

**DATA AVAILABILITY AND TRANSPARENCY  
(CONSEQUENTIAL AMENDMENTS) BILL 2020**

EXPLANATORY MEMORANDUM

DRAFT SEPTEMBER 2020

# Data Availability and Transparency (Consequential Amendments) Bill 2020

## 1 – Overview

1. The Data Availability and Transparency (Consequential Amendments) Bill 2020 (the Consequential Amendments Bill) amends the *Australian Security Intelligence Organisation Act 1979* (the *ASIO Act*) to reflect the proposed operation of the Data Availability and Transparency Bill 2020 (the Bill).
2. The Bill authorises controlled access ('sharing') of Commonwealth data and creates a data sharing scheme. The Bill takes a principles-based approach to data sharing, providing entities with flexibility to tailor sharing arrangements, and ensuring the scheme can respond to evolving technologies and community expectations. Modernising the approach to sharing public sector data will empower the government to deliver effective services and inform better policies, and support research and development.
3. The Bill also creates a National Data Commissioner to regulate the data sharing scheme. Clause 73(1) of the Bill gives the National Data Commissioner the power to accredit, and suspend or cancel the accreditation of, users and data service providers. The National Data Commissioner has the power to impose conditions on accreditation or vary conditions under clause 73(2). Pursuant to clause 73(3), the National Data Commissioner has a discretion to refuse to accredit, or to suspend or cancel an entity's accreditation, for reasons of security.
4. The powers in clause 73 are to be exercised in accordance with the accreditation framework. Under clause 74(2)(a)(iii) of the Bill, the accreditation framework must provide for criteria for accreditation that cover security (as defined in the *ASIO Act*).
5. The amendments in the Consequential Amendments Bill enable the Australian Security Intelligence Organisation (ASIO) to provide advice in relation to the exercise of a power under clause 73(3) of the Bill.
6. The primary security concern in relation to accreditation is the threat posed by foreign national individuals who may be affiliated with a foreign power. Disclosing knowledge of that affiliation through the review process in Part IV of the *ASIO Act* risks prejudicing ongoing security-related investigations, sources and capabilities.
7. Amendments to the *ASIO Act* included in the Consequential Amendments Bill limit the review processes in Part IV of the *ASIO Act* for foreign entities. The scope of the exclusion parallels similar exclusions in Part IV of the *ASIO Act*.

## 2 – Notes on Clauses

### Clause 1 – Short title

1. This clause provides for the short title of the Bill once enacted to be the *Data Availability and Transparency (Consequential Amendments) Act*.

### Clause 2 – Commencement

2. This clause provides that Schedule 1 of this Bill will come into effect at the same time as the *Data Availability and Transparency Act* commences. However, the provisions do not commence at all if that Act does not commence.

### Clause 3 – Schedules

3. This clause provides that upon enactment of this Bill, an Act that is specified in the Schedule is amended or repealed as set out in the Schedule.

### Schedule 1 – Amendments consequential on the Data Availability and Transparency Bill 2020

4. This Schedule details the amendments that will need to be made to the *ASIO Act* upon enactment of the Data Availability and Transparency Bill 2020.

### Amendments to the Australian Security Intelligence Organisation Act 1979

#### Item 1 – Section 35(1) (at the end of paragraph (a) of the definition of ‘prescribed administrative action’)

5. This item inserts an ‘or’ at the end of paragraph (a) of the definition of ‘prescribed administrative action’ in section 35(1) of the *ASIO Act*. This is to fix a typographical error and to ensure that every paragraph ends with an ‘or’.

#### Item 2 – Section 35(1) (after paragraph (e) of the definition of ‘prescribed administrative action’)

6. This item inserts a provision into the definition of ‘prescribed administrative action’ in section 35(1) of the *ASIO Act*, so that an exercise of power under clause 73 of the Data Availability and Transparency Bill 2020 will be ‘prescribed administrative action’. Section 35(1) of the *ASIO Act* is the interpretation provision for ASIO security assessments.
7. This amendment will enable ASIO to provide advice to inform the exercise of a power by the National Data Commissioner under clause 73 of the Data Availability and Transparency Bill 2020, including to accredit an entity or to suspend or cancel an entity’s accreditation.

#### Item 3 – At the end of section 36(1)

8. This item inserts a provision into section 36(1) of the *ASIO Act* to specify that Part IV of the *ASIO Act* (other than section 37(1), (3) and (4)) does not apply to a security assessment in respect of a ‘foreign entity’ (as defined in the Data Availability and Transparency Bill 2020) in relation to the exercise of a power under clause 73(3) of the Data Availability and Transparency Bill 2020.
9. The scope of this exclusion draws on similar exclusions from the review processes in Part IV of the *ASIO Act*.