




FOR INFORMATION

FOI 3711
Document 1

MS24-900008

Title:	ABS Recommendation to Government on 2026 Census topics	
To:	The Hon Dr Andrew Leigh MP Assistant Minister for Competition, Charities and Treasury	
Cc:	The Treasurer, The Hon Dr Jim Chalmers MP Dr Steven Kennedy PSM, Secretary to the Treasury	
Recommendation:	1. That you note the recommended topic changes for the 2026 Census.	
	Noted <input checked="" type="checkbox"/>	Please Discuss <input type="checkbox"/>
Signature:	 The Hon Dr Andrew Leigh MP Assistant Minister for Competition, Charities and Treasury	20. 6. 2024 Date

Executive summary

- This brief outlines the ABS recommendation for changes to the topics collected in the 2026 Census of Population and Housing for Government decision.

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- The running of a five-yearly Census is required under the *Census and Statistics Act 1905*. The Census provides a snapshot of Australia and underpins critical decision making. It shows how our nation changes over time, helps estimate our population and informs critical decisions that guide our future.
- Before every Census, the ABS undertakes a review to inform a recommendation to the Government on the topics for the Census. The review includes extensive public consultation, stakeholder engagement and testing.
- The ABS recommends that for the 2026 Census the topics of Gender and Sexual orientation are added, and the Number of children ever born topic is removed. The ABS also recommends minor updates to the wording of two existing topics to be inclusive of people who use sign-language at home.

Key points

- The 2026 Census content is determined by:
 - Government decision on Census topics, specified in the *Census and Statistics Regulation 2016* (the Regulation) and tabled in both houses of the Australian Parliament.
 - ABS decisions, under authority of the *Census and Statistics Act 1905*, to determine the questions that are used to collect data on the topics prescribed in the Regulation.

Cleared by:	David Gruen Australian Statistician	Contact officer:	Duncan Young, General Manager Census & Population Division
Date cleared:	13 June 2024	Contact number:	s 22
Consultation: Extensive public consultation undertaken as part of Census content review.			

- Over the past 18 months, the ABS has considered evidence from consultation, engagement, research and testing to determine the highest priority data needs for Australia, and the feasibility of collecting this data in the 2026 Census. The ABS used a set of criteria to undertake this assessment (Appendix A).
- Following this assessment, the ABS recommends five topic changes in the Regulation (Table 1). Appendix B provides further detail on each amendment and Appendix C shows how these amendments could be reflected in the Regulation.

Table 1: Summary of recommended amendments to the Regulation

	Amendment	Topic	Detail
1	Add	Gender	Census will collect data on the new topic of Gender for all persons, including persons temporarily absent from a private dwelling on Census night.
2	Add	Sexual orientation	Census will collect data on the new topic of Sexual orientation for all persons on Census night who are aged 15 years or older.
3	Remove	Number of children ever born	Census will not collect or produce data on the Number of children ever born topic.
4	Update	Main language other than English used at home	Minor update to wording. No impact on data collected for the Main language other than English used at home topic.
5	Update	Proficiency in spoken English	Minor update to wording. No impact on data collected for the Proficiency in spoken English topic.

Risks/sensitivities

- The ABS has carefully considered risks and sensitivities when determining the recommendation for amendments to the Regulation. This includes consideration of what mitigations are in place, or can be put in place, to minimise risks for each potential topic change.
- The key risks considered by the ABS in making these recommendations are that:
 1. The 2026 Census collects data of low quality that may result in poor quality decision making or that could be harmful if misused.
 2. Decisions on topics may impact the overall support for the 2026 Census.
 - Inclusion, non-inclusion or removal of topics may reduce participation in the Census.
 - An increase in burden on households may reduce participation.
 3. The 2026 Census contravenes anti-discrimination legislation.
- LGBTIQ+ representatives, individuals and allies have strongly advocated for the inclusion of new topics on Gender, Sexual orientation and Variations of sex characteristics in the 2026 Census. If the Government decides not to include these topics it is likely to generate some criticism of the ABS and/or Government. If the Government supports the ABS recommendation to include Gender and Sexual orientation, but not Variations of sex characteristics, this is expected to receive both support and criticism from the LGBTIQ+ community.

- There is also likely to be some public criticism of the ABS and/or Government for the inclusion of these topics as concerns have been raised from some members of the public during consultation, research and testing. This is due to ideological differences, different cultural backgrounds and/or the personal nature of these questions, particularly because the Census involves a member of the household reporting on behalf of other household members. The ABS intends to include a 'Prefer not to answer' response option to reduce these concerns.
- The ABS assessed Variations of sex characteristics as having high public value for inclusion in the 2026 Census and conducted significant testing and development work on this topic. However, the results from testing, along with evidence from other data collection and research activities, has led the ABS to conclude that the 2026 Census will not be able to collect high quality data on this topic. Given this conclusion, ABS has not recommended this topic be included in the 2026 Census (Appendix B has further details).
- The ABS also determined that it would be unable to develop and collect high quality data on the topics of Ethnic identity and Aboriginal and Torres Strait Islander cultural identity within the 2026 Census timeframes. This was identified during testing and stakeholder consultation. The ABS publicly communicated the outcome for Ethnic identity in December 2023.¹ The ABS Round Table for Aboriginal and Torres Strait Islander Statistics have been informed of the outcome for Aboriginal and Torres Strait Islander cultural identity, with the ABS continuing development of this topic for potential inclusion in the 2031 Census (See MS23-00052 and MS24-000006 for further details).
- The delivery of a successful Census, including implementation of changes to Census topics, requires sufficient time for testing, assurance and large-scale logistics (e.g. printing and distribution of paper forms). The time available to update the Regulation and have it pass the disallowance period in both houses of parliament has been compressed due to the timing of the next Election. The ABS has worked with the Department of Treasury to accelerate this process and manage this timeline risk (see MS24-900004 for further details).
- Further detail on each of these risks and mitigations are in Appendix D.

¹ABS (2023) 2026 Census topic review: Phase two directions, <https://www.abs.gov.au/statistics/research/2026-census-topic-review-phase-two-directions>

Appendix A – 2026 Census topic assessment criteria

The ABS assesses new, changed and existing Census topics against a set of criteria which have been informed by the United Nations Principles and Recommendations for Population and Housing Censuses.²

The 2026 Census topic assessment criteria are:

1. The topic is of current national importance.
2. There is a need for data at the national level, and either the local level or for small population groups.
3. There is likely to be a continuing need for data on the topic following the Census.
4. There are no other suitable alternative data sources or solutions that could meet the topic need.
5. Data on the topic can be collected efficiently.
6. A representative of the household would be willing and able to answer questions on the topic for each member of the household.

Once all criteria were assessed, the ABS considered:

- whether the public benefit of collecting data on the topic would outweigh the cost of collection
- the impact on data comparability between Censuses
- if collecting data on a topic will impact how the public answers questions on other topics
- the likelihood that the new or changed topic would be developed within the required timeframes for the 2026 Census.

The ABS then assessed if the combination of topics will maintain a high level of public support for the Census, including the overall size and complexity of the form.

Further information on the topic assessment criteria is available on the ABS website.³

² United Nations (2017) Principles and Recommendations for Population and Housing Censuses, rev 3, Department of Economic and Social Affairs, Statistics Division, New York, https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Principles_and_Recommendations/Population-and-Housing-Censuses/Series_M67rev3-E.pdf, UN website, accessed January 2023.

³ ABS (2023) 2026 Census topic assessment criteria, <https://www.abs.gov.au/census/2026-census-topic-review/2026-census-topic-assessment-criteria>

Appendix B – Topic Recommendations

Recommendation 1: Addition – Gender

2026 Census implication	Data on the topic of Gender would be collected for all persons including all persons temporarily absent from a private dwelling on Census night. ⁴
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Topic definition

Gender is a social and cultural concept. It is about social and cultural differences in identity, expression and experience as a man, woman, or non-binary person. Non-binary is an umbrella term describing gender identities that are not exclusively male or female.

Responses to a gender question may reflect a combination of gender identity, expression and/or experience. In statistical collections, gender may be reported in terms of a person's felt or lived gender, as well as how that person is perceived by others, depending on whether information on gender is based on self-reported data or collected by proxy (i.e., by another member of the household).

A person's gender may differ from their sex and may also differ from what is indicated on their legal documents. Some people may not identify with a specific gender or with the concept of gender at all.

Data or policy needs

The *Australian Government Guidelines on the Recognition of Sex and Gender*⁵ ('the Guidelines') outline that the preferred approach for Australian Government departments and agencies is to collect and use information about a person's gender rather than information about a person's sex, as the Government "is primarily concerned with a person's identity and social footprint."⁶

The ABS received feedback from all levels of government, businesses, community groups, advocacy groups, academics and individuals. Stakeholders provided examples on how whole of population data on gender from the Census would help contribute to informed policy and planning, resource allocation and delivery of services at the national and local level based on a person's gender identity.

Feedback highlighted the importance of collecting gender in addition to sex, as sex data is required for population projections, health statistics and comparability with previous Censuses. If the Census collects gender alongside a question on sex recorded at birth, the ABS can also produce data on trans and gender diverse populations. The feedback pointed to research that people who are transgender and gender diverse experience poorer physical and mental health

⁴ This recommendation will require two amendments to the Regulation, as a separate amendment is needed to specifically collect data on persons temporarily absent from a private dwelling on Census night. These amendments would be specified in sections 9 and 10 of the Regulation (see Appendix C).

⁵ Attorney-General's Department (2015) *Australian Government Guidelines on the Recognition of Sex and Gender*, <https://www.ag.gov.au/rights-and-protections/publications/australian-government-guidelines-recognition-sex-and-gender>, Attorney-General's Department website, accessed 4 June 2024.

