



NATIONAL ARCHIVES OF AUSTRALIA

**Data Sharing and Release
Legislative Reforms - Discussion Paper
National Archives of Australia Submission**

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Australian Government
National Archives of Australia

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About the National Archives of Australia

The **National Archives of Australia** (the National Archives) is an Executive Agency in the Attorney-General's portfolio, established under the *Archives Act 1983*. It is deemed a non-corporate entity under the *Public Governance, Performance and Accountability Act 2013*.

The National Archives is the Australian Government entity that sets the information and data management policy and standards that must be met by Government agencies in the creation, management, preservation and disposal of government records. This ensures essential records – including data in digital form – are maintained as the authentic evidence and national memory of Government activity and decisions, remaining accessible and re-usable now and in the future.

The definition of 'Commonwealth records' in the Archives Act covers all information in digital and non-digital formats that is created, used or received as part of Government business. As a result, all data, including email, social media content, datasets, geospatial information, audio-visual and business-related information in any other format constitutes the records of the Commonwealth.

Functions

The functions of the National Archives, as summarised in brief below, are set out in full in section 5(2) of the *Archives Act 1983*, and include:

- determining standards and providing advice to Australian Government agencies for management of government information;
- setting information management requirements, such as the Digital Continuity 2020 Policy for Australian Government data and information;
- determining the most valuable Australian Government data and information for retention as national archives;
- ensuring that the most valuable (archival) data is conserved and preserved for access by future generations; and
- facilitating, publicising and sponsoring the use and reuse of archival material for policy development, economic activity and public benefit.

Submission

The **National Archives of Australia** (the National Archives) is pleased to provide feedback on the *Data Sharing and Release Legislative Reforms Discussion Paper* with respect to the key functions it performs across government, under the *Archives Act 1983*.

The National Archives supports the development of the proposed reforms to enable better use and reuse of public sector data. Achieving this is dependent on the capability of agencies to find and maintain original data and protect its integrity throughout its lifecycle, so that it can be shared via interoperable systems.

The National Archives has an established statutory based role in ensuring agencies identify and maintain the most valuable archival data assets in perpetuity, and is committed to supporting better citizen and government outcomes through increasing access to, and use of, government data and information.

Our feedback is focussed on areas where the National Archives can best assist in strengthening the Data Sharing and Release Legislative Reforms; noting our ongoing commitment in working with the Office of the National Data Commissioner to address common challenges and support best practice data governance and management in the Australian Government.

Key recommendations

The National Archives recommends the Data Sharing and Release Legislative Reforms:

1. Ensure alignment and complementary interactions with the *Archives Act 1983*, with particular attention to the selection, long-term preservation of and access to Australian Government information, records and datasets of enduring national value.
2. Clarify the timeframe for application of the new legislation. The *Archives Act 1983* provides for public access to records in the 'open period', that is, records over 20 years of age, subject to the exemption of material of ongoing sensitivity. The new legislation will need to complement these existing provisions for open access to Australian Government information to minimise potential duplication or confusion.
3. Ensure the role of the Data Commissioner is clearly differentiated from the National Archives' existing legislated role in regards to setting standards and providing advice on managing information and data, including alignment of responsibilities at legislative and policy levels as appropriate.
4. Recognise the National Archives' longstanding role and areas of expertise in information and data management, identification of valuable datasets, and the collection, management of and access to public sector data.

Comments addressing specific points raised in the Discussion Paper are provided below.

Data Sharing and Release Legislative Reforms - Discussion Paper Feedback

2.3 DATA SHARING AND RELEASE FRAMEWORK - NATIONAL DATA ADVISORY COUNCIL

The National Data Advisory Council is an important source of expertise to support the National Data Commissioner's guidance, advice and advocacy functions. It advises the National Data Commissioner on ethical data use, community expectations, technical best practice and industry and international developments. The National Data Commissioner may also seek advice from the National Data Advisory Council on issues relating to the broader data environment (pg 14).

The National Archives is a trusted source of expertise and advice to agencies on the integrity, disposal and preservation of significant public sector data. It also ensures the public right of access to information in records over 20 years of age.

As future membership opportunities may arise, the National Archives would be a valuable addition to the National Data Advisory Council in providing a national and international perspective on:

- identifying valuable information and data;
- information and data governance and management;
- managing and preserving a collection; and
- providing access to public sector data.

The National Archives is a recognised and respected leader in the international information management community. It works, collaborates, learns from and shares information management knowledge and experience with the national, regional and international information management community, including with Australian state and territory government archives, to evolve the role and capability of archives, and develop information and data management capability in agencies.

Australia, as a member state of UNESCO, supports the implementation of the Universal Declaration on Archives, adopted in September 2010. The Declaration states:

Open access to archives enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life.

2.5 HOW WILL SHARING WORK UNDER THE LEGISLATION

In the process of streamlining the system, there is also the opportunity to realise benefits from datasets that can generate significant community-wide value. The Productivity Commission recommended establishing these datasets as a national asset called the 'National Interest Dataset' (pg 17).

The National Archives holds significant datasets of former Government policy decisions which should be considered for inclusion or reuse in a National Interest Dataset.

Our Selection Principles¹ identify the most significant records of Australian Government including datasets, for permanent retention and transfer to National Archives for ongoing preservation and access. These established requirements can be used to shape and inform any future proposals relating to the creation of a National Interest Dataset.

The National Archives' existing role in identifying records of national significance, including high-value datasets, must be considered in any new mechanism that identifies Australia's records of national significance.

¹ <https://www.naa.gov.au/information-management/dispose-information/transferring-information/transferring-information-national-archives/how-we-select-national-archives>

6.2 OBJECTIVES AND FUNCTIONS OF THE NATIONAL DATA COMMISSIONER

The legislation will also empower the National Data Commissioner to advocate for proper management and greater use, reuse and release of public sector data (pg 41).

The accreditation rules will address core principles contained in the legislation, including:

- a) skills and capabilities to protect, manage and use data
- b) privacy standards, if handling personal information
- c) effective governance to manage and use data (pg 42).

A key National Archives' legislative function is to build information and data management capability across Government agencies. The expertise of the National Archives and its work with agencies is fundamental to each part of the data life cycle from creation, management and use, through to destruction, archiving and release. These functions underpin the availability of fit for purpose data for sharing.

The National Archives issues information and data management requirements through policies, standards and legal instruments under the *Archives Act 1983*. It is crucial that data governance and management advice, guidance and standards are provided to Government agencies in a consistent manner – where agencies responsible for information and data policy and advice are working together to avoid duplication and any potential confusion.

Legislative reforms will need to consider the:

- National Archives' legislated role for building data and information capability for the Australian Government, and to ensure any related requirements in the legislation does not duplicate the National Archives' existing role;
- inclusion of National Archives' standards and requirements in an accreditation process, to ensure the integrity and reliability of data being shared to third parties; and
- inclusion of appropriate National Archives' destruction and information and data management requirements in data sharing agreements.

Other general comments

The National Archives also suggests that legislative reforms need to consider:

- including provisions that enable the original data custodian (agency responsible for the dataset/s) to request access to the source, combined or repurposed data;
- whether it is necessary for the legislative framework (or supporting documents) to reflect the fact that data identified by data custodian agencies for sharing under the proposed arrangements may be held by the National Archives rather than the creator as a result of the *Archives Act 1983* transfer provisions; and
- making provision for the management and governance of aggregated datasets created as a result of data sharing agreements, including identification of the most valuable Australian Government datasets as archival resources (for transfer to the National Archives) and associated custody arrangements.