



Submission on the Accreditation Framework Discussion Paper

6 November 2020

The Australian Research Data Commons (ARDC) would like to thank the interim National Data Commissioner for the opportunity to comment on the proposed Accreditation Framework as part of the Data Availability and Transparency draft exposure Bill consultation.

Responses to Questions

1. **What is considered to be an appropriate level of Australian ownership for an organisation to be eligible for accreditation?**

Australian ownership of participating entities should not be an eligibility requirement for accreditation. In itself, accreditation of foreign entities does not represent a threat to Australian interests.

Requiring a level of Australian ownership of entities seeking accreditation, regardless of the data to be shared, will prevent important research efforts with international partners, such as the recent international response to the COVID-19 pandemic or the longer term research into climate change. This is because:

- Research partners will likely not meet Australian ownership thresholds and so may not participate fully in nationally significant research projects on which international collaboration is critical, and
- Partners with complex ownership arrangements will take longer and be more costly to accredit, thus impacting project outcomes and potentially deterring others from participating in future projects.

Foreign access to data should not be enforced using the accreditation framework. Control over foreign access and related matters (such as where data is stored and processed) should be enforced at the data layer using authorisation services trusted to apply conditions as set by Commonwealth Data Custodians.

The accreditation process should focus on evaluating the *ability* of organisations to comply with a range of constraints likely to be set by Data Custodians over the access, processing and use of data. This includes the ability to control access by foreign entities should that be stipulated by Data Custodians.

2. Should individuals acting on behalf of an Accredited Data Service Provider (ADSP) be accredited individually? If so, what might be appropriate arrangements?

Ideally, individuals would not need to be accredited under the Scheme, but would instead be subject to controls imposed by the accredited organisation for which they work. If it is required, the impost of the accreditation framework on individuals should be kept as small as possible. It should only be the minimum criteria necessary to validate their ability to apply the Five Safes Principles in context.

The accreditation criteria should reflect the fact that most access and usage controls should be separate from the accreditation framework. Instead, access and usage controls should be controlled by automated authentication and authorisation processes and services governed by the National Data Commissioner.

3. Are there circumstances when it should be mandatory to use an ADSP for a data sharing project?

Use of an ADSP should not be mandated in the Act or in a rule issued by the Minister. The Data Commissioner could have an ability to direct use of an ADSP in exceptional circumstances. This is because risks are highly dependent on context and a prescriptive approach is likely to be either too broad or too narrow to efficiently and effectively achieve the desired outcome.

Likewise, Data Custodians should also not be able to mandate use of a specific ADSP in the Data Sharing Agreement. Rather, Data Users should be able to choose one or more ADSPs with the appropriate expertise.

In line with a principles based approach, the context under which use of an ADSP might be considered is best described in data codes or guidelines from the Commissioner. This gives the Commissioner the flexibility to advise entities on emerging situations or technology developments where use of an ADSP might be prudent.

The data codes and guidelines should be written in a way that allows flexible use of ADSPs. For example, use might vary from simply seeking validation of a proposed approach all the way to entities completely outsourcing highly specialised procedures.

In this way, each entity is responsible for assessing if and how an ADSP is appropriate to fulfil their requirements, such as ensuring an output is safe. It acknowledges that the best mitigations are likely to result from a direct partnership between the entity that owns the risk, and the one or more ADSP with the requisite skills to mitigate that risk.

4. What would those circumstances be?

The discussion paper outlines that use of an ADSP might be mandatory for 'complex data integrations'. Further to the answer above, the ARDC does not believe these circumstances justify mandating an ADSP.

Many requests from the research sector to access Commonwealth data will likely be premised on researchers wanting to combine two or more data sources as an integral part of their research activities (and not all datasets involved will be Commonwealth data). It is also likely that this may lead to data being more sensitive than the individual sources of data. This is currently the case even without Commonwealth data and there are mature processes already for managing this risk. Therefore, a reasonable proportion of research projects participating in the Scheme could potentially include 'complex data integrations' with Commonwealth data.

