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15 October 2019

Dr Phillip Gould
Office of the National Data Commissioner
Department of the Prime Minister and Cabinet
Barton ACT 2600

Submitted online: <https://www.datacommissioner.gov.au/forms/discussion-paper-submission>

Dear Dr Gould,

Data Sharing and Release Legislative Reforms Discussion Paper, September 2019

The University of Sydney welcomes the opportunity to comment on the latest discussion paper regarding the data sharing and release legislative reforms from the Office of the National Data Commissioner ("Office").

We commend the Office for the very careful, highly transparent and consultative approach that it has taken to this important policy process since releasing its initial Issues Paper in July 2018. We are pleased to see that many of the issues and ideas we and other research institutions have raised in previous submissions have been taken on board and are reflected in the Discussion Paper and in the Office's emerging thinking about the design of the legislation and its operation.

We can see from the Discussion Paper and presentations at the consultation sessions that significant conceptual progress has been made in developing the new legislation. Consistent with your request for brevity in submissions to this stage of the process, we have summarised below some of the key points our various representatives made at the consultation sessions.

1. We support the decision to **establish the Office of the National Data Commissioner and locate it within PM&C** – to promote cultural change across all Federal Government agencies to foster an ethos of sharing and releasing public sector data safely for public benefit (Discussion Paper, p.13).
2. We endorse **the objectives of the legislation**: *consistently safeguard public sector data sharing and release; enhance the integrity of the data system; build trust in use of public sector data; establish institutional arrangements; promote better sharing of public sector data* (p.14).
3. We support the **objective of working towards building a national system** for data sharing and release and understand the Office's reasons for initially focussing on improving the sharing and release of Commonwealth data sets (p.15).



4. We agree that having **Indigenous representation** and consultation around data that is sourced from or relates to Indigenous communities is vitally important. We support the proposal that an Indigenous data advisory body/committee be established as a key part of the new legislative framework, which will ensure a consistent whole-of-government approach to Indigenous data access and sovereignty (p.15).
5. We support the proposal that the definition of **public benefit** research include commercial use. Any public benefit test should recognise the value of commercial research collaborations and partnerships and also the development of new technologies/products by commercial entities that have clear benefit to the community. Applications for releasing/sharing data for commercial use would need to pass the public benefit thresholds (p.17).
6. We are pleased with the way the Office's thinking has progressed in relation to the **framework by which data will be shared with trusted research institutions and researchers**. While we have some reservations about the potential costs and administrative burdens some of the proposed arrangements could place on research institutions, we look forward to receiving more details so that we can start assessing the likely resourcing, educational and process implications for the University and the higher ed sector generally.
7. We support the application of consistent **privacy standards** to ensure equivalent data protection across all state and territory jurisdictions. Additionally, we agree that higher protections for sensitive data should exist.
8. We urge the Office to develop clear guidance around **when individual consent is required for data sharing**. We agree that a blanket waiver of consent might not be suitable in all instances, in which case an alternative mechanism is required to assess whether consent is required. This may depend on the type of data collected, the purpose for which it was collected and the purposes for which the data are to be used.
9. We would like to see the **approval process** where Data Custodians release datasets for research to not be entirely dependent on Human Research Ethics Committee ("HREC") approval being sought first by researchers. For example, some datasets will not contain unit record personal information, and so may not require HREC approval for the research project to proceed. We need to ensure that a nuanced approach will be adopted, that will depend on the level of risk and the type of data.
10. We are supportive of new **Data Codes** being developed by the Office and would welcome the opportunity for research institutions to be consulted during the development of any binding rules and non-binding guidance.

We look forward to having an opportunity to review the exposure draft of the proposed new data sharing and release legislation early in 2020 and are keen to continue to work constructively with the Office and other stakeholders to ensure the best possible legislative outcome in the national interest.

Should you require further information or assistance from the University of Sydney, please liaise with Mr Tim Payne, Director, Higher Education Policy and Projects, Office of the Vice-Chancellor and Principal: [REDACTED] who continues to coordinate our engagement with this important policy process.

Yours sincerely,

Professor Duncan Ivison
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