⁶ The Guidelines define a social footprint as "evidence of a person's identity operating in the community. A social footprint can be established using credentials or other information (changes of name, details of education/qualifications, electoral register entries, employment history, and interactions with organisations such as Australia Post, banks, financial institutions and State and Territory public authorities) which establish a person's use of an identity in Australia over time."

outcomes, lower access to secure housing, and are at increased risk of poverty, discrimination and violence.

While a question on gender is included in some ABS household surveys, this does not fully meet data needs, as these surveys are unable to identify gender diversity at detailed geographic and demographic levels due to the sample sizes. However, ABS household surveys support the policy need for this topic, for example showing that 6 in 10 trans people aged 16-34 years had experienced a mental disorder in the last 12 months, almost twice that of cis people of the same age.⁷

Based on the Guidelines and feedback received, the ABS has assessed that whole of population data on the topic of Gender, including persons temporarily absent from the household on Census night, has high public value.

Evidence that informed the recommendation

Evidence gathered through research and testing on the question design has provided the ABS confidence that data on gender of sufficient quality can be collected for people of all ages in the Census (Testing details in Appendix E-F).

The ABS successfully collects data on gender in its household surveys. These surveys use the gender question from the 2020 Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables (the '2020 Standard').⁸ The 2020 Standard was developed through extensive research, consultation with LGBTIQ+ representatives, and testing.⁹ The 2020 Standard specifies that gender can be collected of persons of all ages, and the question includes the response option of 'Prefer not to answer' for people who prefer not to answer for themselves or others, whether on an age basis or for other reasons.

The ABS used the recommended question from the 2020 Standard as the starting point for the 2026 Census. This question was refined based on findings from testing and the changes were supported by the ABS LGBTIQ+ Expert Advisory Committee for the 2026 Census.¹⁰

During cognitive testing, the ABS observed that most participants understood the distinction between the concepts of sex and gender. Testing indicated that the inclusion of a question on gender, in addition to refinements to the question on sex to collect sex recorded at birth, will enhance the quality of data relating to a person's sex. This will reduce conflation of sex and gender concepts that was observed in the 2021 Census. These observations were particularly evident for trans and gender diverse participants, with some explicitly commenting on the improvement from the 2021 Census where they had difficulty responding.

While the testing did not highlight any significant concerns with the question, there were some people who found the question sensitive or were unsure of how to respond on behalf of young

⁷ABS (2024) Mental health findings for LGBTIQ+ Australians, <https://www.abs.gov.au/articles/mental-health-findings-lgbtq-australians>, ABS website, accessed 9 June 2024.

⁸ABS (2021) Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables, <https://abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/2020>, ABS website, accessed 4 June 2024.

⁹The ABS reviews and updates each of its statistical standards periodically to ensure they are contemporary to information needs and changes in the real world. The 2020 Standard, issued in January 2021, replaced the previous Standard for Sex and Gender Variables, 2016, and expanded in scope to incorporate standards for variations of sex characteristics and sexual orientation. The ABS plans to next review the 2020 Standard based on the findings of the 2026 Census topic review process ahead of the 2026 Census.

¹⁰For the first time, the ABS has formed a LGBTIQ+ Expert Advisory Committee for the 2026 Census. This committee includes members of the LGBTIQ+ community and others with a wide range of expertise, qualifications and experience. The committee includes peak organisations, academics, government officials, health professional and people involved with service delivery.

children. The ABS observed that the inclusion of a 'Prefer not to answer' response option, as well as other improvements to question wording and response categories, reduced these concerns. Testing did not suggest that there is a need to restrict the ages of whom this question is asked of. Most participants who reported a gender that was different to their sex recorded at birth were supportive of the inclusion of the question.

Quantitative research of views about the 2026 Census showed that the understanding, comfort and support for including the gender question was comparable to both the sex and income question (income was included in the research to provide a benchmark) and higher than the questions on sexual orientation and variations of sex characteristics (Appendix F).

The ABS also considered the experiences of collecting gender data in comparable countries. Data on gender has been successfully collected from people of all ages in the New Zealand and Canada Censuses, which have used a similar question design to the question being tested for the 2026 Census. The England/Wales and Scotland Censuses included a single question that sought to identify trans and gender diverse populations, rather than ask about a person's gender. The questions in these two Censuses had a binary yes/no response and were asked only of people aged 16 years and over. There have been some quality concerns about the England/Wales Census data for this question.¹¹

In addition, the ABS will continue to investigate additional mitigations to maximise the quality of this data and to maintain strong support for the Census. These mitigations have been identified through testing, research and input from the ABS LGBTIQ+ Expert Advisory Committee and include the introduction of additional training for field staff, options for individuals to complete a personal form rather than respond on a household form, and implementation of targeted engagement and communications plans.

Current sex and gender questions being tested¹²

<p>8 What was the person's sex recorded at birth?</p> <ul style="list-style-type: none">• 'Another term' includes options available on birth registrations.• Mark one box, like this: <input type="checkbox"/>	<p><input type="checkbox"/> Male</p> <p><input type="checkbox"/> Female</p> <p><input type="checkbox"/> Another term</p>																				
<p>9 What is the person's gender?</p> <ul style="list-style-type: none">• Gender refers to current gender, which may be different to sex recorded at birth and may be different to what is indicated on legal documents.• Mark one box, like this: <input type="checkbox"/>	<p><input type="checkbox"/> Man or Boy</p> <p><input type="checkbox"/> Woman or Girl</p> <p><input type="checkbox"/> Non-binary</p> <p><input type="checkbox"/> Uses another term (specify)</p> <table border="1" data-bbox="957 1456 1358 1568"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table> <p><input type="checkbox"/> Prefer not to answer</p>																				

¹¹ Data from the Scotland Census has not yet been released.

¹² The ABS will review the question after the large-scale test in September 2024 (provided the topic is included in the 2026 Census). Refinements will be made if there is evidence that they will improve question performance (e.g. adjusting instructional text to aid understanding). The ABS will not remove the 'Prefer not to answer' response option as testing and research has shown the importance of this response option in maintaining comfort and support for the inclusion of the question.

Recommendation 2: Addition - Sexual orientation

2026 Census implication	Data on the topic of Sexual orientation would be collected for all persons on Census night who are aged 15 years or older.
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Topic definition

The ABS defines sexual orientation for the purposes of data collection as referring to sexual identity and attraction. This is how a person thinks of their own sexuality, the term they identify with and their romantic or sexual attraction to others.

Responses to a sexual orientation question are a subjective view of oneself and can change over the course of a person's lifetime and in different contexts.

There are multiple ways in which someone might define their sexual identity and attraction to others. Common examples include heterosexual or straight, gay, lesbian, or bisexual.

Data or policy needs

The ABS received feedback requesting the collection of data on sexual orientation from all levels of government, businesses, community groups, advocacy groups, academics and individuals. These stakeholders provided examples on how this data would contribute to informed policy and planning, resource allocation and delivery of services at the national and local level. The evidence included research that indicates LGB+ people often have higher levels of vulnerability including experiences of discrimination and abuse, and associated mental health issues, that require targeted support.

While a question on sexual orientation is included in some ABS household surveys, this does not fully meet data needs, as these surveys are unable to support understanding at detailed geographic and demographic levels due to the sample sizes. However, ABS household surveys support the policy need for this topic, for example showing that nearly 3 in 5 LGB+ people aged 16-85 years had experienced a mental disorder in the last 12 months, almost three times that of heterosexual people.¹³

All stakeholders agreed that it was necessary to have a minimum age for this topic. There were differing views as to the minimum age that would effectively meet data needs, with submissions and the ABS LGBTIQ+ Expert Advisory Committee highlighting that the data needs are relevant for the entire LGB+ population.

Based on the feedback received, the ABS assessed that the topic of Sexual orientation has high public value for collection, but is not required to be collected from all ages in the population.

Evidence that informed the recommendation

Evidence gathered through research and testing has provided the ABS confidence that data on sexual orientation of sufficient quality can be collected from people aged 15 years or older in the Census (Testing details in Appendix E-F).

The ABS successfully collects data on sexual orientation in its household surveys. These surveys use the sexual orientation question from the 2020 Standard. The question in the 2020 Standard includes the response option of 'Prefer not to answer' for people who prefer not to answer for themselves or others, whether on an age basis or for other reasons. A 'Don't know' response option is also included.

¹³ ABS (2024) Mental health findings for LGBTQ+ Australians, <https://www.abs.gov.au/articles/mental-health-findings-lgbtq-australians>, ABS website, accessed 9 June 2024.

The 2020 Standard advises that the age at which a person is asked to provide a response to a question on sexual orientation should depend on the purpose of the data collection and the need for the information. However, it does recommend that the question is asked of people aged 15 years or older for general demographic collections unless there is a reason to consider another age range.

The 2020 Standard states that this question is appropriate as a self-reporting question only, and a respondent should not be asked to respond on the sexual orientation of others in scope of the data collection. As the Census does require respondents to answer the question on behalf of others, the ABS has closely monitored reporting via proxy during testing, including the sensitivities and quality of data, and whether the response options effectively mitigate these risks.

Extensive testing has been undertaken as part of the 2026 Census testing program, including with respondents who identified as lesbian, gay, bisexual or use a different term. In line with guidance in the 2020 Standard, the ABS asked the sexual orientation question of persons aged 15 years or older in all testing activities due to there being an expressed data need for teenagers. This age limit is consistent with all other Census questions where there is an age limit applied.

The ABS used the recommended question from the 2020 Standard as the starting point for the 2026 Census. The question design was refined during the testing program, with all refinements made in consultation with the ABS LGBTIQ+ Expert Advisory Committee.

During cognitive testing, some participants raised concerns about the inclusion of this question due to the sensitivity of the topic. These concerns were largely allayed by providing a 'Prefer not to answer' response option, as well as other improvements to response categories. The question did not highlight any significant concerns with the age limit of 15 years or older (either too old or too young). The majority of LGB+ participants were supportive of the inclusion of this question.

