



New South Wales  
Council for Civil Liberties

## **NSWCCL SUBMISSION**

### **THE TREASURY**

### **CENSUS AND STATISTICS AMENDMENT (STATISTICAL INFORMATION) REGULATIONS 2019**

**21 December 2019**

#### **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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# CENSUS AND STATISTICS AMENDMENT (STATISTICAL INFORMATION) REGULATIONS 2019

## Introduction

The New South Wales Council for Civil Liberties (NSWCCL) welcomes the opportunity to make submissions to Treasury concerning the *Census and Statistics Amendment (Statistical Information) Regulations 2019 (Regs)* amending the *Census and Statistics Regulation 2016*.

NSWCCL supports, in general, the updating of the list of topics for the collection of statistical information. NSWCCL does not support the collection of sensitive health information and the lengthy storage of any sensitive personal information by the Australian Bureau of Statistics (ABS).

### 1. Health Conditions

Item 2 of the Regs inserts a topic relating to health conditions diagnosed by a doctor or a nurse. This topic is required to be answered by all respondents and is intended to assist health service planning and delivery.

However, the inclusion of this topic will make it mandatory for respondents to reveal sensitive personal information about themselves. This is opposed by the NSWCCL, given the retention of that information by the ABS.

In 2016 the Australian government reinstated a plan to retain names and addresses from the census, a move which does not guarantee that future governments won't access sensitive personal information.<sup>1</sup> Information concerning a respondent's health information, as with other information collected by the Census since 2016, is retained for four years to provide longitudinal data to the ABS. The production of longitudinal data requires identification information to be retained so that each census return can be linked with the last one. It is antithetical to the way in which census data used to be collected, which had, as a strong ethical foundation, that identification information would be disassociated with data collected and destroyed immediately after collection had been verified.

One ABS strategy which was originally under consideration was that the longitudinal data collection would be limited to a relatively small sample (5%) of the population (randomly selected). This would limit the practical utility of the dataset to anyone who was interested in misusing it. However, the last census was on the basis that longitudinal data would be collected for 100% of the population. NSWCCL finds this unacceptable.

Before enabling any longitudinal data analysis, the ABS should conduct an adequate, independent, publicly available, Privacy Impact Statement (PIA).

The ABS claims that it will never release identifiable Census data and that names and addresses will be stored securely and separate from one another. However, there have been data breaches by the ABS in the past. Most recently, the 2016 online Census form was

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<sup>1</sup> Greber, Jacob. (March 2016) "ABS slammed for breach of trust over 'intrusive' 2016 Census data matching plan" AFR < <https://www.afr.com/policy/economy/abs-slammed-for-breach-of-trust-over-intrusive-2016-census-data-matching-plan-20160309-gnebcj> > accessed 22/12/19

subject to four Denial of Service attacks of varying nature & severity, bringing online census collection to a standstill.<sup>2</sup>

Unsurprisingly, breaches of this kind have the potential to undermine the trust of the public in ABS data collection and storage. Respondents may no longer wish to provide full and frank answers to highly detailed personal, religious and financial questions. Certainly, at the last Census, a campaign was waged to boycott the Census on privacy grounds.<sup>3</sup>

**Recommendation 1.**

NSWCCL opposes the inclusion of a topic about a respondent's health condition in the Census.

**Recommendation 2.**

NSWCCL recommends that if the topic about health information were to be included in the Census, it should, like religion, be an optional question.

**Recommendation 3.**

NSWCCL recommends that the ABS conduct, prior to the next census, a publicly available PIA which measures the impact of the collection of longitudinal data on respondents' privacy. The PIA should be scrutinised to ensure its adequacy and independence.

**Recommendation 4.**

NSWCCL recommends that, at the least, a PIA should be conducted before the inclusion of a mandatory question about sensitive health information in the Census.

## **2. Revision of Family Makeup**

The Census, currently makes provision for the recording of information by same sex couples. However, particularly since the updating of the *Marriage Act 1961*, the Census should ensure that information can be recorded for any mix of genders and intersex relationships that may make up a family. For privacy reasons, more fully set out in Point 1 of this submission, any questions relating to sexual orientation, gender identity and intersex status should be optional.

**Recommendation 5.**

NSWCCL recommends that the ABS ensures that respondents can choose, on an optional basis, any mix of genders and intersex relationships that may make up a family.

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<sup>2</sup> Killalea, D. (Aug 2016) "Census hacked: Website for Australian census 2016 attacked, ABS says" *Newscorp Australia* <<https://www.news.com.au/technology/online/hacking/census-hacked-website-for-australian-census-2016-attacked-abs-says/news-story/58667490f31100f64d68f1510d43c239>> accessed 22/12/19

<sup>3</sup> Farrell, P (July 2016) "Census 2016: Australians who don't complete form over privacy concerns face fines" *The Guardian* <<https://www.theguardian.com/technology/2016/jul/25/census-2016-australians-who-dont-complete-form-over-privacy-concerns-face-fines>> Accessed 22/12/19; Doherty, B (Aug 2016) "The Australian census: what you need to know about the national headcount" *The Guardian* <<https://www.theguardian.com/technology/2016/aug/08/the-census-what-you-need-to-know-about-the-national-headcount>> Accessed 22/12/19



### 3. Extension of Consultation Period

The consultation period for submissions on the Regs ends on 10 January 2020, a period of 4 weeks. This period of time represents a Christmas end-of-year vacuum when there is less opportunity to consult widely with the public, civil liberties organisations and community groups about the amendments and less media involvement in reporting those changes. The amendments in the Regs, whilst brief, are important.

#### **Recommendation 6**

NSWCCL recommends that the consultation period be extended to permit greater public consultation and awareness of the effects of the Regs.

This submission was prepared by Michelle Falstein on behalf of the New South Wales Council for Civil Liberties. We hope it is of assistance to Treasury.

Yours sincerely,



**Michelle Falstein**  
**Secretary**  
**NSW Council for Civil Liberties**

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