

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister to the Treasurer, Parliamentary Secretary to the Treasurer

Census and Statistics Act 1905

Census and Statistics Regulation 2016

Section 27 of the *Census and Statistics Act 1905* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for prescribing penalties not exceeding \$500 for offences against the regulations.

The purpose of the *Census and Statistics Regulation 2016* (the Regulation) is to remake the *Statistics Regulations 1983* and to consolidate the content of the *Census and Statistics Regulation 2016* with the *Census and Statistics (Census) Regulation 2015*.

The Act authorises the Statistician to collect statistics and conduct the Census.

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively ‘sunset’ according to the timetable that is set out in the *Legislation Act 2003*. Legislative instruments made in the 1950s, such as the *Statistics Regulations 1983*, ‘sunset’ on 1 October 2016. When a legislative instrument sunsets, it is automatically repealed under section 50 of the *Legislation Act 2003*.

The Regulation remakes the *Statistics Regulations 1983*. No substantive changes have been made; its remaking has improved its readability and ensures that it reflects current drafting practices. The consolidation of the Regulation with the *Census and Statistics Regulation (Census) Regulation 2015* makes significant improvements to the existing provisions. Both Regulations are made under the Act. Consolidating the Regulations ensures that the Regulations pertaining to the Act are easier to navigate.

The Regulation:

- prescribes the engagement of persons to assist the Statistician;
- prescribes matters on which the Statistician can collect information;
- prescribes the classes of premises which the statistician can enter to collect information;
- prescribes the offences which can be committed if a person denies the Statistician, or authorised officer, entrance to a prescribed premises; and
- authorises the Statistician to issue evidentiary certificates.

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

The Act does not specify any conditions that need to be met before the power to make the Regulation may be exercised.

An exposure draft of the Regulation and an accompanying Explanatory Statement were released for public consultation between 8 March 2016 and 30 March 2016. As a result of feedback from the Commonwealth Attorney General's Department minor changes were made to section 16.

The Regulation is an instrument for the purposes of the *Legislation Act 2003*.

The Regulation commences on 1 October 2016.

Details of the Census and Statistics Regulation 2016

Part 1 - Preliminary

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Census and Statistics Regulation 2016*.

Section 2 - Commencement

This section provides that the Regulation commences on 1 October 2016.

Section 3 – Authority

This section prescribes that the Regulation is made under the *Census and Statistics Act 1905*.

Section 4 – Schedules

This section provides that 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.

Section 5 – Definitions

This section defines certain terms for the purposes of the Regulation.

The definitions were previously prescribed in regulation 2 of the *Statistics Regulations 1983* and section 5 of the *Census and Statistics (Census) Regulation 2015*. No changes have been made to the definitions that were previously prescribed.

Section 6 - Extension of the Act to external Territories

The Act extends to such external territories of Australia as are prescribed. The Regulation prescribes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands as external territories to which the Act applies.

Christmas Island, the territory of Cocos (Keeling) islands and Norfolk Island were previously prescribed in section 6 of the *Census and Statistics (Census) Regulation 2015*.

Section 7 – Engagement of persons to assist the Statistician

This section prescribes that the Statistician can engage persons, and subsequently allocate duties, that will assist them in fulfilling the functions of a Statistician. This engagement must be done in accordance with section 3 of the Act and subsection

16(2) of the *Australian Bureau of Statistics Act 1975*. For the purposes of the Act and the Regulation they will be referred to as an officer.

The engagement of persons to assist the Statistician was previously prescribed in regulation 3 of the *Statistics Regulations 1983*. No changes have been made to this process. Minor updates have been made to reflect current drafting practices.

Section 8 – Undertaking of fidelity and secrecy form

This section prescribes that any officer who is executing any power or duty conferred or imposed upon them by the Act, or the Regulation, shall be required to sign an undertaking of fidelity and secrecy. The form can be found in Schedule 1 to the Regulation.

The form of undertaking was previously prescribed in regulation 4 of the *Statistics Regulations 1983*. Minor updates have been made to reflect current drafting practices.

Part 2 – The Census

Section 9 – Statistics information for the Census - persons

This section prescribes the matters in relation to which the Statistician, or authorised officer, may collect statistical information with regards to persons.

These matters were previously prescribed in section 7 of the *Census and Statistics (Census) Regulation 2015*. Minor changes have been made to reflect current drafting practices and improve readability.

Section 10 – Statistical information for the Census – household accommodated on the Census night in a private dwelling

This section prescribes the matters in relation to which the Statistician, or authorised officer, may collect statistical information with regards to a household accommodated on the Census night in a private dwelling.

These matters were previously prescribed in section 8 of the *Census and Statistics (Census) Regulation 2015*. Minor changes have been made to reflect current drafting practices and improve readability.

Section 11 – Statistical information for the Census – private dwelling

This section prescribes the matters in relation to which the Statistician, or authorised officer, may collect statistical information with regards to a private dwelling.

These matters were previously prescribed in section 9 of the *Census and Statistics (Census) Regulation 2015*. Minor changes have been made to reflect current drafting practices and improve readability.

Section 12 – Statistical information for the Census – dwelling other than a private dwelling

This section prescribes the matters in relation to which the Statistician, or authorised officer, may collect statistical information with regards to a dwelling other than a private dwelling

These matters were previously prescribed in section 10 of the *Census and Statistics (Census) Regulation 2015*. Minor changes have been made to reflect current drafting practices and improve readability.