Quantitative research of views about the 2026 Census showed that the level of understanding of this question was comparable to the sex, gender and income questions, but understanding the rationale for inclusion was lower than for these questions. However, respondents reported similar levels of comfort answering a question on sexual orientation to that reported for income, and a higher level of comfort reporting on behalf of others. This is particularly important given the need to understand whether reporting on behalf of others is appropriate in a Census context (Appendix F).

The ABS also considered the experiences of collecting sexual orientation data in other ABS household surveys and Censuses run in comparable countries. Data on sexual orientation has been successfully collected in other ABS household surveys and in the Censuses in New Zealand, England/Wales and Scotland. These collections all had a question design similar to the question being tested for the 2026 Census. The question was asked of people aged 15 years or older in New Zealand, however not collected via proxy, and 16 years or older on a household form with proxy reporting in England/Wales and Scotland.

If this topic is included in the 2026 Census, the ABS will invest in additional steps to maximise the quality of this data and to maintain strong support for the Census. These mitigations have been identified through testing, research and input from the ABS LGBTIQ+ Expert Advisory Committee and include the introduction of additional training for field staff, options for individuals to complete a personal form rather than respond on a household form, and implementation of targeted engagement and communications plans focusing specifically on the rationale for why this question should be included.

Current sexual orientation question being tested - only asked of people aged 15 years or older¹⁴

<p>58 How does the person describe their sexual orientation?</p> <p>• Mark one box, like this: <input checked="" type="checkbox"/></p> <p style="text-align: center; font-size: 2em; color: #f08080; opacity: 0.5;">DRAFT</p>	<p><input type="checkbox"/> Straight</p> <p><input type="checkbox"/> Gay or Lesbian</p> <p><input type="checkbox"/> Bisexual</p> <p><input type="checkbox"/> Uses another term (specify)</p> <table border="1" style="width: 100%; height: 40px;"><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr></table> <p><input type="checkbox"/> Don't know</p> <p><input type="checkbox"/> Prefer not to answer</p>																				

Recommendation 3: Removal - Number of children ever born

2026 Census implication	Data on the topic of Number of children ever born would not be collected in the 2026 Census.
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Topic definition

This topic collects information on the number of children ever born to each female aged 15 years or older.

Data or policy needs

The primary use of data from this question is to calculate lifetime fertility. This informs population projections for Australia. Data from this question is also used for research purposes, for example to understand differences in birth rates between various socio-economic groups.

Prior to 2011, the question was asked every 10 years, and this was sufficient to meet the data needs to inform population projections. The topic was collected in the 2011 and 2016 Censuses because of decisions to make no topic changes for these Census cycles.

Evidence that informed the recommendation

The ABS communicated during the 2021 Census content consultation that the topic will be retained in 2021 to align with international reporting, but that the ABS would consider moving back to the ten-yearly cycle for the 2026 Census.

Feedback was sought during consultation on any impacts if the topic was removed from the 2026 Census and next collected in the 2031 Census. Feedback was received from all levels of government, community groups, non-government organisations, academics and individuals,

¹⁴The ABS will review the question after the large-scale test in September 2024 (provided the topic is included in the 2026 Census). Refinements will be made if there is evidence that they will improve question performance (e.g. adjusting instructional text to aid understanding). The ABS will not remove the 'Prefer not to answer' or 'Don't know' response options as testing and research has shown the importance of these response options in maintaining comfort and support for the inclusion of the question.

outlining how data on the topic is used in research and policy settings and the implications if data is not collected in the 2026 Census.

The ABS considered feedback received and undertook further engagement with key data users. The ABS assessed that while there is a data need, the case for collecting this topic every Census was not as strong as for other topics being considered for change or inclusion. Most of the key data users were understanding of the need to prioritise topics, with many supportive of other topics being considered for potential inclusion. There may also be opportunities to inform data needs through linked administrative data in the future.

In December 2023, the ABS advised key stakeholders that the public value of collecting data on this topic every five years is not as strong as other data needs. The ABS advised that due to this, it will be recommending removal of the topic for the 2026 Census with the intention to collect data on the topic in the 2031 Census and every ten years thereafter, to align with international reporting requirements. The ABS also publicly communicated this decision in the 2026 Census topic review: Phase two directions publication.¹⁵

Recommendation 4 & 5: Minor updates

Recommendation 5	
Languages spoken at home	Replace the word 'spoken' with 'used'
2026 Census implication	Data on the topic of Languages spoken at home will better accommodate members of the community who use sign language.
Recommendation 6	
Proficiency in speaking English¹⁶	Replace the word 'spoken' with 'used' and 'his or her' with 'the person's'
2026 Census implication	The topic will be consistent with the recommended amendment to Languages spoken at home. This will also enable collection of data from all persons who use a language other than English at home.

Topic not recommended: Variations of sex characteristics

Topic definition

Variations of sex characteristics refers to people with innate genetic, hormonal or physical sex characteristics that do not conform to medical norms for female or male bodies. Other umbrella terms used to describe being born with variations of sex characteristics are intersex or Differences/Disorders of Sex Development (DSD).

¹⁵ ABS (2023) 2026 Census topic review: Phase two directions, <https://www.abs.gov.au/statistics/research/2026-census-topic-review-phase-two-directions>

¹⁶ Current wording in the Regulation: "For a person who speaks a language other than English at home - his or her proficiency in speaking English"

Data or policy needs

The ABS received feedback from all levels of government, businesses, community groups, advocacy groups, academics and individuals that identified the need for collection of information on the LGBTIQ+ community. Feedback highlighted that there is a significant data gap on information about the number of people with variations of sex characteristics.

The medical needs of people with variations of sex characteristics are unique and complex. Feedback indicated that having the opportunity to analyse data on variations of sex characteristics with other Census variables, such as long-term health conditions, would provide valuable information to inform service delivery.

Understanding the number of people who have variations of sex characteristics may also help government and non-government organisations to plan, legislate and provide resources to support individuals and their families. The small size of this population group means that sample surveys are unable to produce either national or lower-level estimates.¹⁷

The topic was assessed as having high public value, although a lower priority than the Gender topic because inclusion of Gender likely improves the quality of data on sex and also because of the relatively small size of the population of people with variations of sex characteristics.

Evidence that informed the recommendation

Evidence gathered through research and testing has led the ABS to conclude that it would not be possible to collect data of sufficient quality on variations of sex characteristics in the 2026 Census. Data collected of low quality may be harmful if misused, even if significant caveats are released with the data (Testing details in Appendix E-F).

The 2020 Standard includes a standard question to collect data on variations of sex characteristics which is recommended to be collected separately to a sex recorded at birth question. The 2020 Standard recommends the question of variation of sex characteristics is asked of people of all ages.

The 2020 Standard states that this question is appropriate for self-reporting only, and a respondent should not be asked to respond to the question on behalf of others.

Testing demonstrated concerns from participants about what the question on variations of sex characteristics is referring to, how to answer the question and/or discomfort with being asked for themselves or others. The testing suggests there is a very limited understanding of concepts, with participants unfamiliar with the medical terminology used, and reporting that the question is of a highly personal nature. The ABS observed conflation between variation of sex characteristics, sex, gender and sexual orientation. This resulted in several participant comments regarding the repetitiveness of the questions.

Results from quantitative research on understanding and support for topics in the 2026 Census are consistent with the cognitive testing results, with the reported understanding of variations of sex characteristics and support for its inclusion lower than all other topics included in the research (Appendix F).

The ABS LGBTIQ+ Expert Advisory Committee considered the testing outcomes, but advised against further changes to simplify the question as they would increase the risk of people answering incorrectly.

¹⁷ Intersex Human Rights Australia recommend an upper bound figure of 1 in 59 births (1.7%) when estimating the prevalence of the population that have a variation of sex characteristics. They highlight though that they have seen estimates range from 1 in 1,500 or 2,000 births to 1 in 25 births.

Intersex Human Rights Australia (2013) Intersex population figures, <https://ihra.org.au/16601/intersex-numbers>, IHRA website, accessed 4 June 2024.

The ABS also considered the experiences of collecting variations of sex characteristics data in other ABS household surveys and in the 2023 New Zealand Census (the only comparable country that has included a question on this topic). The topic was not collected via proxy response in any of these data collections and the data and accompanying quality assessments are yet to be publicly released.

Inaccurate responses to this question could occur due to misunderstanding the question or the concept, or due to reporting on behalf of others. This is expected to be more likely for culturally and linguistically diverse population groups. Given the small size of the population, false-positive responses are likely to have a greater impact on the quality and utility of the data and may lead to misuse in decision making, particularly when errors in reporting are more likely to occur with specific population groups.

Further details

The ABS committed to exploring how to collect data on variations of sex characteristics in the Census in the resolution of the complaint brought against the ABS in the Australian Human Rights Commission (AHRC). The ABS anticipates that the non-inclusion of the Variation of sex characteristics topic is likely to prompt criticism of the ABS and/or Government, particularly from some LGBTIQ+ organisations and individuals.

Conversely, there is also a risk that inclusion of the question may reduce support for the Census, particularly as testing showed an increase in respondent burden when participants were trying to answer the question. However, Stats New Zealand has advised the ABS that the question did not appear to impact participation in their 2023 Census.

The ABS has included a question on variations of sex characteristics in the large-scale test scheduled for September 2024. Consistent with previous Censuses, the decision on the content for this test is made prior to the finalisation of the ABS recommendation to Government and Government decision.

If the Government decided to include Variations of sex characteristics as a topic, the ABS would analyse the results of the large-scale test and work with the ABS LGBTIQ+ Expert Advisory Committee to consider whether further question refinements are desirable and could be made.

Current variations of sex characteristics question being tested

<p>30 Has the person been told they were born with a variation of sex characteristics (sometimes called 'intersex' or 'differences of sex development')?</p> <ul style="list-style-type: none">• This question refers to innate reproductive development, genetics, or hormones that do not fit the medical norms for female or male bodies.• These specific characteristics may be noticed at birth, or develop in puberty.	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Don't know</p> <p><input type="checkbox"/> Prefer not to answer</p>
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Appendix C – Draft changes to Census and Statistics Regulation 2016

The following table outlines the Regulation¹⁸ in force as of 11 February 2020.

