



**Office of the National
Data Commissioner**

**Exposure Draft of the
Data Availability and
Transparency Bill 2020**

November 2020



Australian Government
Australian Research Council



LIFE COURSE CENTRE

The Australian Research Council Centre of Excellence for Children and Families over the Life Course (Life Course Centre) is a national research centre focused on investigating the drivers of deep and persistent disadvantage in Australia. We are committed to leveraging our evidence-based research to develop new knowledge, technology and practices to benefit children and families living in disadvantage.

The Centre is administered by The University of Queensland and is a collaboration with The University of Western Australia, the University of Sydney and the University of Melbourne. We also have a wide range of collaborative links to national and international academic, government and non-government partners.

In order to better understand the causes and life course consequences of disadvantage, and to develop effective interventions to address it, our research requires access to integrated public sector data about children and families. This access to linked longitudinal administrative data enables us to investigate people's interactions with government services and institutions over time, and to identify the critical time-points at which interventions can be most effective.

The Life Course Centre has experience with projects involving both State and Commonwealth administrative data in line with our mission to address deep and persistent disadvantage. Most recently this has included use of Multi-Agency Data Integration Project (MADIP) data in collaboration with the Department of Education, Skills & Employment and the Department of Home Affairs to investigate education equity in Australia. We support reforms to improve public sector data sharing and use, and we welcome the opportunity to respond to the release of the **Exposure Draft of the Data Availability and Transparency Bill 2020**.

For more information on the Life Course Centre visit: www.lifecoursecentre.org.au

Life Course Centre

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The Life Course Centre has engaged with the Office of the National Data Commissioner (ONDC) since it was established within the Australian Government Department of Prime Minister and Cabinet in 2018. This includes attendance at several Data Sharing and Release roundtables, and invitations to Life Course Centre Data for Policy events and workshops. We commend the ONDC for its extensive consultation on the Data Sharing and Release Legislative Reforms. The process has been inclusive, fair, thoughtful and comprehensive.

The Life Course Centre has been involved with this reform process from the start, providing two previous submissions in earlier consultation periods in 2018 and 2019, and we will continue to contribute to its progression. In this latest submission, we respond to the ONDC request for public comment on the release of the **Exposure Draft of the Data Availability and Transparency Bill 2020**.

At the outset, the Life Course Centre wishes to express its strong support for the work of the ONDC in developing the Exposure Draft of the Data Availability and Transparency Bill 2020. It is an important milestone in this ongoing reform process.

The supporting materials released - a Consultation Paper on the Exposure Draft and a Discussion Paper on the Accreditation Framework - are representative of the high-quality, thorough approach the ONDC is undertaking with these reforms. Similarly, the Webinar the ONDC hosted on the reforms on 14 October 2020 was a commendable and informative initiative for engaging stakeholders in this process.

Below we outline some general responses for consideration. Please take these as reflective of our overall support, rather than criticism, of the reform process.

Data custodians: The Accreditation Framework is heavily focused on those accessing public data (data users) rather than those providing it (data custodians). While Commonwealth data custodians will automatically be an entity in the new scheme, it is important to recognise that they have different capabilities in data quality, capacity and technical expertise. Some are currently far more advanced than others. If they are all to automatically be part of the scheme as holders of public data under current definitions, what will be the incentive for them to improve their data quality, internal data handling and curation standards? It could be beneficial for data custodians to be accredited for skills and practice in the same way that data users are, so that equal standards apply.

Public awareness: The Australian public has a right to know where their data is being kept, how it is being used and by whom, but there is currently very little mention of public or community awareness in the Accreditation Framework. Given the data being collected and shared is about the lives of Australians, openness and public transparency is critical. While public registers will be available, there does appear to be a gap in how the public will be actively engaged and made aware of the new scheme, for example via a detailed community engagement strategy.

Data sharing purposes: The Exposure Draft authorizes data sharing for 3 purposes: for delivery of government services; to inform government policies and programs;

and for research and development. There is the potential for some overlap between the second and third purposes if there is a partnership between a Commonwealth agency and a research institution. For example, university researchers may be involved in projects to inform government policies and programs. The details of researchers' involvement in the second purpose appears unclear. This may cause confusion and may need some clarification.

