

## EXPLANATORY STATEMENT

### **Issued by authority of the Minister for Housing and Assistant Treasurer**

#### *Census and Statistics Act 1905*

#### *Census and Statistics Amendment (Statistical Information) Regulations 2020*

The *Census and Statistics Act 1905* (the Act) governs the taking and administration of the Census, including the statistical information that is to be collected.

Section 27 of the Act provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 8 of the Act provides that regulations may prescribe the matters in relation to which the Statistician shall collect statistical information.

The purpose of the *Census and Statistics Amendment (Statistical Information) Regulations 2020* (the Regulations) is to amend the *Census and Statistics Regulation 2016* (the Census Regulations) to update the list of topics in relation to which the Statistician shall collect statistical information.

The next Census is scheduled for 2021. Some of the questions from the last Census are not as relevant to policy making and government planning today. Further, there are new topics which would provide helpful information to ensure informed decision making in Australia. Schedule 1 to the Regulations updates the list of topics for the next Census so that the statistics collected from the Census continue to provide useful information to assist with planning, policy-making and service delivery.

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

Public consultation on the proposed Regulations was undertaken from 13 December 2019 to 10 January 2020. Approximately 200 submissions were received, with no technical law design issues raised. Submissions made similar points to those made in previous consultation on potential Census topics undertaken by the ABS from 3 April to 30 June 2018 and generally support the proposed changes. Only a minority of submissions addressed the two new proposed Census topics of chronic illness and ADF service. Most of the submissions received were in support of an additional topic to collect information on sexual orientation, gender and intersex status.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the day after it was registered on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the *Census and Statistics Amendment (Statistical Information) Regulations 2020***

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Census and Statistics Amendment (Statistical Information) Regulations 2020*.

**Section 2 – Commencement**

This section provides that the instrument commences the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

The Regulations are made under the *Census and Statistics Act 1905*.

**Section 4 – Schedule**

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

**Schedule 1 – Amendments**

Items 1 and 2 insert two new topics into the list of topics in relation to which the Statistician shall collect statistical information.

Item 1 requires the Statistician to collect information about service in the Australian Defence Force from persons 15 years and older. Collection of this topic on the Census will allow for a better understanding of the circumstances of Australia's veteran community, and will facilitate targeted services and support related to this community's health, economic and social wellbeing.

Item 2 inserts a topic relating to health conditions diagnosed by a doctor or a nurse. This topic will be answered by all respondents and assist health service planning and service delivery at the local level.

Item 3 repeals the topic related to access to the internet at the dwelling from the list of topics. The growth in internet access outside of the home on mobile and other personal devices has rendered the current topic collecting household internet access as less relevant.

**Statement of Compatibility with Human Rights**

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

***Census and Statistics Amendment (Statistical Information) Regulations 2020***

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**

Schedule 1 to the *Census and Statistical Amendment (Statistical Information) Regulations 2020* (the Regulations) updates the list of Census topics in the *Census and Statistics Regulation 2016*. It inserts topics relating to diagnosed health conditions and service in the Australian Defence Force. It removes a topic relating to access to the internet at the dwelling.

**Human rights implications**

This legislative instrument engages two rights:

- the right to an adequate standard of living; and
- the prohibition on interference with privacy.

The 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 relating to diagnosed health conditions and service in the Australian Defence Force will be used by the Commonwealth and state and territory governments to make informed decisions on resource distribution including the implementation of housing and healthcare programs.

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

The Regulations engage a person's right to privacy as they require the Statistician to collect personal information about respondents' Australian Defence Force service and diagnosed health conditions.

The interference with the right to privacy caused by the Regulations is in pursuit of a legitimate objective. All levels of government in Australia need information about Australia's population to inform their decisions and policy making. Australia's population is ageing and health services in many states are coming under pressure. While extensive information is collected by the ABS' National Health Survey at the

national and broad state and territory levels, there is currently no information available to policy-makers on the prevalence of diagnosed health conditions for small population groups, and at small geographical areas.

Governments also require information about the number and circumstances of its veterans. A range of studies have shown that this group of people have distinct needs and may require special consideration or resources. The Department of Veterans' Affairs are aware of the population of former defence force personnel that engage its services but this only represents a subset of the population of former defence force personnel. The Department of Veterans' Affairs has undertaken extensive work to identify alternative sources of data but has found them to be inadequate.

Further, there is a rational connection between the Regulations and the legitimate objective of obtaining information to support Australia's future planning and policy-making needs. If the Government did not have access to the information collected on Census night, it would be unable to make informed decisions that balance Australia's future needs and ensure that our scarce resources are appropriately allocated.

Finally, the limitation on the right to privacy is reasonable, necessary and sufficiently precise. The Regulations do not impose obligations on persons to provide personal information. Such obligations associated with the collection of information from persons for the purposes of the Census are lawfully imposed by subsections 10(4) and 11(2) of the *Census and Statistics Act 1905*. Further, the two additional questions are broad, for example, Census respondents only need to identify whether they have diagnosed health conditions and they do not need to provide any specifics about their medical condition or treatment.

There are also safeguards in the *Census and Statistics Act 1905* to ensure that personal information is appropriately safeguarded, used and handled. For example, information given under the *Census and Statistics Act 1905* is protected by the secrecy provisions of section 19, which provides for offences for officers who disclose Census information to third parties.

Therefore the Regulations impose a permissible limitation on the protection against interference with the right to privacy.

## **Conclusion**

This legislative instrument is compatible with human rights.