

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Competition, Charities and Treasury

Census and Statistics Act 1905

Census and Statistics Amendment (Statistical Information) Regulations 2024

The *Census and Statistics Act 1905* (the Act) provides the framework for taking and administering the Census of Population and Housing (Census) and for the collection of statistical information by the Statistician.

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 in the Census.

The purpose of the *Census and Statistics Amendment (Statistical Information) Regulations 2024* (the Amendment 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 2026. Some of the topics from the last Census need to be amended to remain relevant to policy making and government planning today. Further, a new topic of 'sexual orientation and gender' needs to be included for data on the sexual orientation and gender of the Australian population to be collected. The inclusion of this topic would provide vital information to contribute to informed policy and planning, resource allocation and service delivery.

The proposed Amendment Regulations would amend wording in the Census to better accommodate persons who use sign language, and would remove a topic relating to the number of children ever born for females aged 15 years and older as there is not a strong data need for this topic to be collected in every Census. They would also insert a topic into the Census relating to sexual orientation and gender for all persons aged 16 years and older.

The inclusion of the topic of sexual orientation and gender as well as amendments to other topics in the Census Regulations is underpinned by extensive consultation, engagement, and testing. The Australian Bureau of Statistics (ABS) established the LGBTIQ+ Expert Advisory Committee for the 2026 Census to advise on question development for relevant topics. Testing has confirmed that households would be willing and able to provide information on the topic, and the inclusion of a 'Prefer not to answer' response option reduced concerns with providing responses on this topic.

The LGBTIQ+ Expert Advisory Committee for the 2026 Census is made up of members with experience across dimensions relevant to LGBTIQ+ people, including legal and human rights issues; health, wellbeing and family structures; research methodology into LGBTIQ+ populations; and diversity within the LGBTIQ+ community. Members come from peak bodies for LGBTIQ+ people, academic and research institutions, medical

institutions and Government agencies. There are also individual representatives who provide personal perspectives and lived experience.

The ABS also worked with the ABS Round Table for Aboriginal and Torres Strait Islander Statistics to inform advice to the Government on the 2026 Census. The Round Table on Aboriginal and Torres Strait Islander Statistics is an advisory group established to work with the ABS to improve data quality and engagement with Aboriginal and Torres Strait Islander peoples. Membership is made up of Aboriginal and Torres Strait Islander people with experience in research, policy, service provision and advocacy on issues important to Aboriginal and Torres Strait Islander Australians from urban, regional and remote communities.

The Act does not specify any conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

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

The Amendment Regulations commence on the day after it is registered on the Federal Register of Legislation.

The Amendment Regulations are subject to disallowance and sunset provisions pursuant to the *Legislation Act 2003*.

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

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

The Office of Impact Analysis (OIA) has been consulted (OIA ref: 24-08171) and agreed that an Impact Analysis is not required. The measure has no impact on compliance costs.

Details of the *Census and Statistics Amendment (Statistical Information) Regulations 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Census and Statistics Amendment (Statistical Information) Regulations 2024* (the Amendment Regulations).

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1 – Amendments

Item 1 amends the topic related to languages spoken at home to better accommodate persons who use sign language.

Item 2 and 3 amend the topic related to a person’s proficiency in English to better accommodate persons who use sign language.

Item 4 repeals the topic related to the number of children ever born for females who are not less than 15 years of age. There is not a strong data need for this topic to be collected in every Census. Removing this topic for the 2026 Census would manage the burden on households completing the Census.

Item 5 inserts a topic relating to sexual orientation and gender. This topic will be collected for all persons aged 16 years and older. The data collected would contribute to informed policy and planning, resource allocation and delivery of services to population groups that are more likely to experience poorer health and economic outcomes.

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 2024

This Census and Statistics Amendment (Statistical Information) Regulations 2024 (Amendment Regulations) 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

The Amendment Regulations 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. Some of the topics from the last Census of Population and Housing (the Census) require updating so that they remain relevant to policy making and government planning today. Further, the Amendment Regulations include a new topic of sexual orientation and gender. The inclusion of this topic would provide vital information to contribute to informed policy and planning, resource allocation, and service delivery.

Human rights implications

Schedule 1 of the Amendment Regulations engages the right to protection from unlawful or arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR) because it would empower the Australian Bureau of Statistics (ABS) to collect personal information about a person's sexual orientation and gender.

The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of 'reasonableness' to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

There is high public value in having quality data on sexual orientation and gender. All levels of government in Australia need information about Australia's population to inform their decisions and policy making. The data collected would contribute to informed policy and planning, resource allocation and delivery of services to communities who are more likely to experience poorer health and economic outcomes. While data on sexual orientation and gender is collected in some ABS household surveys, these surveys are unable to support understanding and inform policy-makers at detailed geographic and demographic levels.

The ABS undertook an independent Privacy Impact Assessment (PIA) for the 2026 Census that explored privacy issues related to the sensitive topics of sexual orientation and gender. Following external stakeholder consultation, the PIA recommended that the inclusion of

these topics be supported by strong community consultation and that a ‘Prefer not to answer’ response option be included. The ABS has accepted and is implementing these recommendations.

The inclusion of this topic is underpinned by extensive consultation, engagement and testing. The ABS established the LGBTIQ+ Expert Advisory Committee for the 2026 Census to advise on question development for relevant topics and worked with the ABS Round Table for Aboriginal and Torres Strait Islander Statistics throughout the feasibility assessment process. Testing has confirmed that households would be willing and able to provide information on the topic, and the inclusion of a ‘Prefer not to answer’ response option reduced concerns with providing responses on this topic.

Further, the ABS collects information in the Census for statistical activities. These activities include collection, compilation, analysis and publication of statistics about the Australian population and its dwellings. Census data will only be used to produce statistics or for research purposes. It will not be possible for any one person or household to be identified from the statistics or research. Information provided in the Census form is protected by the secrecy provisions of the *Census and Statistics Act 1905*. The ABS is required by law to protect the information and maintain its confidentiality.

Conclusion

The Legislative Instrument is compatible with human rights because to the extent that it may limit the human right to privacy, those limitations are reasonable, necessary and proportionate to achieving the outcome of obtaining data critical to delivering positive policy outcomes.