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Ms Louise Lilley
Macroeconomic Modelling and Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Consultation on Census and Statistics (Information Release and Access) Determination 2018

Dear Ms Lilley

Thank you for the opportunity to provide a further submission on the remaking of the Statistics Determination as the *Census and Statistics (Information Release and Access) Determination 2018*.

The Business Council appreciates that many of our concerns raised in the last consultation process have been incorporated in the draft Determination.

However, one of our recommendations has not been taken up: that the Determination should require consent to be sought prior to allowing third parties access to or use of de-identified unit record level business data, where the data subject is reasonably identifiable.

We acknowledge the Australian Bureau of Statistics (ABS) already has strict protocols in place relating to access and use of such data. We also acknowledge that there may be administrative costs and impediments to obtaining consent for the data sets in question (although these costs may be mitigated if consent allows less intensive protocols around data use). However, we remain of the view that if it is accepted good practice to obtain consent for use of identified data, it is difficult to see why, in principle, identifiable data should be treated differently.

While our preference remains that permission should be sought by some means, if this is not adopted, we consider that the Determination should specify the requirement for protocols to be adhered to, to protect business data that is commercially sensitive.

Discussion

As stated in our initial submission in February 2018, we strongly support increasing the availability and use of data from the ABS. However, we cautioned that greater data sharing invariably increases the risk of breaching the commercial confidentiality of data, and hence additional controls are required.

It is imperative to ensure commercially confidential data is treated with probity, to ensure trust and confidence in the ABS' work amongst businesses who contribute to statistical datasets.

Specifically, we made three recommendations in relation to de-identified unit record level business data (under dii [clause 7(1)(b)]):

1. Access to this data should be subject to a business' express consent, if the business is identified or reasonably identifiable from the dataset. The requirement to seek express consent for releasing reasonably identifiable business information should be included in the Determination.
2. Government agencies should not be permitted to use the data for any purpose other than research and public policy development.
3. The ABS should take steps to ensure third parties who access identifiable data are sufficiently capable of reducing the risk of breach (including a sufficient level of cyber security readiness).

The ABS subsequently provided further information to the Business Council about penalties for government agencies that use data for enforcement or compliance purposes (recommendation 2) and controls to ensure cyber security readiness (recommendation 3). These recommendations are reflected in the ABS' intended approach.

The ABS has advised that express consent will be sought prior to releasing unit record level business information where the business is *identified*.

We remain of the view that the Determination should require that businesses' express consent should be sought, prior to the release of unit record level business information, if the business is *reasonably identifiable* (recommendation 1). This is for three reasons:

- **consistency with other datasets.** Express business consent is required for detailed business information covered under clause 5 of the Determination. At a principle level, identifiable business level data under clause 7 should be treated the same.
- **alignment with data management norms.** Consent has been recognised as the norm for data release (in the Productivity Commission's *Data Availability and Use* report and in the Treasury's *Consumer Data Right* booklet).
- **accountability and transparency.** It would be preferable to codify the requirement in the Determination, rather than leave to the judgement of ABS officers, to ensure consistency, accountability and transparency in the application of the requirement. Once consent has been given, the ABS can have more certainty and confidence in how the data should be used.

We are mindful of the potential administrative burden of gaining consent, given the nature of some data sets. To be clear, we would support the ABS managing consent in different, less onerous ways to streamline the process. For example, consent could be collected at the same time as the data and renewed at regular intervals (such as, every three years).

We also consider that, where consent is obtained, there would be scope for the ABS to apply less strict controls to accessing data in the controlled environment. Indeed, the data could be opened to a wider distribution group or range of uses, depending on the nature of the consent.

If the ABS remains of the view that identifiable unit record level business information is best protected through controls, rather than through seeking consent, then we consider that requirement should be specified in the Determination. This should be additional to the required aspects of an undertaking specified in clause 15(1)(c).

Thank you again for the opportunity to participate in the consultation process.

Further questions can be directed to myself, or Mr Josh Machin, Manager, Policy at (03) 8664 2601 or josh.machin@bca.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Lisa Gropp', with a horizontal line extending to the right and a small dot at the end.

Lisa Gropp
Chief Economist