Blue rows are recommended amendments. Suggested draft wording is included in green.

Statistical information for the Census - persons

Item	Matter
1	Name
2	Sex
New item	Gender
3	Date of birth or age last birthday
4	Relationship to the other persons, if any, who spend the Census night in the same accommodation
5	Present marital status
6	Address of usual residence
7	Address of usual residence 1 year before the Census day
8	Address of usual residence 5 years before the Census day
9	Religion or religious denomination
10	Citizenship
11	Aboriginal or Torres Strait Islander origin
12	Ancestry
13	Country of birth
14	Country of birth of each parent
15	For a person not born in Australia—the year of the person's first arrival in Australia
Update	Languages spoken used at home
Update	For a person who speaks uses a language other than English at home - his or her the person's proficiency in speaking English
18	Present attendance at an educational institution, including the type of institution attended (if any)
Update	For a person who is not less than 15 years of age, the following: (a) the highest level of primary or secondary school completed; (b) educational qualifications; (c) labour force status; (d) income; (e) domestic activities;

¹⁸Australian Government Federal Register of Legislation, <https://www.legislation.gov.au/F2016L00706/latest/text>, Legislation website, accessed 4 June 2024.

	<p>(f) the provision of unpaid care due to the disability, long term illness or old age of another person;</p> <p>(g) the provision of care to a child, without pay;</p> <p>(h) voluntary work through an organisation or group;</p> <p>(i) service in the Australian Defence Force;</p> <p>(j) sexual orientation</p>
20	<p>For a person who is not less than 15 years of age and was employed (including self employed) during the week immediately preceding the Census day, the following:</p> <p>(a) status in employment during that week;</p> <p>(b) occupation during that week;</p> <p>(c) the name and address of the undertaking in which the person was employed during that week;</p> <p>(d) the main kind of business or industry carried on, or service provided, by that undertaking during that week;</p> <p>(e) the hours worked by the person during that week;</p> <p>(f) the main duties or tasks that the person usually performs in the occupation;</p> <p>(g) the mode of travel to work by the person on the Census day;</p> <p>(h) if the person owns a business, the total number of persons who are employed by the business</p>
21	<p>The need for assistance with, or the supervision of another person for, any of the following activities (including the reason for the need):</p> <p>(a) self care;</p> <p>(b) body movement;</p> <p>(c) communication</p>
22 Remove	<p>For a female who is not less than 15 years of age—the number of children to whom she has given birth</p>
23	<p>Health conditions diagnosed by a doctor or a nurse</p>

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

Item	Matter
1	The address on the Census night
2 Update	For a person who is usually a member of the household but is absent from the household accommodation on the Census night, the following: (a) name; (b) sex; (#) gender; (c) date of birth or age last birthday; (d) student status; (e) relationship to other members of the household; (f) Aboriginal or Torres Strait Islander origin
3	The right, title or interest of the household in the household's accommodation
4	The number of bedrooms in the dwelling
5	The rent or loan repayments payable by the household for its accommodation
6	If the dwelling is rented—the nature of the person or body to whom rent is paid
7	The number of registered motor vehicles, garaged or parked at or near the dwelling on the Census night, that are owned or used by residents of the dwelling

11 Statistical information for the Census—private dwelling

Item	Matter
1	The structure
2	The location
3	The status of a person in the dwelling

12 Statistical information for the Census—dwelling other than a private dwelling

Item	Matter
1	The classification of the dwelling by reference to its purpose
2	The status of a person in the dwelling
3	The address of the dwelling
4	The name (if any) of the dwelling
5	The number of persons resident in the dwelling

Appendix D – Key risks and mitigations

1. The 2026 Census collects data of low quality that may result in poor quality decision making or could be harmful if misused.

The ABS aims to mitigate this risk by:

- implementing a testing program that identifies potential issues with data quality and assesses whether question refinements can improve the quality of data collected
- not recommending topics for inclusion in the 2026 Census where the ABS has low confidence in the quality of data being produced
- if a topic collected in the 2026 Census produces low quality data, the ABS plans to be transparent about the data quality and will seek community peer review and support during processing and dissemination activities to minimise the risk of misuse.

This risk was realised in the 2021 Census where the ABS collected data on 'non-binary sex' (a response option to the sex question) that was not meaningful and of poor quality. The ABS attempted to manage the impact of this by being open about the data quality and seeking community peer review and support. The ABS is aware that despite the caveats placed on the data, it is still misinterpreted by some data users and media.

2. Decisions on topics may impact the overall support for the 2026 Census.

There are two primary drivers for this risk:

2.1 Inclusion, non-inclusion or removal of topics may negatively impact participation in the Census.

Lower participation may occur due to individual concern, public 'protest' or campaigns. This could result in less trusted and/or lower quality Census data.

The ABS has tried to mitigate this risk through the review process by:

- a. introducing an expanded and transparent public consultation process that clearly communicates the rationale for shortlisting decisions at each stage of the process
- b. implementing an extensive testing program to identify potential concern or issues with new content
- c. forming the ABS LGBTIQ+ Expert Advisory Committee and involving them throughout the testing process
- d. seeking advice from the ABS Round Table on Aboriginal and Torres Strait Islander Statistics
- e. considering potential new content in the 2026 Census independent privacy impact assessment
- f. considering the age of respondents that should be asked new questions
- g. including a 'Prefer not to answer' as a response option for new sensitive questions.

The ABS will develop engagement and communication plans for new topics being added to the 2026 Census to help inform the public and stakeholders on the reason for inclusion of new topics.

The ABS is undertaking three independent Privacy Impact Assessments (PIAs) for the 2026 Census. The first PIA explored the privacy issues related to sensitive topics, including Sexual orientation and Gender. Following external stakeholder consultation, the PIA recommended that 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 ABS has published the PIA and the ABS response.¹⁹

2.2 An increase in burden on households may reduce overall response.

The decision to increase the number of topics in the 2026 Census may reduce support for the Census due to the increased burden. Including questions that are seen as more sensitive or require a householder to check a response with individual household members, may further add to the perceived and/or real burden. The 2021 Census took households 30 minutes, on average, to complete, and additional questions will add to the overall length and time required to complete the Census.

The ABS is investigating options to reduce the burden on households when completing the form. This includes improvements to the design of the online form and whether the ABS can better target the supplementary questions that are only asked to improve coding of responses.

3. The 2026 Census contravenes anti-discrimination legislation.

The questions asked by the ABS to collect data in the Census must be consistent with anti-discrimination legislation. In particular, the ABS must collect data in a manner that treats all groups equitably or be able to demonstrate that treating groups of people differently was reasonable in the circumstances.

Where groups are treated differently, or perceived to be treated differently, the ABS may be subject to a complaint, and if the complaint is not resolved this could lead to legal action. A complaint needs to demonstrate potential disadvantage such as an emotional impact or distress, the inability to participate in the Census, or poor policy outcomes due to a lack of data or production of poor-quality data.

The 2016 and 2021 Censuses were the source of complaints to the AHRC, with one complaint for the 2021 Census on the design of specific questions, and omission of topics and questions relating to gender, proceeding to conciliation. Given public expectations on inclusion and diversity, it is possible that complaints will be made to the AHRC regarding the 2026 Census topics and questions.

As a mitigation for the 2026 Census, the ABS has assessed the level of risk associated with the collection methods for all existing and proposed topics in the 2026 Census. This assessment has considered advice from the Australian Government Solicitor.

The ABS assessment is that there is a very low legal risk associated with the recommended amendments to the Regulation and that residual risk associated with existing topics will be mitigated.

There is a risk that a complaint may be raised with the AHRC about the non-inclusion of a Variations of sex characteristics topic, however the ABS has assessed that the legal risk is very low.

¹⁹ ABS (2024) Privacy Impact Assessments (2026 Census of Population and Housing), <https://www.abs.gov.au/about/legislation-and-policy/privacy/privacy-impact-assessments#2024>, ABS website, accessed 9 June 2024.

Appendix E – Summary of 2026 Census testing program

The ABS has undertaken extensive testing to inform the topic recommendations for the 2026 Census. This testing builds upon knowledge from the 2021 Census, the development of the 2020 Standard and from other ABS household surveys.

Testing has included focus groups, online panels and over 190 cognitive interviews across diverse population groups and geographic areas to develop and test questions for the 2026 Census (Table E1). Feedback from advisory bodies, the ABS LGBTIQ+ Expert Advisory Committee and the ABS Round Table on Aboriginal and Torres Strait Islander Statistics, have also informed the design of questions. The ABS is continuing testing to inform the final design of questions. This includes a large-scale public test in September 2024.

Table E1: Testing to explore understanding of concepts, and develop and test questions (as at June 2024)

Method: ABS cognitive interviewing (192 participants), focus groups (26 participants) and online panels (175 participants), August 2023 to June 2024	
Target populations	Locations
<ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander peoples. • People with culturally and linguistically diverse backgrounds - born overseas, parents born overseas, English as a second language or have a religion or spiritual belief. • People who identify as LGBTIQ+, gender diverse or have innate variations of sex characteristics. • People living in different household arrangements, such as living with children, in a large household or diverse family arrangements. • People with different employment arrangements, such as currently working (including casual jobs), employed but on long term leave, unemployed and looking for work, or gig workers. • People who have moved in the past 12 months. 	<ul style="list-style-type: none"> • Virtual/online (Australia-wide) • Face-to-face <ul style="list-style-type: none"> ○ Brisbane, Qld ○ Logan, Qld ○ Thursday Island, Qld ○ Geelong, Vic ○ Melbourne, Vic ○ Broome, WA

Appendix F – Motivations and barriers to Census completion

The ABS has commissioned quantitative research on motivations and barriers to Census completion to inform communication and engagement strategies. This research includes the identification of measures to understand and improve the support for, and completion of, questions on sex, gender, sexual orientation and variations of sex characteristics in the 2026 Census. This research was through focus groups, 160 in-depth interviews, including with sector representatives, and sample survey results based on over 1,000 participants (Table F1).

