

Data Availability and Transparency Bill 2020

Comments from the National Archives of Australia - 6 November 2020

The National Archives of Australia supports the appropriate use and reuse of Australian Government data, which is founded upon good information management practices. The National Archives welcomes the development of the Data Availability and Transparency Bill to better enable the controlled sharing of government data in support of government service delivery, policy and programs and research and development, and as being complementary to existing public access regimes, including the *Archives Act 1983*.

The National Archives has a key role in retaining and managing the most valuable datasets of Australian Government (Cwth), including both original data and that generated as a result of sharing data under the proposed legislation. Through its information management policies, and supporting advice to agencies, the National Archives aims to ensure that government data is created and managed so that it is authentic, reliable and available to be shared.

The National Archives appreciates the extensive consultation undertaken by the Office of the National Data Commissioner (ONDC) in developing the legislation and the ongoing opportunity to support and inform the process.

With respect to the exposure draft of the legislation released for public comment on 14 September 2020, the most significant issue for the National Archives relates to the definition of a 'Data custodian'. The National Archives has previously sought clarity as to whether it might be considered a data custodian with respect to data held in its collection, separate from the operational data it holds as an agency.

From our engagement with the ONDC to date, and our consideration of this issue, the National Archives understands that it could be considered a data custodian with respect to its collection material. By virtue of the fact that it has control over data in the collection and the right to deal with that data, the National Archives would presently meet the definitional requirement of a data custodian. Without specific reference within the legislation with respect to the status of data held in the National Archives collection, there is potential for entities seeking access to the data to be unclear on who the data custodian is for the purposes of the legislation and, accordingly, where requests should be directed.

Under the legislation as currently proposed, National Archives will consider implementing processes for accessing such data under an appropriate policy approach. For example, referring data requests for collection material made directly to the National Archives under the scheme to the relevant 'controlling agency', that is, the Australian Government (Cwth) agency from which the data originated. Under such a policy the National Archives would assist agencies by facilitating access to records held in the collection, in accordance with existing processes and resourcing.

Should the National Archives adopt this policy approach it would advise Australian Government (Cwth) agencies of these arrangements.

The National Archives remains open and willing to discuss the above and possible remedies within the legislation as well as other matters that may be of mutual interest. We look forward to the successful implementation of this important initiative.