If use of an ADSP were mandatory under these circumstances, most research institutions would be forced to consider becoming an ADSP to ensure they could support the activities of their researchers. The result would

be an increase in costs for institutions without a clear link to improved safety of Commonwealth data. And it does not address the shortfall identified by the Productivity Commission, which is that the public sector does 'not have 'the necessary skills, resources or infrastructure to integrate and share data safely'.¹

Alternatively, universities and research institutions could choose to rely on a relatively small number of third party ADSPs compared to the total number of potential 'complex data integrations' they would hope to conduct. This would fundamentally shape the data supply chain constraining both the 'availability', and the 'confidence in the use of', Commonwealth data.²

If the Scheme is principles-based, then the process of accreditation should cultivate confidence that entities can predictably identify critical decision points as to when and under what conditions they should seek assistance from ADSPs to meet one or more of the Five Safe Principles. The Commissioner should actively provide balanced guidance and, if necessary, mediate disputes in matters where the Data Custodian and Data User disagree as to the risk or cost of any extra controls. In addition, the Commissioner is there to oversee the Scheme focusing their regulatory efforts on areas identified to be of extreme risk, and with the failsafe ability to direct the use of an ADSP in any exceptional circumstances.

Use of Interoperability Services must be Mandatory

Most critical for the safety of Commonwealth data is the need for mandatory use of Interoperability Services operated by trusted bodies sponsored by the Commissioner. These Interoperability Services are essential for facilitating near real-time sharing or controlled access consistent with terms stipulated by Data Custodians.

Note that Interoperability Services are not bodies through which data must pass or else managed repositories in which data must be stored, but are instead services that apply controls over any involvement of entities with data. One analogy is the automated service a bank uses to ensure that the PIN entered is a match for the card used whenever a customer wants to withdraw cash from a teller machine. Of note:

- Some of these services will be automated, such as authentication, authorisation and auditing of transactions, but others will rely on manual processes, such as the Data Sharing Agreement.
- Some of these services might be from established providers who may be accredited to operate under this Scheme should they choose to do so, such as the Australian Access Federation³; others may be newly established by the Commissioner solely for the purpose of supporting this Scheme.

Regardless, use of these Interoperability Services must be mandatory to ensure predictable levels of trust and control by all parties when making use of this Scheme to share data between participating entities.

5. Are there elements of data capability that should be given more or less weight in the accreditation process, i.e. making elements mandatory or optional?

Nil Comment

¹ An alternate approach to addressing this specific shortcoming could be to make use of one or more ADSP mandatory **only** whenever Commonwealth bodies share data between themselves.

² Section 3

³ <https://aaf.edu.au/>

6. What elements would be most useful to Data Custodians to support their decision-making process when considering sharing and access to data?

It is important to acknowledge that the creation of this Scheme should fundamentally change the process of how Commonwealth bodies consider sharing and access to data. It achieves this in two ways:

First, it creates a range of institutions and infrastructures that collectively share the risks of making data more available. That is, it is no longer the sole responsibility of Data Custodians to mitigate every possible risk prior to sharing data; other entities have inherited various responsibilities through participation in the Scheme.

Second, the Scheme creates a graduated approach to sharing when previously there was a binary approach. That is, by now enabling Data Custodians to define universal rules for what and how data will be shared during each step (at discovery, at access and at time of use), the Scheme reduces the overall risk at any single point. Previously, Custodians had to predict how their data might be used by others after they had handed it over, leading to 'unnecessarily complicated and time consuming agreements' prior to sharing ever occurring.⁴

Given these changes, Data Custodians should be able to nominate a greater number of elements than they do currently, confident they will be complied with at each respective stage of sharing and in a way that is relevant to the entity involved and the purpose at the time. By investing in building strength in the Scheme, Data Custodians are freed from minutely managing every possibility with every dataset with every User.

