



Australian
Society of
Archivists

Submission on the exposure draft of the *Data Availability and Transparency Bill*

Authorised by:

Council of the Australian Society of Archivists Inc.

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1. About the Australian Society of Archivists

The Australian Society of Archivists Inc. (ASA) is the peak professional body for archivists in Australia. We advocate on behalf of the archival and recordkeeping profession and seek to promote the value of archives and records as well as support best practice standards and services. The Society has over 900 individual and corporate members and is administered on a national basis by an elected Council. Branches and Special Interest Groups are active in all States and Territories. The ASA is grateful for this opportunity to comment on the exposure draft of the Data Availability and Transparency Bill 2020.

2. Overview

The ASA welcomes the Commonwealth Government's commitment to increasing the use of government data to improve community services and outcomes. The ASA believes that the Data Availability and Transparency Bill (DATB) creates a clear and consistent framework for enabling cross-government data sharing. The ASA also applauds the consultation on the DATB that the Office of the National Data Commissioner has coordinated and the responsiveness to the feedback generated through this consultation that is apparent in the exposure draft.

It is the view of the ASA that recordkeeping must be a core component of the DATB. The DATB is legislation that allows the sharing of information inputs to create new information outputs that will influence government decision-making, service allocation and citizens' lives.

The DATB needs a greater emphasis on accountability in data sharing to enable the government to defend its decision-making. The DATB needs to require the creation and maintenance of records of government (including both intra and inter-government) data sharing so that government can continue to account for its decisions and allow individual customers to appeal or question these decisions, even when the decisions have been generated by public servants or by government artificial intelligence tools using multiple datasets provided by multiple agencies. Accountability in data sharing also means recording the context in which the data was collected, to enable proper tracking of the stated purpose to which the data would be put, and, where appropriate, data subject consent. Such records should travel with the data as it is used and shared.

This legislation will herald the next generation of government customer service and strategic innovation. It is critical that this is supported by accountability through recordkeeping – to ensure the ongoing delivery of government services that meet the expectations of all Australians.

3. Position statement of the Australian Society of Archivists

The ASA's position in relation to the Data Availability and Transparency Bill is:

- 1. The government needs to ensure there is traceability and accountability for emerging data-driven forms of government business, and appropriate frameworks for appeals, oversight and review.**

By building recordkeeping requirements into the DATB, the government can ensure that data sharing becomes a key and trusted underpinning of government decision making. These

accountability frameworks will become more important when sharing is used to input additional data into AI tools used for government decision making.

2. Documenting data context and quality is key to understanding data inputs.

Data quality is critical to safe and viable data reuse. Data quality is therefore an important underpinning to effective data sharing. It is important to document and understand data quality, the context and purpose/s of data, how it was collected, its accuracy, its completeness, its number of features or the sensitivity of the data, and tracking decisions based on shared data insights.

3. The DATB needs to include requirements regarding the use of shared data.

The DATB contains requirements governing the sharing and releasing of output that is scheme data. However it does not contain any requirements regarding the use of output for a specific data sharing purpose, for example, for the use in government decision making or service delivery. If aggregated shared data is used to generate insights that will lead to government action, there must be traceability and accountability in the DATB for these uses.

4. The outcomes of some government data sharing initiatives to date has shown that planning for adverse events is necessary.

The Bill outlines penalties for inappropriate data sharing. As large scale government data sharing is a new endeavour for many organisations, the DATB needs to also consider including protections for those who share data in good faith and following due process. It also needs to consider whether there need to be protections and requirements in place to manage any adverse effects of data sharing, or inappropriate actions taken based on outputs.

5. The DATB should be designed to ensure data subjects will be able to exercise their rights in the future.

At the time of preparing this submission, the Commonwealth Attorney-General's Department progressed the review of the Privacy Act 1988 (Cth) with the release of an Issues paper. While not seeking to prejudge the outcomes of the review process, it is the ASA's belief that Australia will eventually align with jurisdictions including the EU and California with regard to data subject rights, including rights to access and erasure. The introduction of such rights only makes the need for strong provisions around recordkeeping and tracing of the context of data collection and use even more pressing.

4. Key recommendations

In relation to the Data Availability and Transparency Bill, the ASA recommends the following:

1. It is essential to incorporate traceability and accountability into the DATB.

These issues could be addressed in a new section after the current section 20. This should state:

- To enable ongoing accountability and trace for government decision-making, it must always be possible to identify the scheme data that were used to produce outputs.'

2. **Statements regarding data quality should be incorporated into the DATB.**

In section 18, within the requirements for a data sharing agreement, it should say that:

- 'Scheme data should be supported by statements about the quality of the data, how it was collected, its accuracy, its completeness, its number of features or the sensitivity of the data. These statements should be maintained as an ongoing record to inform use of output.'

3. **Requirements regarding the use of outputs should be built into the DATB.**

Section 18 of the DATB should state that agreements may want to require all parties to validate the outputs before use. And if outputs are used for:

- the delivery of government services
- informing government policy and programs or
- research and development

then the DATB may need to reference that the output becomes a new record owned by the accredited user and subject to the relevant requirements of the relevant records legislation.

4. **Build protections into the DATB for those who share data in good faith, in accordance with the DATB requirements, but when this sharing leads to adverse outcomes.**

Following section 23, there should be a new section that is based on the provisions in the NSW Government Information (Public Access) Act that, provided all aspects of the DATB assessment and release processes have been followed, provide people with protection from prosecution or penalty if there are unforeseen impacts associated with their information release.

5. **Build protections into the DATB for members of the community who are impacted by adverse data sharing.**

There need to be protections and requirements in place to manage any adverse effects of data sharing, or inappropriate actions taken based on outputs that have an impact on the community, or on individual citizens.

6. **Prepare for the introduction of data subject rights.**

On the assumption that GDPR-like data subject rights are on the horizon for Australian privacy law, strong provisions around recordkeeping and tracing of the context of data collection and use become even more critical, to ensure the efficient and effective implementation of mechanisms for fulfilling such rights.