Part 3 – Statistics

Section 13 – Statistical information that may be collected for publication

This section prescribes the matters in relation to which the Statistician may collect statistical information for publication.

The matters were previously prescribed in regulation 5 of the *Statistics Regulations 1983*. Minor changes have been made to reflect current drafting practices and improve readability.

Part 4 – Administration

Section 14 – Powers of Entry - prescribed clauses of premises

This section prescribes the classes of premises which the Statistician, and authorised officers, can enter.

The classes of premises were previously prescribed in regulation 5A of the *Statistics Regulations 1983*. Minor changes have been to reflect current drafting practices and improve readability.

Section 15 – Entry to prescribed premises

This section prescribes that a person commits an offence if, after receiving reasonable notice, the person:

- fails to arrange for a Statistician, or authorised officer, to enter a prescribed premise; or
- refuses the Statistician, or authorised officer, entry after they have issued a request.

This section is necessary and convenient for carrying out and giving effect to the Act. Section 15 of the Regulation is permitted by section 18 of the Act. Section 15 facilitates the right of entry by making it an offence for a person who received notice, to fail to make arrangements allowing the Statistician or authorised officer entry or, to refuse entry. It is merely ancillary to the powers of entry in section 18 of the Act as it does not expand the circumstances in which entry may be sought.

Section 27 of the Act allows for the Regulation to prescribe penalties not exceeding \$500 for any offences committed against the Regulations. Currently, each penalty unit amounts to \$180.¹ Section 4AB of the *Crimes Act 1914* (Cth) provides that a reference to a penalty amount in dollars is converted into penalty units at a rate of 1/100. Therefore, the reference in section 27 of the Act to a penalty of \$500 would

¹ Section 4AA *Crimes Act 1914* (Cth).

convert to five penalty units. This corresponds to the penalty imposed for the offences in section 5B of the Regulation.

The offences were previously prescribed in regulation 5B of the *Statistics Regulations 1983*. Minor changes have been to reflect current drafting practices and improve readability.

Section 16 – Evidentiary Certificates

This section prescribes that:

- The Statistician may issue a certificate which indicates that a document to which it is attached is a true copy of a notice as per sub-section 10(4) or 11(2) of the Act;
- the Statistician can issue a certificate which indicates that a document to which it is attached is a true copy of an undertaking as per subsection 13(2)(c); and
- in proceedings for an offence against the Act, a certificate given under this section is prima facie evidence of the facts specified in the certificate.

The issuing of evidentiary certificates is necessary and convenient for carrying out and giving effect to the Act.

The circumstances under which an evidentiary certificate could be issued were previously prescribed in regulation 5A of the *Statistics Regulations 1983*. Minor changes have been made to reflect current drafting practices and improve readability.

Part 5 – Transitional Matters

Section 17 – Things done under the *Statistics Regulations 1983*

This section prescribes that if something was done, for a particular purpose, under the *Statistics Regulations 1983* then it will be able to be done under this Regulation.

Schedule 1 – Undertaking of fidelity and secrecy

Schedule 1 contains the form of undertaking that must be completed in accordance with section 8 of the Regulation.

The form was previously prescribed in the Schedule to the *Statistics Regulations 1983*. Minor changes have been to reflect current drafting practices and improve readability.

Schedule 2 – Repeals

Schedule 2 prescribes that the *Census and Statistics (Census) Regulation 2015* and the *Statistics Regulations 1983* have been repealed.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Census and Statistics Regulation 2016

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This legislative instrument remakes the *Statistics Regulations 1983*. No substantive changes have been made; its remaking has improved its readability and ensures that it reflects current drafting practices. The consolidation of the Regulation with the *Census and Statistics Regulation (Census) Regulation 2015* makes significant improvements to the existing provisions. Both Regulations are made under the Act. Consolidating the Regulations ensures that the Regulations pertaining to the Act are easier to navigate.

The Regulation:

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Human rights implications

This legislative instrument engages and promotes the right to an adequate standard of living, including food, water and housing. This right is contained in Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*. Statistics and Census data, collected by the Statistician, are used by the Commonwealth and state and territory governments to make informed decisions on resource distribution including the implementation of housing, healthcare, education and infrastructure programs.

This legislative instrument engages, and is compatible with, the prohibition on interference with privacy. Article 17 of the *International Covenant on Civil and Political Rights* prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

This regulation, which dictates that it is an offence for a person to prevent the Statistician, or an authorised officer, from entering a premise that is prescribed in section 14, is not arbitrary. It is a reasonable response as it is in pursuit of a legitimate objective. An effective means of accessing premises is necessary for the Statistician, and authorised officers, to collect statistical information and census data. Before entering a prescribed premise the Statistician, or authorised officers, must provide reasonable notice. Further, they are only able to enter areas which facilitate their access to the entrance point of a private premise.

The inclusion of these penalties in the Regulation provides residents with a clear statement about their responsibilities under the Act. The government expects that penalties will only be imposed as a last resort in extreme circumstances. Therefore, the penalty is proportionate. It facilitates the Statistician's continued capacity to collect accurate data.

Consequently, there is a reasonable and lawful basis for this offence as it is in pursuit of the legitimate objective of collecting statistics and data for the purposes of the Census.

Conclusion

This Legislative Instrument is compatible with human rights.