



## **TELSTRA CORPORATION LIMITED**

### **Public submission on the Exposure Draft of the Data Availability and Transparency Bill 2020 (Cth)**

**6 November 2020**



## Introduction

Telstra welcomes the opportunity to provide comments on the Exposure Draft of the Data Availability and Transparency Bill 2020 (Cth) (**the DAT Bill**).

We are supportive of the government's regulatory reforms aimed at promoting better availability of public sector data when done with appropriate safeguards. We also support the general objects of the Bill, including its objective to enhance integrity and transparency in sharing public sector data and to build confidence and trust in its use. We consider that the Bill has the potential to significantly increase the availability of, and unlock benefits that can be derived from, data collected, created or held by or on behalf of Commonwealth bodies.

We also appreciate the efforts made to ensure that data sharing is done only for appropriate purposes and with robust protections. In particular, we support limiting data sharing to the specific data sharing purposes and when consistent with the data sharing principles. We also support the current sharing exclusions, including when sharing data would contravene or infringe copyright, intellectual property, common law duties or privileges, Parliamentary privileges or immunities; when data is commercial information and sharing it can give rise to an action for breach of confidence; and in circumstances regarding national security, law enforcement and evidence in courts and tribunals.

## Data collected under the *Competition and Consumer Act 2010* (Cth) record keeping rules should be excluded from the operation of the Bill

As a carrier, Telstra has certain record-keeping obligations under Part XIB, Division 6 of the *Competition and Consumer Act 2010* (Cth) (**the CCA**) and the rules made pursuant to section 151BU of that Act. Pursuant to these record keeping rules (**the RKR**), Telstra provides the Australian Competition and Consumer Commission (**the ACCC**) with sensitive geocoded information on its mobile and fixed networks and other sensitive commercial information. Telstra's expectation is that this RKR data will not be shared except in specified circumstances pursuant to the CCA and with notice to Telstra.

The DAT Bill appears to expand the circumstances in which the ACCC may voluntarily share RKR data. RKR data falls within the definition of "public sector data", insofar as it is data lawfully collected or held by a Commonwealth body (the ACCC). In particular, section 22 of the Bill provides that sharing data authorised by the Bill overrides other prohibitions on data sharing contained in other Commonwealth laws. This means that the Bill overrides restrictions on sharing RKR data set out in the CCA.

It may be the case that some RKR data falls within a relevant exception, such as the commercial information/breach of confidence exception (DAT Bill, s 17(3)(b)). It may also be the case that sharing of RKR data is not otherwise authorised under section 13, or the ACCC chooses not to share RKR data under the data sharing scheme. However, it is not certain whether any of these provisions would exclude RKR data from the operation of the Bill.

Some of the RKR data that Telstra provides to the ACCC is sensitive, commercial information. For example, operator information collected by the ACCC under the Internet Activity RKR and NBN SIO RKR which relates to an operator's commercial strategy or is otherwise commercial-in-confidence is not made public in ACCC reports. Additionally, publishing disaggregated RKR information could lead to identification of a specific operator, which would raise privacy and other related concerns.

Accordingly, Telstra suggests that it should be explicit that sharing of RKR data, collected by the ACCC pursuant to Part XIB of the CCA, is excluded from the data sharing scheme established by the DAT Bill. This could be prescribed in the regulations (see DAT Bill, section 17(4)(c)). This would give Telstra and other carriers confidence that the operation of the record keeping provisions in the CCA and its delegated legislation will be unaffected by the DAT Bill.