Table F1: Research to understand motivators and barriers to Census completion

Method: Focus groups and in-depth interviews (160 participants), and a sample survey (interim results from 1,187 participants), May to June 2024	
Target populations	Locations
<ul style="list-style-type: none">• People who completed 2021 Census late/did not complete it or completed it offline.• Aboriginal and Torres Strait Islander people and Elders.• People with culturally and linguistically diverse backgrounds, including people with a religious background, and sector representatives.• People who identify as LGBTIQ+ and representatives.• People with disability, carers of people with disability and sector representatives.• People experiencing homelessness, and sector representatives.	<ul style="list-style-type: none">• Virtual/online (Australia-wide)• Face-to-face<ul style="list-style-type: none">○ Parramatta, NSW○ Alice Springs, NT○ Cairns, Qld○ Adelaide, SA○ Launceston, Tas○ Melbourne, Vic○ Port Hedland, WA

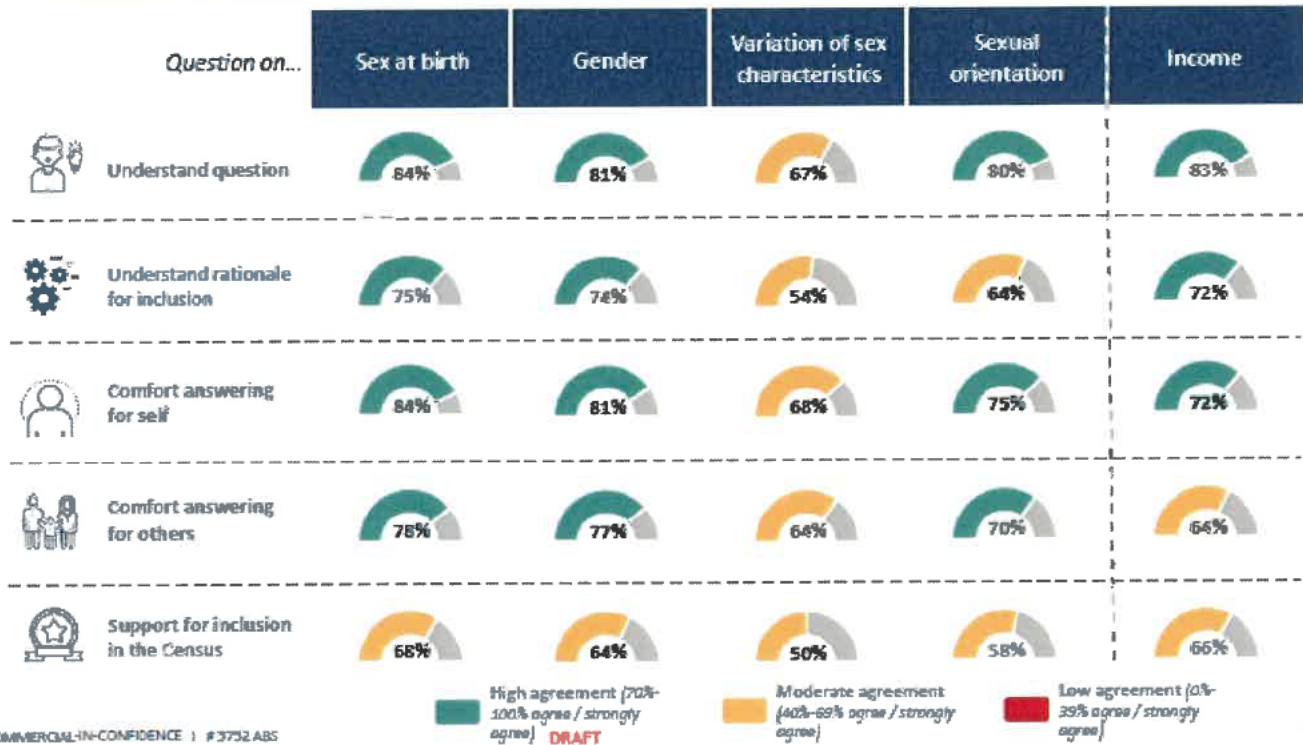
The research highlighted differing levels of understanding, comfort, and support for the topics, with the question on gender comparable to the question on sex, and comparable to, or stronger than the question on income, which was used as a benchmark question (Figure 1).

The question on variations of sex characteristics performed the worst of the three potential topics with relatively lower levels of understanding of the question, rationale for inclusion and comfort in answering the question. A question on sexual orientation had strong conceptual understanding, but lower levels of understanding of rationale for inclusion and support for inclusion than sex, gender and income (but higher than variations of sex characteristics). The ABS believes communication strategies could target improving the understanding of the rationale and value of inclusion of the sexual orientation question.

Figure 1: Comparison of level of understanding, comfort and support for selected questions^{(a)(b)}

The level of understanding, comfort and support varied for each of the tested questions 

Against all metrics, the performance of sex at birth and gender was comparable to or stronger than that of income. In contrast, most of the metrics for variation of sex characteristics and sexual orientation tended to be lower.



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(a) Quantitative analysis on interim data collected via an online survey administered between 24 May – 29 May 2024, with n=1,187 Australians aged 18+ years.
 (b) Questions on sex and income were included as a benchmark in the research.



FOR INFORMATION

MB24-900003

Title:	Further information requested on ABS recommendation to Government on 2026 Census Topics	
To:	The Hon Dr Andrew Leigh MP Assistant Minister for Competition, Charities and Treasury	
Cc:	The Treasurer, The Hon Dr Jim Chalmers MP Dr Steven Kennedy PSM, Secretary to the Treasury	
Recommendation:	1. That you note the additional information to support the Government decision on topic changes for the 2026 Census.	
	Noted <input checked="" type="checkbox"/>	Please Discuss <input type="checkbox"/>
Signature:	 The Hon Dr Andrew Leigh MP Assistant Minister for Competition, Charities and Treasury	1 / 7 / 24 Date

Executive summary

Terrific brief - thank you.

- This brief provides information you and your office have requested to support the Government decision on topics for the 2026 Census. It supplements information presented in the ABS recommendation on topic changes (see MS24-900008).
- There is compelling evidence on the importance of collecting data on Gender for all ages, and Sexual orientation for people 15 years and over. Questions on gender and sexual orientation have tested sufficiently well for younger cohorts, and potential concerns can be mitigated.
- The 2026 Census LGBTIQ+ Expert Advisory Committee (LGBTIQ+ EAC) have offered to provide you with any additional evidence to support inclusion of these topics when you met on 3 April 2024. The ABS can recommend members who would be well placed to provide further information on data needs for younger populations.
- The ABS is confident that if the topic on Variations of sex characteristics is not included in the 2026 Census, the position will be defensible and will not jeopardise support for the Census due to:
 - the strength of the evidence underpinning the ABS recommendation
 - the ABS' transparent communication with the LGBTIQ+ EAC on the challenges of collecting data of sufficient quality, as well as the collaboration during testing to try and improve question performance.

Cleared by:	Brenton Goldsworthy Deputy Australian Statistician	Contact officer:	Duncan Young, General Manager Census & Population Division
Date cleared:	26 June 2024	Contact number:	s 22
Consultation:	Nil		

Key points

- The ABS carefully considers whether to apply a minimum age for each topic when determining its recommendation to Government. To do this, the ABS assesses the strength of the data need for younger populations, the likely data quality, potential impacts on support for the Census, and the potential for breaching anti-discrimination legislation.

Data needs – supporting health and wellbeing of LGBTIQ+ youth

- The Australian Government Department of Health and Aged Care (DHAC) submission for the 2026 Census topic consultation stated that whole of population data on the LGBTIQ+ community is critical to inform the monitoring and evaluation of actions under the Australian Government's 10-year National Action Plan for the Health and Wellbeing of LGBTIQ+ People¹. DHAC highlighted the specific need for information on LGBTIQ+ subgroups and data for smaller geographical areas, which current datasets are unable to provide.
- The DHAC submission noted that the benefit of the Australian Government investment in national health survey collections, which include data on sex, gender, variations in sex characteristics and sexual orientation (e.g. Intergenerational Health and Mental Health Study), cannot be fully realised without whole of population data representing LGBTIQ+ people and communities.
- DHAC commissioned a report to provide evidence to inform the development of the Action Plan². This report analysed existing studies to outline a wide range of health concerns, challenges and experiences that underpin LGBTQA+ health and wellbeing.³ This report highlighted additional challenges for younger people aged 14 to 25 years. For example:
 - "There are considerable barriers to accessing mental healthcare, which for young LGBTQA+ people – who face barriers associated with their age in addition to their minoritised sexual and/ or gender identities – are especially heightened." (p. 49)
 - "Aboriginal and Torres Strait Islander LGBTQA+ youth experience alarmingly high rates of poor mental health, including suicidal ideation, self-harm, as well as verbal, physical and sexual assault. ... Feeling a part of their school was associated with a lower likelihood of suicide attempt and self-harm. ... Culturally appropriate mental health support and prevention of harassment are also crucial for these youth." (p. 28)

¹ DHAC (Department of Health and Aged Care) (2023), 'Pathway to better health for LGBTIQ+ communities', <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/pathway-to-better-health-for-lgbtqi-communities>, DHAC website, accessed 23 June 2024.

² Amos, N., Lim, G., Buckingham, P., Lin, A., Liddel-Hunt, S., Mooney-Somers, J., Bourne, A., on behalf of the Private Lives 3, Writing Themselves In 4, SWASH, Trans Pathways, Walkern Katatdjin, and Pride and Pandemic teams (2023). *Rainbow Realities: In-depth analyses of large-scale LGBTQA+ health and wellbeing data in Australia*. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University.

