



**DATA SHARING AND RELEASE  
LEGISLATIVE REFORMS  
DISCUSSION PAPER**

Office of the National Data  
Commissioner

AUSTRALIAN DATA ARCHIVE SUBMISSION  
15 October 2019

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Dear National Data Commissioner

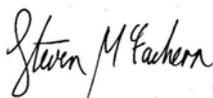
The Australian Data Archive are pleased to submit a response to the *Data Sharing and Release Legislative Reforms Discussion Paper*.

The Australia Data Archive continues to support efforts by the Australian Government to increase the quality and availability of government-held administrative, survey and linked datasets in a way that ensures the privacy of individuals and entities who provide their data and that maintains public trust and support.

This response should be attributed to the Australian Data Archive only, and not the ANU as a whole. Our response sets out general comments on the issues raised in the discussion paper and highlights issues that we consider warrant further consideration and discussion.

We would welcome the opportunity to discuss issues raised in this paper further.

Yours sincerely



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## Data Sharing and Release: Legislative Reforms Discussion Paper

### **General Comments**

The Australian Data Archive (ADA) strongly supports the overall reform agenda set out in the Discussion Paper and shares the Government's commitment to the sharing of data with trusted users for specified purposes. We also recognise that culture change takes time and we support the processes outlined, including ongoing consultations and legislative changes to encourage and support government agencies 'to share information safely and consistently for the benefit of all Australians' (p. 3).

### **Overall support for approach**

#### **Data sharing and release Framework**

We support the three-pronged regulatory framework consisting of the independent Data Commissioner, a National Data Advisory Council and new legislation to encourage greater data sharing, while strengthening safeguards.

The objectives of the legislation are clear and adopting consistent approaches across jurisdictions will simplify processes, support minimum standards and clear expectations for data handling and apply appropriate safeguards and protections.

While the proposed exemptions (National Intelligence data and *My Health Record* data) are sensible, we support the proposed exemption list being open to further consultations and public scrutiny.

#### **Public benefit**

We agree that better data sharing will provide a better understanding of 'Australia's economy, society and environment' (p. 21) which will be for the public benefit if the data is used to inform future government policy, programs and services or for research and development. These benefits can be realised at the individual, cohort and/or national level.

The preclusion of data sharing for the purposes of compliance and assurance activities and national security and law enforcement purposes is strongly supported, as are the conditions proposed for the commercial use of public data.

#### **Safeguards**

The ADA strongly supports a principles-based framework based on the internationally recognised Five-Safes Framework which provides for 'strategic, privacy, security, ethical and

operational risks to be considered as part of a holistic assessment' (p. 29). The proposed framework builds on protocols already embedded within our organisation.

It also enables assessments to be made in line with existing relevant legislation that protect privacy. The issue of consent is discussed in more detail below.

## **Trust and Transparency**

Transparency underpins trust in data sharing, but also in organisations, institutions and governments. The approach outlined is well designed and articulated and covers different aspects of data sharing and use. The use of registers of both users and data service providers should encourage public confidence in the new data sharing framework and its supporting legislation.

The proposed Data Sharing Agreements strike a good balance between simplicity and transparency, while reflecting the Data Sharing Principles. In addition, the reporting regime is fit for purpose and will support ongoing improvements and education, as required.

We note that the development of a data breach scheme is still being considered, but that provisions could be included in the Data Sharing Agreements. We would welcome further consideration of what constitutes a breach and what penalties may apply and how they might be addressed in the legislation and/or the rules.

## **Role of the NDC**

The four major roles identified for the National Data Commissioner, guidance, advice, advocacy and regulation, are equally important. To a large extent, they will determine the extent to which data sharing is embraced by government agencies, government and the research community.

Accreditation is an important component of the oversight of the new data sharing system. It is good that the accreditation system will be principles-based, as this will allow data users and service providers to adapt to changing technologies and systems without the need for constant revision.

## ***Issues we believe need further discussion/consideration***

### **Consent**

We acknowledge that there has been significant feedback received about consent and agrees that further discussion is required. We agree that the most appropriate approach could be to have different levels or kinds of consent required for access to different sorts of data, as long as the number of 'categories' is small and they are clearly delineated.

### **Safeguards**

While we are strongly supportive of the five safes framework for data release and sharing, we also believe that a considerable investment is still required to provide the technical and governance arrangements for the framework to be implemented. We believe that the ONDC

has a leadership role in designing and supporting this framework, but that this should be a collaborative process with other government and research organisations.

## **Accreditation**

Accreditation will be important for transparency and confidence in the new system, especially for data custodians and the community. However, it is important that any accreditation system places as little burden as possible on data users and data service providers, while providing the required assurance that individuals and organisations have the required skills, capabilities and systems to support safe data sharing.

Related to accreditation is the issue of monitoring whether data is being shared and used for the specified purpose and in line with the legislated protections. The role of the ONDC in conducting or monitoring audits of data release and usage could be explored or clarified as part of future consultations.

## **Rules to be issued by responsible ministers**

Separating the principles-based legislation from more practical rules (and possibly guidelines) makes sense and should simplify any legal recourse sought under the legislation. However, it is unclear whether different portfolio ministers could issue different, and potentially contradictory, rules. It will be important for the legislation to provide quite fixed guidelines for ministers or those developing new rules so that such potential conflicts can be avoided.