

Submission to Data Sharing and Release Legislation Reforms Discussion paper

My name is Anne Picot, I am a retired archivist-recordkeeper and former Privacy and GIPA officer at the University of Sydney. I participated in an earlier roundtable discussion of the proposal to reform data sharing and release in Sydney but was unable to participate in the more recent round of consultations. I presume that is why I did not receive any notice of the existence of this paper and the invitation to make a submission in good time.

Nonetheless I would like to make some points arising from a cursory reading of your discussion paper. This is simply to ensure you know that some members of the public are not comfortable with some of the proposal.

Submission

1. The Data Commissioner should not be a champion to encourage data sharing and release and also have a regulatory role. This would create a conflict of interest and undermine public trust in the office of the Commissioner. The objectives of the Data Commissioner set out on p.13 (2.2) and on p. 39 (6.2) embrace these opposing functions.

A regulatory role is needed, and the regulator would need to have the powers to halt an instance of data sharing or release where the risk assessment, protections and mitigation measures proposed are assessed as inadequate and/or not compliant with best practice and the proposed legislation. The regulator must be external to the office of the Data Commissioner.

2. There does not appear to much recognition that Australian government public sector data sets are Commonwealth records under the Archive Act. At the very least the National Archives of Australia should have a representative on the National Data Advisory Council. The rules about release of data should be consistent with the Archives Act and related regulations as well as the privacy legislation.

3. I draw your attention to the scandal of “RoboDebt” as an instance of data sharing which has proved in practice catastrophic for many individuals and has alarmed the public about the practice of data sharing and government motivation for doing so. If the case of RoboDebt is assessed as an instance which has in many people’s view gone badly wrong, there are likely lessons about how it should have been done, or whether it did conform to the proposed 5 Safes or the data sharing principles, which can inform this discussion with a real life case study. At the least this case should urge caution about how to proceed with data sharing.

4. The possibility of data sharing with commercial entities is disquieting. Any data sharing with a non-government entity should be considered an instance of data release, not sharing and be assessed accordingly. Presumably commercial entities are seeking to access government data for the purpose of making a profit. One would hope that any such proposal would be subject to a public tender process with limits placed on commercial-in-confidence provisions so the public has the right to know what data their taxes has paid for collecting is being provided to a profit-making entity.

5. in 2.5 I read with alarm that it is proposed to remove the need for “lengthy legal processes to establish authority”. It must be incumbent on every data custodian in an government agency to identify and document the agency’s authority for the collection and management of data sets and consequently for the sharing or release of said data sets. Presumably the legislation will set out the obligatory functions of data custodians in agencies.

6. Finally given my time for submission is running out I object to the notion that consent should not be needed for the re-use involved in sharing of personal information not included in the original act of collection. The requirements under the National Health and Medical Research Council are a minimum for managing re-use of personal information for a public purpose, governed as they are by university ethics processes. It is a cop out to place the responsibility on the data custodians – who should have it any way under the relevant privacy laws – and not place at least oversight with the Data Commissioner or regulator. Consent should be built into the data sharing principles if you are to have any hope of winning the public's trust for the whole data sharing proposal.

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