³ Data need is for LGBTIQ+ population (including I for Intersex variations), however the DHAC study was on the LGBTQA+ population only as data was not available to support findings for people with Intersex variations.

- “Residential location was associated with mental health outcomes among cisgender LGBTQA+ young people, with those living in ... rural and remote areas faring worse than those living in inner-suburban areas. ... LGBTQA+ cisgender young people were particularly vulnerable to experiencing homelessness when living in regional towns and rural and remote areas. This finding may suggest greater experiences of family rejection in these regions resulting in young people needing to leave their homes.” (p. 30-31)
- Attachment A provides further findings from the report.
- Unpublished data from the ABS 2020-2022 National Study of Mental Health and Wellbeing supports the findings on mental health in these studies, as it showed LGB+ people aged 16-24 years were more likely to experience a 12-month mental disorder than heterosexual people aged 16-24 years (66.0% compared to 38.8%).
- If a higher age restriction was introduced, the cohort of people that are excluded from answering in the 2026 Census would not be represented in the data for 5 years. Data on this cohort would be missing for policy development, service delivery and evaluation for this period. If the age restriction was increased to 18 years, the missing cohort would be 21 to 23 years before data was released from the 2031 Census in 2032.

Other considerations – Gender specific

- Increasingly, surveys conducted outside the ABS are collecting gender rather than sex as their key demographic variable. This is in line with the *Australian Government Guidelines on the Recognition of Sex and Gender*.⁴ Whole of population gender data would support benchmarking and weighting of these surveys, and to model small area/population estimates.
- The 2021 Census showed that the collection of sex without gender created data quality issues, so the exclusion of the gender topic from younger people would impact on the quality of data on sex for younger populations.⁵
- Additionally, all age restricted questions are currently placed together towards the back of the paper form. This is to reduce respondent burden and mitigate the risk of people accidentally skipping subsequent questions. If gender was moved to the age restricted section in the paper form, the data quality issues outlined above may occur. The ABS has not tested options for implementing an age restriction for this question on the paper form and therefore is unable to understand potential data quality impacts.
- The sex or gender of a person can be changed on a birth certificate in all jurisdictions and other official identity documents (including passports) for people under 18 years of age. In the ACT you can change your sex on your birth certificate at 14 years without parental consent, and in Tasmania at 16 years.

⁴ Attorney-General’s Department (2015) *Australian Government Guidelines on the Recognition of Sex and Gender*, <https://www.ag.gov.au/rights-and-protections/publications/australian-government-guidelines-recognition-sex-and-gender>, Attorney-General’s Department website, accessed 4 June 2024.

⁵ Analysis of the 2021 Census sex question identified that without a question on gender, 3 in 5 respondents who selected ‘non-binary sex’ and responded using the write in field, indicated a gender identity. It is also likely that transgender populations would have also responded with their gender identity (i.e. males at birth reporting female), however it is not possible to understand the extent of this.

- The ABS may be exposed to greater legal risk of contravening anti-discrimination if an age limit is applied to gender.⁶ This is because people who are not asked the question on gender will only be able to report their sex recorded at birth.

Mitigating risk

- The ABS outlined several key mitigations to manage the risk of community concern associated with collecting data on the topics in its recommendation (MS24-900008), including providing a 'Prefer not to answer' option. In addition to these mitigations, the ABS will continue to have individual forms available, to support the private completion of the Census.
- The ABS is conducting research into motivations and barriers to completing the Census. This is identifying approaches to manage risks associated with including these topics in the Census (Attachment B). These will be discussed with the LGBTIQ+ EAC and considered further once the Government decision is known.

Further considerations on Variations of sex characteristics

- The ABS is pooling data from several household surveys to produce experimental estimates on the topics of gender, sexual orientation and variation of sex characteristics.
- Quality assurance activities on the experimental estimates for people with a variation of sex characteristics are highlighting the complexities of collecting the data accurately, even when a respondent is only answering for themselves and when the data is collected by a trained interviewer. The analysis shows greater challenges in accurate data collection for this topic compared to other topics. The ABS is seeking external peer review of this analysis. The estimates are planned for release in early August 2024 and the ABS will include information about data accuracy alongside the estimates.
- ABS is commencing work with your office to develop a communications and engagement strategy to announce the Government decision on topics for the 2026 Census. If the Government accepts the ABS' recommendation, a key element of the strategy will be the engagement with stakeholders who have strongly advocated for the inclusion of this topic.
- The ABS' transparent communication with the LGBTIQ+ EAC on the performance of questions throughout the testing program, and collaboration in refining the question where possible, will partially mitigate risk. The ABS has confidence that continued transparency of the evidence underpinning the recommendation will further mitigate the risk. While there is likely to be initial disappointment, the majority of LGBTIQ+ organisations are expected to promote the value of the Census data and the importance of completing the Census if the other questions are included.
- The ABS will share the outcomes of the research on motivations and barriers to Census completion at the next LGBTIQ+ EAC on 31 July. Attachment B provides the final assessment of level of understanding, comfort and support for selected questions.

Attachments

Attachment A – Key findings on young people from Rainbow Realities report

Attachment B – Updated data from research into motivations and barriers to Census completion

⁶ If groups are treated differently, or perceived to be treated differently, the ABS may be subject to a complaint and if the complaint is not resolved this could lead to legal action. The questions asked by the ABS to collect data on the prescribed topics must be consistent with anti-discrimination legislation.

Attachment A – Key findings on young people from Rainbow Realities report

The Rainbow Realities report¹, commissioned to inform the development of the Australian Government’s *10-year National Action Plan for the Health and Wellbeing of LGBTIQ+ People*² provides a synthesis of data from six surveys of LGBTQA+ populations in Australia.³ These analyses highlight a wide range of health concerns, challenges and experiences that underpin LGBTQA+ health and wellbeing, including for younger people. Table 1 outlines some key findings from the report. For additional themes, analysis and insights, see the full report.

Table 1: Rainbow Realities report – Key findings on young people by theme

Theme: Mental health (p. 47)
<u>LGBTQA+ Young People (Writing Themselves in 4)</u> <ul style="list-style-type: none">• 81.0% of LGBTQA+ young people indicated high or very high levels of psychological distress.• 63.8% reported having ever been diagnosed with a mental health condition.• Almost half had ever been diagnosed with generalised anxiety disorder (49.5%) or depression (48.3%).
<u>Trans and Gender Diverse Young People (Trans Pathways)</u> <ul style="list-style-type: none">• 74.6% of trans and gender diverse young people had ever been diagnosed with depression.• 76.4% indicated clinically relevant symptoms of depression in the last 2 weeks.• 72.2% had ever been diagnosed with an anxiety disorder.
Theme: Suicidality and self-harm (p. 62)
<u>LGBTQA+ Young People (Writing Themselves in 4)</u> <ul style="list-style-type: none">• 58.2% of LGBTQA+ young people had experienced suicidal ideation in the past 12 months.• 24.4% had made a suicide plan.• 25.6% had attempted suicide at some point in their lifetime.• 62.1% reported having ever self-harmed.• Only 38.1% of the LGBTQA+ young people who had experienced suicidal ideation, planning, attempts or self-harm ideation/attempts in the past 12 months had accessed any professional counselling or support service for this in the past 12 months.

¹ Amos et al., *Rainbow Realities: In-depth analyses of large-scale LGBTQA+ health and wellbeing data in Australia*.

² DHAC (2023), ‘Pathway to better health for LGBTIQ+ communities’.

³ This includes findings from the Private Lives 3, Writing themselves in 4, SWASH, Trans Pathways, Walkern Katatdjın (Rainbow Knowledge) and Pride and Pandemic surveys. Young people were included in the scope of Writing Themselves In 4 (14 to 21 years), Trans Pathways (14 to 25 years) and Walkern Katatdjın (Rainbow Knowledge) (14 to 21 years).

Trans and Gender Diverse Young People (*Trans Pathways*)

- 79.7% of trans and gender diverse young people had experienced self-harm ever in their lives.
- 43.6% had self-harmed in the last 12 months.
- 82.4% had experienced suicidal thoughts ever in their lives.
- 48.1% had attempted suicide ever in their lives.

Theme: Experiences of homelessness (p. 73)

LGBTQA+ Young People (*Writing Themselves in 4*)

- 23.6% of LGBTQA+ young people had experienced at least one form of homelessness in their lives.
- 26.0% of the young people who had ever experienced homelessness reported this was related to being LGBTQA+.

Trans and Gender Diverse Young People (*Trans Pathways*)

- 22.0% of trans and gender diverse young people had experienced issues with accommodation, including a lack of stable accommodation, homelessness or couch-surfing.

Attachment B – Updated data from research into motivations and barriers to Census completion

The ABS presented preliminary findings from the research on motivations and barriers to Census completion in the recommendation on topics for the 2026 Census (MS24-900008). The quantitative phase of the research has now concluded. Figure 1 provides updated analysis. Changes of note from the preliminary research are:

- Final results are +/- 2 percentage points compared to the preliminary findings, with two exceptions for Variations of sex characteristics:
 - Understanding the rationale for inclusion has dropped from 54% to 50%.
 - Support for inclusion in the Census has dropped below 50% (from 50% to 46%).
- Comfort answering for others for Sexual orientation reduced to 'Moderate agreement' (from 'High agreement'), but still is higher than the existing topic of Income.
- Support for inclusion for Variations of sex characteristics is now 10% lower than Sexual orientation, and 18% lower than Gender.

Figure 2 outlines the risks identified during the research of including or not including the questions, and mitigations that may reduce these risks. The ABS is considering all mitigations.

Figure 3 provides preliminary recommendations on a communication strategy that would support public understanding of the rationale for the sexual orientation question. The research indicated that increasing public understanding of the rationale would also increase support for inclusion.

