

EXPOSURE DRAFT

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Part 1—Preliminaries

1 Name

This instrument is *Census and Statistics (Information Release and Access) Determination 2018*.

2 Commencement

This instrument commences on the day after this instrument is registered.

3 Authority

This instrument is made under section 13 of the *Census and Statistics Act 1905*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: The expression ‘Statistician’ is used throughout this instrument and is defined in section 3 of the Act.

In this instrument:

Act means the *Census and Statistics Act 1905*.

enactment means any of the following:

- (a) an Act of the Commonwealth, a State or Territory;
- (b) an Ordinance of a Territory;
- (c) a law (including rules, regulations or by-laws) made under any of the other enactments described in paragraphs (a) to (b).

official body means any of the following organisations:

- (a) a government entity within the meaning of section 41 of the *A New Tax System (Australian Business Number) Act 1999*; or
- (b) an organisation, or other body, established for a public purpose by, or under the provisions of, an enactment.

responsible officer means, in relation to an organisation, an officer of the organisation acting within the scope of authority exercisable by the officer, in accordance with arrangements approved by the organisation.

statistics means the results of compilation and analysis of information collected under the authority of the Act.

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Part 2—General rules applying to disclosures

6 Disclosure of information of a personal or domestic nature

Information that is of a personal or domestic nature relating to a person can only be disclosed under this Determination if the disclosure is done in a manner that is not likely to enable the identification of that person.

7 Statistician must approve disclosure of information

Information can only be disclosed under this Determination if the Statistician has approved the disclosure of the information in writing.

8 Consent must be given to the Statistician in writing

Consent that is given in accordance with a provision of this Determination is only valid if the consent has been given to the Statistician in writing.

9 Requirements for undertakings given to the Statistician

If a section of this Determination requires that an undertaking be given to the Statistician for a disclosure to be made, information can only be disclosed under that section if an undertaking has been given, in writing, by:

- (a) if the information is to be disclosed to an individual — the individual; and
- (b) if the information is to be disclosed to an organisation:
 - (i) a responsible officer of the organisation; and
 - (ii) if the Statistician considers it necessary in a particular case — each individual in the organisation who will have access to the information.

Note: It is an offence to fail to comply with an undertaking that is given in accordance with a provision of this Determination (see subsection 19(3) of the Act).

10 Information may be disclosed under any section

Subject to any requirements in this Part, information can be disclosed under any section of Part 3 of this Determination where the conditions in that section are met. This is the case irrespective of whether a condition for releasing the information under another section has not been met.

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Part 3—Disclosures

11 Disclosure of certain classes of statistics

- (1) Information in the form of statistics may be disclosed if it relates to:
 - (a) an official body;
 - (b) foreign trade, being statistics derived wholly or in part from customs or import documents;
 - (c) interstate trade, being statistics which are the result of compilation and analysis of information collected under a law of the State of Tasmania;
 - (d) building and construction, not being the costs or net returns of individual builders or contractors;
 - (e) agricultural, apicultural, poultry, dairying and pastoral activities not being the costs or net returns of individual operators.
- (2) Despite subsection (1), information cannot be disclosed under this section if, prior to the disclosure of information under this section:
 - (a) if the information relates to an individual — the individual;
 - (b) if the information relates to an organisation — a responsible officer of the organisation,has shown that the disclosure would be likely to enable the identification of that individual or organisation (whichever is applicable).

12 Disclosure of information already available to the public

Information relating to an organisation may be disclosed if the information has been published by, or is available to the public from, the organisation or any official body.

13 Disclosure with consent

- (1) Information relating to an individual or organisation may be:
 - (a) published or disseminated; or
 - (b) if the Statistician has been given an undertaking in relation to the information in accordance with subsection (4) — disclosed on a confidential basis,if consent to disclosure of the information has been given in accordance with subsection (2).
- (2) Consent is given in accordance with this subsection if the consent:
 - (a) has been given by:
 - (i) if the information relates to an individual — the individual; or
 - (ii) if the information relates to an organisation — a responsible officer of the organisation; and
 - (b) specifies each of the following:

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- (i) the type of information to be disclosed;
 - (ii) whether the information is to be published or disseminated or is to be disclosed on a confidential basis;
 - (iii) if the information is to be disclosed on a confidential basis — the name of the individual or organisation to which the information is to be disclosed and the purposes for which the information may be used;
 - (iv) whether the information may be disclosed on a continuing basis; and
 - (v) if the information is to be disclosed on a continuing basis — arrangements for renewal or cancellation of consent.
- (3) Despite consent being given in accordance with subsection (2), information to which that consent relates may not be disclosed if, in conjunction with other information released by the Statistician, the disclosure would be likely to enable the identification of a particular individual or organisation that has not also consented to the disclosure of information.
- (4) An undertaking is given in accordance with this subsection if the undertaking specifies that the individual or organisation (whichever is applicable) will:
- (a) use the information only for specified purposes; and
 - (b) not disclose the information in any form which, in conjunction with other information released by the individual or organisation, would be likely to enable the identification of the particular individual or organisation to which the information relates;
 - (c) comply with any other condition that, in the opinion of the Statistician, is reasonably necessary in a particular case.

Note: It is an offence to fail to comply with an undertaking that is given in accordance with a provision of this Determination (see subsection 19(3) of the Act).

14 Disclosure of lists of business characteristics

- (1) Information relating to the business characteristics of an individual or organisation may be disclosed in the form of lists if the Statistician has been given an undertaking that specifies that the individual or organisation (whichever is applicable) will:
- (a) use the list only for purposes specified in the undertaking which do not involve enforcing any obligation or liability applicable under any enactment; and
 - (b) comply with any other condition that, in the opinion of the Statistician, is reasonably necessary in a particular case; and
 - (c) will not, except for the purposes specified in the undertaking, release the list to:
 - (i) if the list is to be disclosed to an individual — another individual, or an organisation; or
 - (ii) if the list is to be disclosed to an organisation — an individual outside the organisation or another organisation.

Note: It is an offence to fail to comply with an undertaking that is given in accordance with a provision of this Determination (see subsection 19(3) of the Act).

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- (2) Where information is disclosed in accordance with this subsection (1), the Statistician must make a description of the information publicly available within 28 days of the disclosure.

15 Disclosure of unidentified information

- (1) Information in the form of individual statistical records may be disclosed if:
- (a) all direct identifiers, such as name and address, have been removed; and
 - (b) if the information relates to an individual — the information is disclosed in a manner that is not likely to enable the identification of the individual; and
 - (c) the Statistician has been given an undertaking in accordance with subsection (2).
- (2) An undertaking is given in accordance with this subsection if the undertaking specifies that use of the information is subject to the following conditions:
- (a) no attempt will be made to identify particular individuals or organisations to which the information relates;
 - (b) the information will be used only for statistical or research purposes;
 - (c) if the information is to be disclosed to an individual — the information will not be disclosed to another individual or an organisation without the approval in writing of the Statistician;
 - (d) if the information is to be disclosed to an organisation:
 - (i) the information will not be disclosed to an individual outside the organisation or another organisation without the written approval of the Statistician; and
 - (ii) if the Statistician considers it necessary in a particular case — the information will not be disclosed to an individual in the organisation who has not given an undertaking in accordance with this subsection;
 - (e) if the Statistician considers it necessary in a particular case — either or both of the following:
 - (i) the information, and any copies of it, will be either returned to the Statistician or destroyed as soon as the purposes for which it was disclosed have been achieved;
 - (ii) access by officers to information, documents or premises will be given as may be necessary for the purpose of conducting a compliance audit concerning observance of the conditions under which the information is disclosed;
 - (f) any other condition that, in the opinion of the Statistician, is reasonably necessary in a particular case.

Note: It is an offence to fail to comply with an undertaking that is given in accordance with a provision of this Determination (see subsection 19(3) of the Act).

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16 Disclosure of information to enable the Statistician to perform relevant functions

Information may be disclosed if the disclosure is to assist the Statistician to perform statistical functions and the Statistician has been given an undertaking in relation to the information that specifies that:

- (a) the information will be used only to assist the Statistician to perform the statistical functions as specified in the undertaking; and
- (b) if the information is to be disclosed to an organisation — the information will not be disclosed to another organisation or to an individual other than an individual in the organisation who has also given the Statistician an undertaking pursuant to this section; and
- (c) the individual or organisation (whichever is applicable) will comply with any other condition that, in the opinion of the Statistician, is reasonably necessary in a particular case.

Note: It is an offence to fail to comply with an undertaking that is given in accordance with a provision of this Determination (see subsection 19(3) of the Act).

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Schedule 1—Repeals

Statistics Determination 1983

1 The whole of the instrument

Repeal the instrument