Overall, this should result in streamlined Data Sharing Agreements more akin to standardised licencing agreements that leverage trusts inherent in other Scheme constructs, such as the accreditation of Users.

To achieve this:

- Custodians need to trust the accreditation of Data Users,
- Custodians should not have full liability and responsibility for all handling of their data by others in the Scheme, and
- The new institutional constructs between Users and Custodians, established by the Office of the National Data Commissioner (ONDC), need to be effective.

7. Should the accreditation process recognise other frameworks, standards or processes that have assessed an element of data capability? If so what standards/processes might be appropriate to recognise?

It is imperative for the success of the Scheme that it recognises existing mature research sector mandated procedures for ensuring safe projects (e.g. Human Research Ethics Committees⁵) or safe data and people (e.g. The Code for Responsible Conduct of Research⁶ and the National Statement on Ethical Conduct in Human Research⁷).

Given the large number of standards and frameworks already used by participating entities, the Scheme will need a body dedicated to advise entities on equivalency and interoperability of various standards over time.

⁴ <https://pmc.gov.au/resource-centre/public-data/guidance-data-sharing-australian-government-entities>

⁵ <https://www.nhmrc.gov.au/research-policy/ethics/human-research-ethics-committees>

⁶ <https://www.nhmrc.gov.au/about-us/publications/australian-code-responsible-conduct-research-2018>

⁷ <https://www.nhmrc.org.au/publication/national-statement-on-ethical-conduct-in-human-research/>

The Commissioner will also need to ensure Custodians behave in a way that reflects efficient and ‘consistent’ recognition of these existing external trust systems. This includes ensuring that the design of the Scheme does not inadvertently cause unnecessary re-assessment of the same aspects.

As an example of where this already occurs, both the accreditation framework and the Data Sharing Agreement template require Data Users to assert their conformance with the Five Safes Principles. So, in terms of fraud control plans and risk assessments of Users, is this an element of the accreditation framework only evaluated by the accrediting authority, or does each Data Custodian also have the right/duty to re-assess fraud control plans relative to each dataset that is to be shared?

8. Are there any elements of data capability that should be captured in order to understand an accredited entity’s ability to keep data safe?

One element seemingly missing from the Scheme is consideration of a certification framework and certification bodies. In many comparable ecosystems internationally, creation of a robust certification framework has been deemed essential.

As an example, if Data Users are expected to apply the Five Safes Principles and will bear the cost for failing to appropriately apply those Principles, they may seek training and advice from third parties to assist them. The question arises as to who validates the competency of the various consultants and training institutions who might provide that advice. If these providers are certified by a reputable body, does that provide more confidence than if just provided by anyone? The same questions hold true for the accrediting authorities themselves; how does the Commissioner know they are competent to assess the performance of others?

This issue already arises in the Scheme as proposed, when Data Custodians, who are themselves not accredited, are in a position during the negotiation of a Data Sharing Agreement to assess the conformance of Data Users with the Five Safes Principles. As pointed out elsewhere, this presents a significant risk that the new process becomes highly subjective, with outcomes similar to the current process of negotiating access.

ARDC recommends that this system of certification underpinning the safety of the proposed Scheme needs further consideration by the Office of National Data Commissioner.

9. What is a reasonable period of time to assess an application?

There are two aspects to this question based on the model typically used to fund research activities.

First is the length of time it takes to gain accreditation as well as to negotiate Data Sharing Agreements with one or more Custodians. If a research project is funded for twelve months, then assuming it takes three months to complete both simultaneously, then this will probably be workable depending on effort required.

Second is that research projects can be initiated in large numbers at once, such as for National Health and Medical Research Council (NHMRC) grant schemes. The result of this funding pattern is likely to be a glut of accreditation and data sharing requests, and thus bottlenecks at peak times due to the resource limitations of accrediting authorities and Data Custodians.