Attachment A: Key findings on young people from Rainbow Realities report

The Rainbow Realities report¹, commissioned to inform the development of the Australian Government's 10-year National Action Plan for the Health and Wellbeing of LGBTIQ+ People² provides a synthesis of data from six surveys of LGBTQA+ populations in Australia.³ These analyses highlight a wide range of health concerns, challenges and experiences that underpin LGBTQA+ health and wellbeing, including for younger people. Table 1 outlines some key findings from the report. For additional themes, analysis and insights see the full report.

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<u>LGBTQA+ Young People (Writing Themselves in 4)</u> <ul style="list-style-type: none">58.2% of LGBTQA+ young people had experienced suicidal ideation in the past 12 months.24.4% had made a suicide plan.25.6% had attempted suicide at some point in their lifetime.62.1% reported having ever self-harmed.Only 38.1% of the LGBTQA+ young people who had experienced suicidal ideation, planning, attempts or self-harm ideation/attempts in the past 12 months had accessed any professional counselling or support service for this in the past 12 months.
<u>Trans and Gender Diverse Young People (Trans Pathways)</u> <ul style="list-style-type: none">79.7% of trans and gender diverse young people had experienced self-harm ever in their lives.

¹ Amos et al., *Rainbow Realities: In-depth analyses of large-scale LGBTQA+ health and wellbeing data in Australia*.

² DHAC (2023), 'Pathway to better health for LGBTIQ+ communities'.

³ This includes findings from the Private Lives 3, Writing themselves in 4, SWASH, Trans Pathways, Walkern Katatdjin (Rainbow Knowledge) and Pride and Pandemic surveys. Young people were included in the scope of Writing Themselves In 4 (14 to 21 years), ~~Trans Pathways (14 to 25 years)~~ and Walkern Katatdjin (Rainbow Knowledge) (14 to 21 years).

-
- 43.6% had self-harmed in the last 12 months.
 - 82.4% had experienced suicidal thoughts ever in their lives.
 - 48.1% had attempted suicide ever in their lives.

Theme: Experiences of homelessness (p 73)

LGBTQA+ Young People (*Writing Themselves in 4*)

- 23.6% of LGBTQA+ young people had experienced at least one form of homelessness in their lives.
- 26.0% of the young people who'd ever experienced homelessness reported this was related to being LGBTQA+.

Trans and Gender Diverse Young People (*Trans Pathways*)

- 22.0% of trans and gender diverse young people had experienced issues with accommodation, including a lack of stable accommodation, homelessness or couch-surfing.
-

Attachment B – Updated data from research into motivations and barriers to Census completion

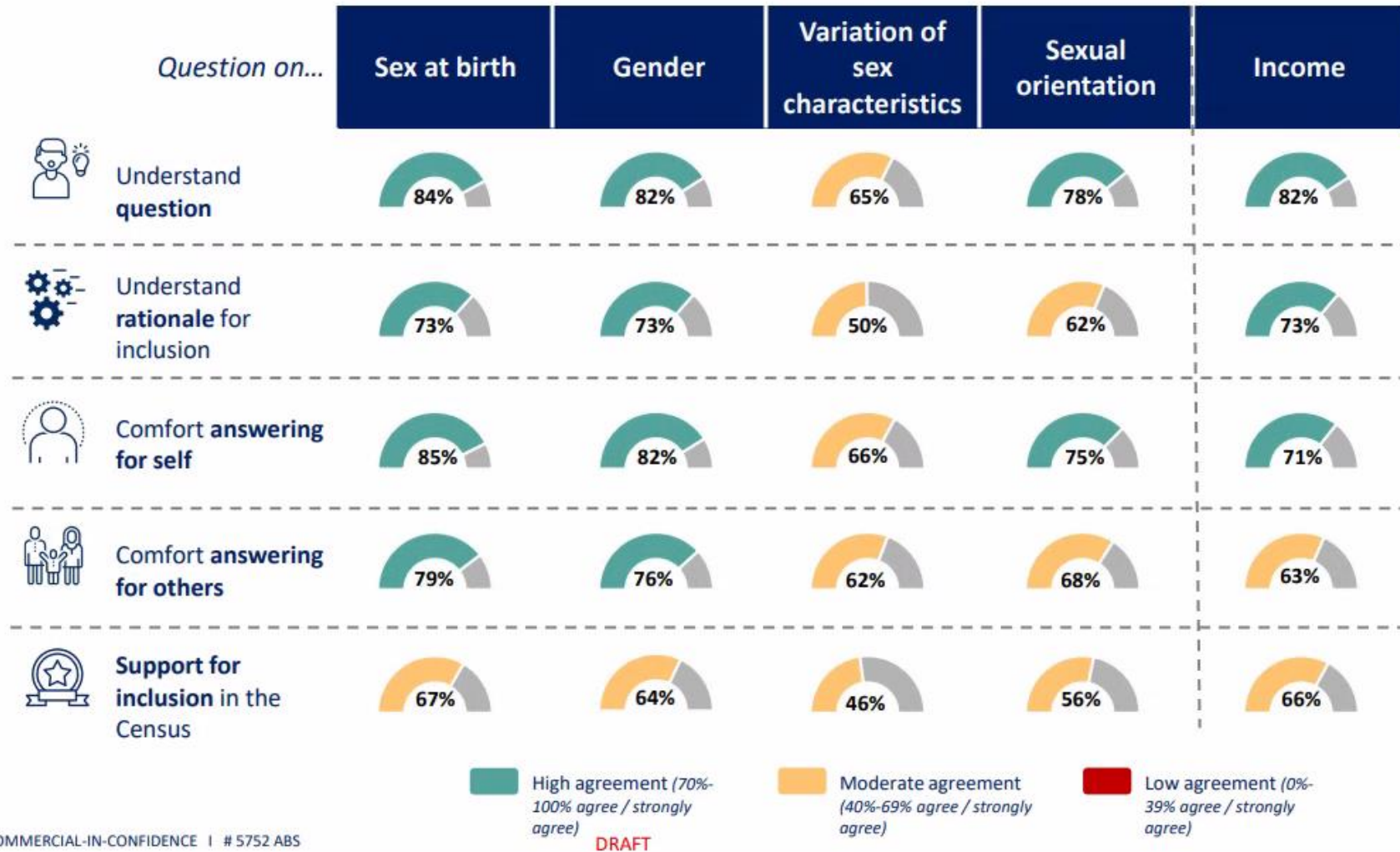
The ABS presented preliminary findings from the research on motivations and barriers to Census completion in the recommendation on topics for the 2026 Census (MS24-900008). The quantitative phase of the research has now concluded. Figure 1 provides updated analysis. Changes of note from the preliminary research are:

- Final results are +/- 2 percentage points compared to the preliminary findings, with two exceptions for Variations of sex characteristics:
 - Understanding the rationale for inclusion has dropped from 54% to 50%.
 - Support for inclusion in the Census has dropped below 50% (from 50% to 46%).
- Comfort answering for others for Sexual orientation reduced to 'Moderate agreement' (from 'High agreement'), but still is higher than the existing topic of Income.
- Support for inclusion for Variations of sex characteristics is now 10% lower than Sexual orientation, and 18% lower than Gender.

Figure 2 outlines the risks identified during the research of including or not including the questions, and mitigations that may reduce these risks. The ABS is considering all mitigations.

Figure 3 provides preliminary recommendations on a communication strategy that would support public understanding of the rationale for the sexual orientation question. The research indicated that increasing public understanding of the rationale would also increase support for inclusion.

Figure 1: Comparison of level of understanding, comfort and support for selected questions^{(a)(b)}



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(a) Quantitative analysis on data collected via an online survey administered May-June 2024, with n=2,077 Australians aged 18+ years.

(b) Questions on sex and income were included as a benchmark in the research.

Figure 2: Risks and mitigations of including and not including questions on sex, gender, sexual orientation and variations of sex characteristics



There are risks to both including and not including the tested questions



But a range of risk mitigation strategies have also been identified that could at least partly address the risks.

Risks of including

RISK: Inaccurate or non-completion of questions due to:

- Not understanding the question and therefore being unable to complete.
- Being unwilling to complete/ not being comfortable completing the questions.



MITIGATION: Communications and education about the meaning and rationale of the questions, and structural supports to maximise comfort completing.

RISK: Negative wellbeing impacts for LGBTQIA+ people due to:

- Forcing LGBTQIA+ people to 'out' themselves if they are not living in a household where it is safe for them to do so.
- Exposure to potential public debate about the new questions, which may include homophobic and/ or transphobic views.



MITIGATION: Ensure sufficient support services are available for LGBTQIA+ communities to allow for potential increased demand and provide a 'prefer not to say' option for all questions'.

RISK: Negative reputational impacts if ABS/ Government seen to be changing question to be "politically correct", promoting an agenda or "forcing" Australia in a particular political direction/ ideology.



MITIGATION: Communications and education on the rationale for including the questions and the consultation process.

Risks of not including

RISK: Inaccurate completion or non-completion of existing question on sex – due to lack of appropriate response options "forcing" transgender and gender diverse people to select a response that does not accurately describe them.

RISK: Negative wellbeing impacts on LGBTQIA+ communities, due to feeling excluded or "invisible" due to a lack of appropriate response options for the existing sex question.

RISK: Negative reputational impacts for the ABS, including:

- Appearing "outdated" in their understanding of sex, gender and sexual orientation.
- Reduced credibility of ABS due to not following best practice in collecting information on LGBTQIA+ communities and seen to be "missing" an opportunity to lead by example.

RISK: Missed opportunity to collect data on LGBTQIA+ communities in Australia, resulting in not having national data on gender, sexual orientation and sex characteristics to inform service delivery, policy and advocacy.



MITIGATION: All risks outlined above could at least partially be mitigated by including the tested questions in the 2026 Census, alongside the appropriate education and communications.

