

Department of Customer Service submission on Data Availability and Transparency Bill 2020 – Exposure Draft

Introduction:

The NSW Department of Customer Service (DCS) wishes to thank the Office of the National Data Commissioner (ONDC) for the opportunity to comment on the proposed Data Availability and Transparency Bill 2020.

The explicit objectives of the proposed legislative reform are “to overcome existing legislative barriers and enable a streamlined, safe, accountable, and transparent pathway to share data”.¹ The NSW Government shares similar objectives with respect to the *Data Sharing (Government Sector) Act 2015* – these are, broadly, promoting the safe management and use of government sector data for policy making, program management and service planning and delivery; removing barriers to data sharing; facilitating expeditious data sharing; and providing protections in connection with data sharing.

DCS is supportive of the objectives of the proposed reform. Clarification and additional guidance in a number of areas is recommended because of the complexity of the Bill and data sharing scheme which may result in reduced capacity for data sharing. This submission outlines our key recommendations, which are informed by our experience operating within the NSW data sharing and privacy legislative landscape as well as our recent experience in leading a significant sector-wide data sharing collaboration initiative supporting the NSW Government’s COVID-19 response.

DCS welcomes any opportunity to continue the discussion with the ONDC on how to improve data sharing between the Commonwealth and NSW Governments.

Scope of the Bill

The Bill and associated controls and safeguards are aimed at providing consistency in sharing public sector data. This includes streamlining practices for governance and management of data, such as an accreditation framework to control who data can be shared with, data sharing principles to manage risks and standardised data sharing agreements.

A standard approach is beneficial in ensuring consistency but may result in the scheme being too onerous for sharing some types of data, for example, where the sensitivity and privacy risks are low.

To ensure a shared understanding among data custodians and data users, clarification on the types of data the Bill is designed to cover would be helpful. This would ensure that data that is low risk can be shared without the data user needing to be part of the scheme.

Interaction with Privacy legislation

The Bill authorises data sharing for a data sharing purpose, that is, for delivery of government services, to inform government policies and programs, and for research and development. The authorisation to share overrides other prohibitions set out in any law of the Commonwealth or of a State or Territory. However, the Bill also requires privacy coverage. To avoid doubt, it would be helpful to explicitly state that secondary uses or disclosures of personal information authorised by the DAT Bill are “...required or authorised by law” under APP6 of the Privacy Act.

¹ Office of the National Data Commissioner, *Data Availability and Transparency Bill 2020 – Exposure Draft*, p.6.

Data integration involves combining data from two or more sources to create an enriched data asset. It would be helpful to provide clarity on whether the use of personal identifiers to conduct the linkage of records from each dataset is permitted by the DAT Bill.

Sharing data between the Commonwealth and the States and Territories

The Bill has the potential to streamline data sharing between the Commonwealth and NSW. As noted above, ideally use of the scheme would be based on the level of risk. A collaborative and flexible approach to data sharing between the Commonwealth and States and Territories was established during COVID-19 through the Australian Data and Digital Council's Data and Analytics Working Group. Sharing of some data was straightforward, while data sharing agreements were required for other data that was shared. Central coordination of data sharing worked well at the Commonwealth and State and Territory levels.

Additional Guidance

The Bill is a long and complex document. The fact of this complexity may lead some data custodians to have greater concerns around data sharing. This may have the unintended consequence of the Bill and associated data sharing scheme reducing capacity for data sharing rather than improving it. Therefore, it would be helpful if the Commonwealth provided supporting guidance and practical examples of how the legislation would assist data sharing as well as examples where it would not. Examples of how the Bill would assist data sharing between the Commonwealth, States and Territories would be welcomed.

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