

Office of the National Data Commissioner (ONDC)
PO Box 6500
Canberra ACT 2600

Dear Ms Anton

Thank you for the opportunity to comment on the *Discussion Paper on Data Sharing and Release Legislative Reforms*. I have been very impressed by your Office's collaborative approach to the design of the future Data Commissioner's role and supporting legislation.

I have taken this opportunity to suggest a broader set of functions for the Data Commissioner than covered by the current Discussion Paper¹. The objectives of the new functions and their nature are summarised below. More information is provided **at Attachment A**.

- 1) Rather than relying only on a change in culture, the Data Commissioner could increase the likelihood of data sharing and release by:
 - a) providing tailored assistance to data custodians to address the legal, technical and privacy related risks that they face
 - b) reduce the costs to data custodians of compliance with the new data sharing and release regulatory system.

- 2) To maintain and enhance public support (or social licence) for data sharing and release, the Data Commissioner could work with other relevant agencies, possibly including the Australian Information Commissioner, to:
 - a) vet (significant) new data sharing and release arrangements, and
 - b) proactively communicate accurate information on the technical details, privacy impacts and intended public benefits of each new (significant) sharing and release arrangement, including via social media.

- 3) To increase the value to be derived from data sharing and release, the Data Commissioner could work with relevant agencies (such as the Digital Transformation Agency, National Archives and the Australian Cyber Security Centre) to improve the utility, quality, documentation and security of Australian Government data.

These suggestions are not intended to be prescriptive but to stimulate broader discussion of how we can use the opportunity presented by the establishment of the National Data Commissioner to support better data use into the future. I hope they help,

Yours sincerely,
Judy Schneider

¹ Possibly, you are already considering these approaches in other fora. For example, descriptions of upcoming presentations indicate that you are intending to do more in the data management space, although I suspect these intentions are more limited than I am suggesting.

Attachment A: Additional information on suggestions for broadening the intended Data Commissioner's role

1. Increasing the likelihood of data sharing and release

Possibly, data sharing and release can be increased and the new regulation arrangements made more efficient by providing additional funding to the Office of the National Data Commissioner so it can develop specialised capabilities, relationships and knowledge to provide a centralised source of tailored assistance to data custodians (or to data providers working on behalf of data custodians).

a. Reducing the risks to data custodians

The reticence of Australian Government agencies to share and release data is likely to be related to the very real risks that they face.

These risks include:

- they will breach their own legislation by releasing data,
- they make data available in a way that results in a privacy breach, and
- external researchers may misinterpret or poorly analyse their data which will require considerable agency resources to check, correct and communicate.

The Data Commissioner could potentially work with other agencies such as the Australian Government Solicitor and Australian Bureau of Statistics to provide advice to help reduce the risks to data custodians. This could include advice on:

- how to work within their legislation, which could benefit from an understanding of how other Commonwealth departments and agencies have worked within their legislation (there are often structural similarities across Acts)
- possible techniques and checks to ensure data is packaged in a way that avoids privacy breaches, and
- data packaging (covering: editing, structuring, metadata and other documentation) so that data is provided to researchers in a way that minimises potential misunderstandings.

b. Reducing costs to data custodians

Another factor that makes data release and sharing unattractive to data custodians is the cost. While the new data sharing and release agreements help to reduce ambiguity for data custodians by providing (semi) standardised and potentially safer procedures for providing data access, they add new administrative workload which may work against greater data sharing and release. Possible solutions include:

- seeking to 'congestion bust' by reviewing the intended regulation of the scheme, perhaps in consultation with the Office of Best Practice Regulation (if this has not been done already)
- providing centralised tailored support to assist agencies to adhere to the new regulations (ie the ONDC could do as much as possible on the data custodian's behalf in consultation with them).

2. Enhanced social licence

It is generally well accepted that the Government needs to maintain and grow its social licence to collect and use data so the public interest can be served. However, responsibility for this social licence is diffused across agencies and past experience suggests it is highly vulnerable to social media campaigns.

The functions of the Data Commissioner could be expanded to include:

i) vetting of new data releases and sharing arrangements

- In addition to providing advice (as discussed in the previous section) the Data Commissioner could also have a role in overseeing (significant) data releases to ensure they do not result in legal or technical problems, which if were to occur, pose a risk to the social licence of the entire Commonwealth.

iii) communications

- This may involve the Data Commissioner or Information Commissioner fulfilling an honest broker type of role in providing accurate information about the nature of new data releases and/or sharing and the extent to which these are consistent with the Privacy Act, 1988.
- As well as providing information on its website, it might be appropriate to resource the Data Commissioner to provide counterbalancing information on social media which could highlight the expected public benefits associated with new data sharing and release arrangements.

3. Increase the value of the data being shared and released

There is considerable scope to enhance the value of Australian Government data for the purposes of research and service delivery as well as other potential new applications such as development of artificial intelligence solutions.

Currently, most administrative data is collected, processed, stored and documented in a way that suits program management requirements. This is not necessarily optimal for other purposes. Through consultation with data stewards, including external researchers, it is possible to slightly alter the management of that administrative data to greatly increase its value.

Possible approaches², if not already implemented, are to introduce governance committees to develop new data items to supplement existing data, or to seek to standardise existing items across data sets. It may also be possible to modify data management approaches so that data is processed in a way that optimises its analytic value and the system can generate meaningful, accurate and comparable datasets over time rather than say, an organisation (always) relying on the ingenuity of data scientists to piece together bespoke datasets in response to data requests.

² This is consistent with my previous correspondence (my email on 21st of November 2018 refers).