raised in submissions.

### Summary of issues raised in submissions

Many of the submissions recognised the importance of maximising access to business data for trusted users through a controlled environment, while maintaining confidentiality of business data. Some submissions were strongly in favour of all of the proposed changes or suggested additional changes, while other submissions raised issues with one or more of the proposed changes.

The main issues raised in the submissions were:

- Consent from a business or organisation should be required for access to business data that is de-identified but could allow the indirect identification of that business or organisation. This requirement for consent should be codified in the Determination.
- Identifiable information about GBEs should not be made available like it is for other government organisations, because GBEs operate in a commercial environment.
- The proposed changes to handling business information would likely extend to the handling of personal information, such as for sole traders.
- The proposed changes do not go far enough to reduce instances of the suppression of import statistics.

A more detailed summary of issues raised for each proposed change, including how each issue is being addressed in the draft instrument, is provided the following section.

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### Responses to issues raised

Treasury and ABS have carefully considered all submissions and consultation discussions.

For each proposed change outlined in the December 2017 consultation paper, the following table provides a summary of the consultation feedback and issues raised, as well as responses/comments on the feedback.

Proposed change and Clause	Summary of feedback and issues raised	Response/comments on the feedback and issues raised
<b>a) Release of information already available to the public (Clause 3)</b>	There was general support for this change. Two submissions noted the additional commentary the ABS will be able to provide alongside its statistical releases will help users better understand the drivers of these statistics.	Incorporate this proposed change in the draft instrument for further consultation.
<b>b i) Release of a greater range of business characteristics to a broader range of recipients in the form of a list of businesses (Clause 6)</b>	There was general support for this change, especially if the information is already in the public domain. One submission sought clarity about the type of business information that may be released and suggested if it included the release of unique identifiers, then further detail and justification would be needed.	Incorporate this proposed change in the draft instrument for further consultation. The change will enable the ABS to respond to future user demand, reduce duplication of work regarding information about businesses across governments and the research sector, and enable governments and the research sector to produce more timely and higher quality outputs. Lists contain information about businesses and are typically used by government departments or organisations to conduct their own surveys. As is currently the case, the business characteristics that could appear in these lists will not be restricted to those already in the public domain. Business characteristics could include common identifiers, such as ABNs which are in the public domain, as well as broad characteristics, such as type of organisation or size of business. Lists may only be disclosed for statistical purposes, and not used for compliance or enforcement purposes. This will not change under this proposal. If a list is misused, strict penalties may apply.
<b>b ii) Simplify the current notification process (Clause 6)</b>	There was general support for this change. One submission considered in addition to releasing a description of lists on their website, the ABS should continue to be required to table these descriptions before Parliament.	Incorporate this proposed change in the draft instrument for further consultation. As stated in the December 2017 consultation paper, the proposed approach will bring the notification process in line with contemporary public notification practices. It will improve transparency while reducing the administrative burden on the ABS. The ABS will continue to make available on its website the descriptions of each list it has released under this provision.

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<p><b>c) Release of information about government businesses (Clause 2)</b></p>	<p>There was general support for this change. Some submissions noted this change would improve understanding of how GBEs contribute to the Australian economy and will enhance overall transparency.</p> <p>Two submissions did not support the change, noting GBEs should be distinguished from other government entities because GBEs operate in commercially-focused environments.</p>	<p>Incorporate this proposed change in the draft instrument for further consultation.</p> <p>A responsible officer of a GBE will be able to object to the disclosure of information on the basis it would likely result in that GBE's information being identified. The objection must occur prior to the release of the information, as objections made after information has been disclosed cannot be taken into account at the time the disclosure is made.</p> <p>This is consistent with current practice for information released under this clause.</p>
<p><b>d i) Release of detailed business information with consent (Clause 5 (1)(b))</b></p>	<p>There was general support for this change.</p> <p>One submission noted a concern that ABS could release data or information without businesses having the opportunity to object.</p>	<p>Incorporate this proposed change in the draft instrument for further consultation.</p> <p>Information can only be released under this clause if consent is given prior to its release.</p> <p>The Determination is made under the authority of the <i>Census and Statistics Act 1905</i> and is subject to the requirement of 13(3) wherein 'information of a personal or domestic nature relating to a person shall not be disclosed in accordance with a determination in a manner that is likely to enable the identification of that person'.</p>
<p><b>d ii) Access to an increased range of de-identified unit record level business information (Clause 7 (1)(b))</b></p>	<p>There was general support for this change.</p> <p>Two submissions recommended express consent should be required for release of information that has had direct identifiers removed but is reasonably identifiable or may enable indirect identification. The submissions further suggested that if the ABS is required to seek consent under Clause 5, then it should also seek consent under Clause 7.</p>	<p>Incorporate this proposed change in the draft instrument for further consultation.</p> <p>Under Clause 7, the ABS provides access to business data through a controlled environment. This provides safe, secure access to statistical records with direct identifiers removed to approved trusted users. Unidentified statistical records are not available to the general public and any statistics compiled are confidentialised before being released from the controlled environment or made available to the general public.</p> <p>The ABS uses a Five Safes Framework for access to unidentified data in the form of statistical records. More information about the Five Safes Framework will be included in the Explanatory Statement to improve understanding of the controls applied to data accessed in the controlled environment.</p> <p>There are strong legislative provisions to protect against deliberate and malicious re-identification of data accessed in this controlled environment.</p> <p>Introducing a requirement to seek consent from each potentially identifiable business whose data could be accessed by trusted users through a controlled environment would be impractical and would create a large burden to both government and businesses. If a large number of organisations or businesses do not provide consent, there is a risk the quality of the insights and research would be reduced due to the introduction of bias into the underlying statistics.</p> <p>Access to business data for trusted users through a controlled environment should not be confused with Clause 5 of the current Determination (Disclosure with Consent). Clause 5 of</p>

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		<p>the Determination sets out a framework to seek consent for the disclosure of information in the form of compiled statistics where an organisation can be identified in the statistics. Disclosure of such information identifying an organisation is rare, and only occurs when the Statistician is satisfied the information is needed to inform a matter of significant public importance. In these circumstances, ABS considers it reasonable to seek consent for such a disclosure. This process of seeking consent for Clause 5 is codified in the current Determination, and will continue under the proposed draft Determination.</p>
<p><b>Other changes suggested in submissions</b></p>	<p>Six submissions suggested the Determination does not go far enough to reduce instances of the suppression of import statistics. Stakeholders proposed a number of recommendations to improve access to import data, which can be used by Australian manufacturers to make applications in anti-dumping cases.</p>	<p>As this change was not included in the set of proposed changes, it will not be incorporated in the revised instrument.</p> <p>Some of the stakeholder recommendations in the six submissions relate to ABS practices or other government processes, and so are outside the scope of the Determination.</p> <p>The ABS will continue to consider each release of statistical information on a case-by-case basis in line with relevant legislation, best practice and internal ABS policy.</p>

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### Draft Instrument

Treasury has released a draft instrument and Explanatory Statement for consultation, available on the Treasury website.

As noted above, the draft instrument incorporates all of the proposed policy changes, plus changes to modernise the Determination.

### Next steps

The consultation period on the draft instrument will run from Tuesday, 12 June 2018 to Friday, 6 July 2018. We welcome further feedback from stakeholders over this time.

Following the consultation period and any revisions to the draft instrument, the final instrument will be tabled to allow the remaking of the Determination before 1 October 2018.