



WA Government response to the exposure draft of the Data Accessibility and Transparency Bill 2020 and Accreditation Framework Discussion Paper

Overview

As outlined in its previous submissions, the WA Government supports the intent of the Data Availability and Transparency Bill 2020 (DAT Bill). Responding to the health and economic impacts of the COVID-19 pandemic has reinforced the importance of information sharing between all levels of government, and highlighted the real difference it can make to the lives of Australians.

The WA Government believes the DAT Bill presents the opportunity to streamline and promote safer information sharing nationally. The WA Government recognises that the implementation of the legislation will be as important as the content of the draft DAT Bill itself, particularly given that the instruments, guidelines and guidance have not yet been developed.

Notwithstanding its support for the intent of the legislation, the WA Government has concerns with some specific elements of the proposed legislation.

This response addresses the exposure draft of the DAT bill and the Accreditation Framework Discussion Paper.

Getting the balance right

The WA Government notes the proposed positions detailed within the consultation documents. The WA Government is supportive of the proposals by the ONDC in regard to the importance of:

- Establishing clearly defined approved data sharing purposes and exclusions that are aligned to the roles and objectives of government agencies and the public interest;
- Adopting data sharing principles based on the Five Safes Framework approach to mitigate risks;
- Establishment of an independent National Data Commissioner to provide leadership for the safe and better use of data;
- Establishing data sharing agreements within a consistent framework that are underpinned by legally binding requirements; and
- Empowering Aboriginal and Torres Strait Islanders to access data about their communities.

A system that works for all

The WA Government, like other state and territory governments, is responsible for the delivery of critical frontline services such as education and healthcare. The draft DAT Bill presents new opportunities to access information that would help jurisdictions to better deliver these services, develop new approaches, and evaluate existing programs. The WA Government believes these opportunities present perhaps the greatest potential to deliver benefits to Australians through modernising, maximising and safeguarding data use through the draft DAT Bill. In contrast to this potential, the WA Government notes that the proposed legislation appears to treat state and territory governments in the same way it treats organisations like research bodies and the private sector.

State and territory governments share a mutual goal with the Australian Government: delivering services that improve the lives of all Australians. Considering the high degree of integration of revenue streams and service delivery between the two levels of government, it is inappropriate and counterproductive for state and territory governments to be treated with the same level of risk as non-government organisations.

Achieving the proposed benefits of the draft DAT bill for Western Australians is predicated on WA Government agencies being able to fully participate in the proposed system established by the draft DAT Bill in a way that is practical.

Pragmatic approaches to a lack of state-based privacy legislation

The WA Government understands that clause 27 of the draft DAT Bill would preclude WA Government agencies from meaningfully participating in the DAT framework insofar as personal information is concerned. This would significantly limit the benefits the draft DAT Bill can offer to Western Australians.

The WA Government appreciates the intent to make privacy legislation applicable to personal information throughout the DAT system. While WA is progressing its own privacy legislation that would meet the requirements of section 27(1)(b), it is the position of the WA Government that a pragmatic, common sense approach to the use of personal information by state governments in the absence of privacy legislation should be enabled by the draft DAT Bill.

The WA Government would like to highlight that Australian and WA Government agencies have been able to come to lawful, practical solutions to share personal information in the absence of state-based privacy legislation for the WA public sector for many years. These solutions should be enabled to continue within the proposed DAT system and negotiated within the terms of individual Data Sharing Agreements.

The proposed approach to the application of privacy legislation is unnecessarily rigid, and means Australian and WA Government agencies only have complex, time-consuming legislative solutions available to resolve potential barriers.

Accreditation

The WA Government acknowledges the role accreditation plays within the proposed framework, and the chosen strategy selected by the Australian Government. However, the benefits of the draft DAT Bill would be undermined if the required safeguards are not reasonably achievable. It is critical that the translation of the principles into accreditation criteria is fit-for-purpose and promotes data sharing.

Accreditation criteria that are too burdensome, costly and/or difficult to achieve will likely reduce, rather than promote, data sharing. It is important that accreditation requirements are not ultimately prohibitive to data sharing on arbitrary terms. This is particularly pertinent given that organisations are required to make an assessment of the Five Safes as relevant to a proposed initiative and associated Data Sharing Agreement, in addition to accreditation.

The WA Government is unable to comment on the accreditation criteria, as they are yet to be developed. The WA Government notes that the Australian Government proposes to replace the existing Accredited Integrating Authorities (AIA) framework with the DAT framework. Based on the experience of WA Government agencies, and those of other jurisdictions in engaging with the AIA framework, the WA Government is concerned that the proposed DAT framework will replace the same level of onerous technical controls, opaque accreditation and limited data sharing benefits for

state and territory governments on behalf of their citizens. The WA Government recommends that the proposed accreditation renewal timeframes should be consistent for both the Accredited Users and Accredited Data Service Providers.

The WA Government recommends that the National Data Commissioner should immediately notify appropriate parties if an Accredited Data Service Provider and/or Accredited User is suspended. The WA Government supports that accredited entities should be made public or, at the very least, Data Custodians should be provided access to the list of current accredited entities.

It is understood that the proposed accreditation model will enable state-based centres of excellence in data linkage and analysis to become Accredited Data Service Providers (ADSPs). The WA Government understands that this could support a move towards a more decentralised linkage model, where jurisdictional data linkage centres are enabled to link identifying data rather than linkage being done primarily by the Australian Government (for example, through the Australian Institute for Health and Wellbeing).

A distributed approach to linkage will ensure that data and digital capability is developed in all Australian jurisdictions, supports place-based decision making and generally supports states and territories to better answer the questions and challenges that are unique to them.

Culture that supports data sharing

The consultation materials acknowledge an adverse data sharing culture amongst government agencies as a risk. Creating safeguards, providing guidance, and regulating the accreditation and sharing space are not sufficient conditions to change this risk averse culture.

For WA Government agencies seeking access to Australian Government-held data, there is still concern that there is a high likelihood of Australian Government agencies declining to share data, though it is permitted within the legislation and the WA Government agency is accredited and appropriately skilled. There is a need to ensure that assessment and interpretation of frameworks like Five Safes is consistent between government organisations.

The WA Government acknowledges that changing culture within the levels of government and the many different organisations who will participate in the Data and Transparency system is a large undertaking, but similarly acknowledges that this is fundamental to achieving the proposed benefits from this legislation. The WA Government believes this legislation, and other initiatives such as those being overseen by the Australian Data and Digital Council, are important to help change this culture. The WA Government looks forward to continuing to work with other jurisdictions in progressing the data sharing and analytics agenda.

Fees and charges

It is important that all organisations and individuals have an equitable opportunity to demonstrate their security and trustworthiness.

While the WA Government is not fundamentally opposed to a cost recovery model as proposed in the discussion paper, it is noted that it could also be counter-productive to charge a fee for accreditation and renewals. It is anticipated that WA Government agencies will incur costs to become compliant with the requirements of the system (for example, upgrading IT systems and training staff), and the additional cost of accreditation could further discourage participation if these costs were significant. At its extreme, this could also create tension between the need for the ONDC to recoup expenses and its aims of promoting data sharing.

Conclusion

The WA Government appreciates the approach to consultation taken by the Office of the National Data Commissioner, and the opportunity to provide input at various stages within the process of policy development.

The WA Government welcomes the opportunity to discuss the issues raised within this submission and explore possible solutions.