Ethics processes. There could be greater clarity around ethics processes. It appears that this process is being left in the hands of the data custodians (individual Commonwealth agencies). However, data sharing and data integration can create datasets that are more sensitive than the individual data sources. Decisions about the sensitivities, or not, of combined data sets should not be the responsibility of one data custodian contributing data.

Monitoring of requests: It is not clear how data sharing requests from data users to data custodians will be monitored by the ONDC, particularly if a request is refused. Is it possible that a request, if refused, does not fall under the scheme because a Data Sharing Agreement was never entered into? At what point does a request fall under the scheme and the regulatory remit of the ONDC? What will be the mechanisms for data custodians to report to the ONDC on data sharing requests and subsequent decisions? The ability to make such decisions will vary across Commonwealth agencies, depending on capabilities and expertise, and will be more complex for projects involving multiple, integrated data sources.

Data Sharing Agreements: Data Sharing Agreements need to be broad to include large programs of work using the same data sets. There should also be scope to amend or extend timeframes for an existing Data Sharing Agreement due to delayed data delivery, as happens in research projects that are tied to funding.

Below we provide brief responses to specific questions posed in the Discussion Paper on the Accreditation Framework:

1. What is considered to be an appropriate level of Australian ownership for an organisation to be eligible for accreditation?

Given sensitivities, perhaps 100% Australian owned for an Accredited Data Service Provider. This would also be a strong position from a public relations perspective.

2. Should individuals acting on behalf of an Accredited Data Service Provider be accredited individually? If so, what might be appropriate arrangements?

Yes, all individuals, whether an Accredited User or an Accredited Data Service Provider, should be accredited and prove their ability to handle the data appropriately. Standards should be the same for shared accountability.

3. Are there circumstances when it should be mandatory to use an Accredited Data Service Provider for a data sharing project?

Yes.

4. What would those circumstances be?

For example, where data integration is required involving more than one data custodian for a project that requires de-identified data. Also, in the selection of study cohorts involving more than one agency.

5. Are there elements of data capability that should be given more or less weight in the accreditation process, i.e. making elements mandatory or optional?

Yes, major elements to protect security should be mandatory (e.g. physical security, database management, storage and transfer protocols and protections from cyberattacks). For individuals, perhaps police clearance should be mandatory?

6. What elements would be most useful to Data Custodians to support their decision-making process when considering sharing and access to data?

The Accreditation Framework has 3 categories of accreditation criteria, none of which speak to an organisation's relationship with the community. We feel this should be addressed. For example, the Australian Commission on Quality and Safety in Healthcare have developed 8 standards of which Partnering with Consumers is one. The ONDC might like to consider a similar approach.

7. Should the accreditation process recognise other frameworks, standards or processes that have assessed an element of data capability? If so what standards/processes might be appropriate to recognise?

Yes, for example, recognition that an organisation has received approval from a governance office to conduct research using State Government-based data. For individuals, having completed ABS Datalab training should be acknowledged. Where Accredited Users are sub-units within a large organisation, such as a research institute or university department, the accreditation process could recognise the common elements associated with working in the larger organisation (e.g. governance and administrative arrangements and organisation-wide data security), separate to the data capabilities specific to the team or sub-unit as identified. This should assist with streamlining the accreditation process.

8. Are there any elements of data capability that should be captured in order to understand an accredited entity's ability to keep data safe?

No comment.

9. What is a reasonable period of time to assess an application?

4-6 weeks.

10. Are there further ways we can streamline the accreditation process?

As per our response to Question 7. which would recognise the capabilities of an organisation with sub-units.

11. Do the timeframes to renew accreditation, every 5 years for Accredited Data Service Providers and every 3 years for Accredited Users, seem reasonable?

Yes.

12. Is it appropriate to notify parties to Data Sharing Agreements of an accredited entity's suspension?

Yes.

13. Is there any information that must, or must not, be made publicly available through the registers of accredited entities?

If an accredited user is part of a larger organisation (sub-unit) then the larger organisation should be named.

14. Is there any information that should be made available to Data Custodians through the registers of accredited entities?

It may be useful for Data Custodians to have a list of current Data Sharing Agreements that the accredited entity is involved in (or make this a searchable field in the Agreements).

15. Is charging a fee for accreditation, such as a renewal fee, reasonable?

No, as ultimately sharing data is for the public good.