



21 February 2018

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

Consultation on the Statistics Determination 1983

Dear Ms Lilley

The Business Council welcomes the opportunity to respond to the Treasury's consultation paper *Proposal to remake the Statistics Determination 1983*.

The Business Council supports improving availability of government-held data, when done appropriately. Data should only be made more accessible if privacy, confidentiality and community trust are maintained.

The Australian Bureau of Statistics (ABS) currently has in place numerous controls, including requiring consent, to minimise the risk of breaching commercial confidentiality in the process of data sharing. The Business Council considers that some of the proposed changes in the new Statistics Determination will increase the risk of breach and will require commensurately stronger controls.

In particular, one of the proposed changes to the Statistics Determination (d ii) would allow increased access to de-identified unit record level business information to researchers and other government agencies. Although the information is de-identified, such information may still enable indirect identification of a business or organisation. Many Business Council members submit such information to the ABS through surveys like the Business Characteristics Survey and the Business Indicators Survey.

We appreciate the ABS has considered the sufficiency of controls for the new Statistics Determination, – however, the Business Council believes stronger controls are necessary than those proposed in the consultation paper. In particular, we consider that the requirement for consent that is applied to identified information in the Determination should also be applied to data that is deidentified but can reasonably be expected to be identifiable (as judged by the ABS and data subjects). There seems to be no reason why, in principle, they should be treated differently if the likely outcome — identification — is the same. Recommendations are outlined below.

- 1. The Statistics Determination should extend the requirement to seek a business' express consent to include data that is reasonably *identifiable* (in addition to the existing requirement relating to identified data), and should reserve the right for businesses to revoke their consent.**

The ABS has existing processes to seek a business's consent before releasing data where the company or its operations are identified or identifiable. Where a business does not consent, the ABS takes steps to remove the data in question or prevent the release of the dataset.

As identified by the Productivity Commission¹, one of the main mechanisms to minimise the risk of breaching privacy or confidentiality in data sharing is consent.

The current Statistics Determination requires the ABS to seek consent from a business prior to releasing data, where the business is *identified*.

The same regulatory requirements do not exist for data that can reasonably be expected to be *identifiable*. While we understand the ABS in practice would apply similar safeguards and protocols, as the proposed changes stand, these requirements would not be codified. Expanding access to identifiable data, without comparable protections codified in the Statistics Determination, could increase the risk of breaching confidentiality.

The Business Council would prefer to codify a requirement to seek business consent prior to making *identifiable* data available to third parties, in the Statistics Determination, rather than relying on practices and processes.

The data subject's consent should be sought prior to making identifiable data available. In line with current data protection norms, it should also allow for a business to revoke that consent at any time (to prevent continued availability of identifiable data).

2. Government agencies should not be permitted to use the data for any purpose other than research and public policy development.

The current Statistics Determination prevents other government agencies from using data for purposes other than the express purpose for which it was collected (in this case, research and public policy development).

The prohibition on using data for enforcement or compliance purposes must be maintained.

Government agencies should organise their activities (including potentially by instituting “ethical walls”) to ensure the personnel accessing data for research or public policy reasons are not also involved with compliance or enforcement activities.

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).

To date, the ABS has taken steps to minimise the risk of a breach of identifiable data:

- at the point of access (through providing access through a secure environment) and
- prior to the point of release (through vetting the outcomes of data access).

We also support the ABS' commitment to verify the purpose and funding source of research, prior to approving access.

Outside of these points in the process, however, there is some chance of third parties holding identifiable data in their own environments. Through the access agreements negotiated with third parties, the ABS should ensure third parties take steps to reduce the risk of inadvertent breaches. Third parties may need to take steps to improve their cyber security readiness.

¹ Productivity Commission, *Data Availability and Use*, March 2017.

As noted at the outset, the Business Council supports measures to improve the availability of data. Increasing access to ABS data by researchers and government agencies is a worthy objective.

We also strongly support making information from these datasets publicly available, where possible in aggregated and deidentified (and unidentifiable) formats, for example, employment by large businesses or information at the state or industry level. The creation of such datasets would greatly expand scope for research and analysis beyond academic and government organisations. We understand that the ABS is actively considering this option.

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, consisting of a series of loops and a long horizontal stroke at the end.

Lisa Gropp
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