Figure 3: Preliminary communication recommendations to improve understanding of the rationale for sexual orientation

Communication will be integral to support understanding of the rationale for the sexual orientation question



Communication about the need for data will be integral to support understanding of the rationale for the sexual orientation question.

WHAT TO COMMUNICATE

To improve understanding of the rationale for inclusion of the sexual orientation question in the Census, it will be critical to **communicate about why the data is needed and the likely impact of data for the community**. This should include key messaging about:



The gap in data about the number of people who are LGB+ and the composition of LGB+ communities in Australia – i.e. there is a gap in knowledge and understanding the whole Australian population.



How data about sexual orientation may be used by:

- Federal, State and Territory Governments.
- Local councils.
- Businesses.
- LGB+ community organisations.
- Health services – including for physical health, mental health and sexual health.
- Schools and educational services.
- Relationship services (e.g. counselling services), and domestic and family violence services.
- Aged care services.



The positive impact of the data for LGB+ people, communities and their families/ friends – including:

- Mental health/ wellbeing impacts of being counted and recognised/ knowing that LGB+ family and friends were counted.
- Impacts of improved service provision for LGB+ communities.



LGB+ people and communities **were consulted and involved in the designing of the questions**.

HOW TO COMMUNICATE



Case studies, testimonials and personal stories of LGB+ people, their parents/ carers, siblings and children to show the impact of data at the personal level, and of organisations and governments for the community level.



Provide **tangible examples** of how sexual orientation data would be used.



Use a **strengths-based “factual”, “informative” and “neutral”** tone that is not biased on LGB+ issues.

WHO SHOULD COMMUNICATE



The ABS.



Other **Federal, State and Territory Government departments/ agencies** that may use the data.



Local councils.



Community organisations and services, healthcare providers, educational bodies and aged care services.



Businesses.



FOR ACTION

FOI 3711
Document 3

MS24-900012

Title:	Confirming Government decision on 2026 Census topics and next steps	
To:	The Hon Dr Andrew Leigh MP Assistant Minister for Competition, Charities and Treasury	
Cc:	<i>The Treasurer, The Hon Dr Jim Chalmers MP Dr Steven Kennedy PSM, Secretary to the Treasury</i>	
Due date:	Timing: Urgent Action required by: 21 August 2024 Reason: 2024 Census Test communications are required to start no later than 22 August 2024.	
Recommendations:	1. That you confirm the Government's decision to make no changes to the <i>Census & Statistics Regulations 2016</i> (the Regulation), and therefore the 2026 Census will collect the same topics as the 2021 Census.	
	Agreed <input checked="" type="checkbox"/>	Not Agreed <input type="checkbox"/>
	2. That you advise the ABS on the timing and nature of communication plans of this decision so the ABS can assist with reducing risks to the delivery of a successful Census.	
	Agreed <input checked="" type="checkbox"/>	Not Agreed <input type="checkbox"/>
	3. That you agree to the LGBTIQ+ Expert Advisory Committee being briefed immediately before public announcement of the decision in recognition of the importance of this critical relationship.	
	Agreed <input type="checkbox"/>	Not Agreed <input type="checkbox"/>
Signature:	 The Hon Dr Andrew Leigh MP Assistant Minister for Competition, Charities and Treasury	23 / 8 / 2024 Date

Executive summary

- This brief seeks confirmation of your verbal advice, provided to the Australian Statistician on 13 August 2024, that the Government has decided that the 2026 Census of Population and Housing (the Census) will collect the same topics as the 2021 Census.
- We request advice on the planned timing and approach to communicating the Government's decision publicly. There are risks to the ABS and Government whenever the decision is announced, although the nature of these risks varies depending on timing.

PROTECTEDPROTECTEDCleared by:	Dr David Gruen AO, Australian Statistician	Contact officer:	Duncan Young, General Manager Census & Population Division
Date cleared:	16 August 2024	Contact number:	s 22
Consultation: Nil			

- One immediate consideration is the 2024 Census Test which includes the topics previously under consideration. The ABS had planned to begin communication with parliamentarians in Test areas and other key stakeholders on 20 August 2024, which requires information on the topics being tested. This can be deferred to no later than 22 August 2024.
- The LGBTIQ+ Expert Advisory Committee should be briefed in advance of the public announcement to help reduce damage to an important working relationship. You met with the Expert Advisory Committee in April 2024.

Key points

- On 14 June 2024, the ABS recommended the Government make 5 topic changes in the Regulation for the 2026 Census (MS24-900008). These were:
 - The addition of topics on Gender and Sexual orientation.
 - The removal of the Number of children ever born topic.
 - Minor updates to wording for the Main language other than English used at home and Proficiency in spoken English topics.
- On 13 August 2024 you advised the Australian Statistician that the Government does not support the ABS recommendation on topic changes. The ABS seeks confirmation of this decision and the Government's plans to announce. This will support the ABS to progress the successful delivery of the 2026 Census and manage risks associated with not changing the topics.
- Consideration should be given to the following when determining the timing of the Government's announcement:
 - There will be increasing public interest, particularly from the LGBTIQ+ community, on topic decisions for the 2026 Census, as the ABS has publicly stated that it will make its recommendation to Government in mid-2024.
 - Prolonged uncertainty will reduce the effective functioning of the LGBTIQ+ Expert Advisory Committee (EAC) for the 2026 Census. The ABS has suspended meetings to provide space for Government decision making. If this suspension is protracted it is likely to generate concern from this group.
 - On the 22 August 2024 the ABS will begin communicating with stakeholders about the 2024 Census Test. This communication necessarily includes discussion of new topics and questions being tested, including the LGBTIQ+ topics recommended by the ABS for inclusion. This includes a national media briefing, launch of the Census website and a publication providing an update on the topic changes that have not progressed to this Test (MS24-000006).
 - From 27 August 2024, members of the public will receive Census test forms that include the recommended LGBTIQ+ topics along with Variations of sex characteristics. This may lead to social media or questions to the ABS or Government.
 - The retention of current topics will require additional testing of the Sex and the Number of children ever born question. This testing will involve recruiting members of the public, including from the LGBTIQ+ community, to participate in cognitive testing. This testing needs to occur in October 2024 to meet timeframes for finalisation of the Census form and will require engagement with LGBTIQ+ stakeholders.

Next steps for ABS

- The ABS will conduct the Census Test from late August till mid-October. The Census Test is critical as a mechanism to test question changes, data collection processes and operational systems to ensure they are ready to deliver a positive, safe and secure Census that is easy to complete. Communication supporting the Test will need to include information on changes to topics and questions that are included in the Test.
- The timing of the Census Test is fixed as printed material has been produced, temporary staff have been recruited, arrangements are in place with external suppliers and the timing has been publicly communicated. The ABS needs to proceed with the Test to avoid any unacceptable risks to Census delivery.
- The ABS will undertake additional work on 2026 Census questions given the decision to not change topics, specifically:
 - The ABS needs to undertake public testing to refine the question on sex. The testing undertaken to date has focused on changes to the sex question, asked alongside a question on gender. Through the Australian Human Rights Commissions (AHRC) conciliation with Equality Australia and Mx Long, the ABS has committed to making changes to the 2021 Census question on sex, specifically to not use the term 'non-binary sex' as one of the options but to still to provide more than two response options. This followed analysis published by the ABS that the inclusion of the term 'non-binary sex' led to the collection of data that was not meaningful.
 - The ABS had communicated in the 2021 Census that the topic of Number of children ever born was not expected to be included on the 2026 Census as there is insufficient need for the data. The ABS also communicated this through the 2026 Census topic review process and recommended its removal to Government. In line with this, the ABS had not invested resources on testing refinements to this question. The ABS has made a commitment through the resolution of the AHRC complaint to not ask this question in a way that assumes who can give birth. Changing this question to meet this commitment will require public testing and engagement with LGBTIQ+ stakeholders.
 - The topics in the Regulation for Main language other than English used at home and Proficiency in spoken English are currently not aligned to the Census question, which was broadened in the 2021 Census to include languages that are used but not spoke (e.g. Auslan). Without an update to the topic the ABS will need to retain this inconsistency between the Census form and the Regulation.
- The ABS has developed experimental population estimates for people who are trans and gender diverse, for people who have a sexual orientation other than heterosexual, and for people born with a variation of sex characteristics. The release of these estimates will not fully meet data needs, as the data will not be available at the required geographic levels or be able to be analysed alongside other Census data. While the ABS has not yet set a release date, as the estimates have been peer reviewed by external experts, there will be an expectation of a release this year.
- To design questions that best collect data on each of the prescribed topics, the ABS will continue to pursue changes to improve questions for the topics of Ancestry, Attendance at an educational institution, Country of birth of parents, Household and family relationships, Industry of employment, Labour force status, Long-term health conditions, Marital status, Mode of travel to work and Religious affiliation.

Issues/sensitivities

- These issues are relevant to the Government's decision to collect the same topics as the 2021 Census:
 - The ABS has publicly communicated that the topics of Gender, Sexual orientation and Variations of sex characteristics are shortlisted for inclusion and have high public value.
 - The ABS published a statement of regret in August 2023 that recognised that the absence of question on gender identity, variations of sex characteristics or sexual orientation meant that some respondents felt invisible and excluded when completing the Census and in the Census results. This decision will mean that these feelings are repeated for the 2026 Census.
 - There is a risk to the successful delivery of the Census if there is public criticism and campaigning while the Census is underway. The ABS expects a strong negative reaction from the LGBTIQ+ community and supportive members of the public. This could reduce the Census response rate and quality of the data collected, and draw criticism of the ABS and Government.
 - LGBTIQ+ advocates may point to the successful implementation of questions relating to Gender and/or Sexual orientation in Censuses in New Zealand, England/Wales and Canada.
- The decision to not include the additional topic of Gender is likely to lead to continued conflation of Sex and Gender in Census form responses, leading to the need to highlight data quality limitations in the Sex data collected in the 2026 Census.