A question remains as to whether organisational level accreditation is trusted enough to be used for the entire range of research activities likely to be subject to the Scheme, or else whether a project centric approach can be supported by all the various components of the Scheme in a timely enough manner.

The recommendation of the ARDC is that accreditation and Data Sharing Agreements should be at the organisation and program level respectively. This would allow re-use of both credentials and Data Sharing Agreements, thus saving significant costs over time. Given the Productivity Commission has indicated the actual risk of this approach is low⁸, it is also an approach favoured by universities and research institutions, particularly during times such as the present pandemic crisis, when financial and time pressures are acute.

10. Are there further ways we can streamline the accreditation process?

To streamline accreditation further, the National Data Commissioner should appoint one or more bodies to accredit entities on their behalf rather than conducting the accreditation directly. This would better enable the Commissioner to set accreditation requirements and arbitrate accreditation complaints objectively.

Additionally, the Commissioner should recognise accrediting authorities of equivalent standards already in use by participants. This would significantly reduce the impost of the Scheme while ensuring equivalent or better protection of Commonwealth data. As already indicated, the research sector as a class of Data Users has mature, mandated procedures arguably comparable with the Five Safes Principles. These processes are administered by experts in areas such as data management, public interest, privacy and ethics, which funding bodies use to assure themselves that their requirements are being met.

Lastly, the Commissioner might consider a variation to the current accreditation framework that has the following features:

- It is primarily a gateway to determine a right to participate in the Scheme, not access data;
- It focuses only on the capacity of entities to apply the Five Safes Principles in context;
- It applies to all entities equally, including Commonwealth Data Custodians. This demonstrates to others that they too have at least an equivalent capacity to handle safely any data shared with them;
- It contains 3-4 different assurance levels, such as Low, Medium and High. This reduces costs overall with only those dealing with highly sensitive data needing the highest level of assurance;
- For Data Users, access and use would be controlled separately using authentication and authorisation services rather than accreditation criteria;
- For ADSP, expertise would be separated from accreditation and held in a register (similar to the DTA Marketplace) meaning they would need to be both accredited and demonstrate relevant expertise, such as in data linkage. This would, in effect, reduce the current role boundary between Users, Custodians and ADSP, allowing a more flexible combination of services and capabilities to emerge.

The advantage for the Commissioner is it will significantly reduce the time and cost required to accredit entities while also facilitating a richer combination of access controls and expertise in the Scheme over time.

11. Do the timeframes to renew accreditation, every 5 years for ADSP and every 3 years for Accredited Users, seem reasonable?

Nil Comment

12. Is it appropriate to notify parties to Data Sharing Agreements of an accredited entity's suspension?

Yes. There should be an automated authentication service that indicates in near real time the accreditation status of any participating entity, including at the level of organisation, component and procedure. Ideally,

⁸ Finding 3.6 of the Productivity Commission Inquiry into Data Availability and Use, p.34.

control over data would, in most cases, be at the data layer, meaning that loss or suspension of accreditation will result in loss of access to data, even if that data is held within a local node of the entity concerned.

13. Is there any information that must, or must not, be made publicly available through the registers of accredited entities?

Nil Comment

14. Is there any information that should be made available to Data Custodians through the registers of accredited entities?

Nil Comment

15. Is charging a fee for accreditation, such as a renewal fee, reasonable?

The ARDC does not currently support the charging of a fee for accreditation. This effectively amounts to a price on accessing and using public sector data for public interest research. This will undermine the objective of the Bill such as improved availability, and therefore use, of Commonwealth data.

The complexity of this matter was addressed at length in Chapter 9 of the Productivity Commission Inquiry, leading to them making Recommendation 9.2, which stated:

- The pricing of public sector datasets for public interest research purposes should be the subject of an independent review.⁹

The ARDC is not aware if this review has already been conducted, and if it has, the nature of any findings.

Contact Information

[Redacted Contact Information]

⁹ Productivity Commission, Inquiry into the Availability and Use of Public Sector Data, p.50.