



## Indigenous Data Network:

PUTTING INDIGENOUS DATA BACK IN  
COMMUNITY HANDS

Indigenous Data Network - Indigenous Studies Unit  
Melbourne School of Population & Global Health  
The University of Melbourne VIC 3010



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Dear Commissioner,

### **RE: SUBMISSION ON THE DATA AVAILABILITY AND TRANSPARENCY BILL EXPOSURE DRAFT**

This submission is made on behalf of the Indigenous Data Network (IDN) in response to the Office of the National Data Commissioner's invitation to comment on the September 2020 release of Data Availability and Transparency Bill exposure draft (the Draft Bill). The IDN is an initiative of the Indigenous Studies Unit, Melbourne School of Population and Global Health, University of Melbourne. The IDN is overseen by a steering committee of senior Indigenous and non-Indigenous academics and is staffed by experts in Indigenous data governance.

The objective of the IDN is to establish a national framework for the coordination of Indigenous-led organisations and others engaged in the ownership, custodianship, and stewardship of data generated by and about Indigenous Australians. The IDN maintains partnerships with a number of peak and regional Indigenous community-controlled organisations, and Commonwealth, state and territory government departments and agencies, which are engaged in the governance of Indigenous data. Further information about the IDN can be found on the IDN website<sup>1</sup>.

### **Submission Points: Public Sector Data, Data Governance Roles, National Data Advisory Council**

The Draft Bill makes reference to a number of proposed entities, roles and relations, the terms and definitions of which bear directly upon the governance of data generated by and about Indigenous Australians, and as such fall within the purview of the Indigenous Data Network. In particular, the Draft Bill refers to:

- Public sector data
- Data governance roles, including data custodians, accredited data service providers and accredited data users
- A National Data Advisory Council

We submit that the terms and definitions by which the Draft Bill proposes to give rise to these entities, roles and relations, pose a risk to the interests that Indigenous Australians hold in data

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<sup>1</sup> <https://mspgh.unimelb.edu.au/centres-institutes/centre-for-health-equity/research-group/indigenous-data-network>

that has been collected from or created about them and which is currently held by or on behalf of a Commonwealth body, or which has been collected or created by or on behalf of a Commonwealth body. Our concerns and associated recommendations with regard to these matters are set out below.

### **Public Sector Data**

The primary purpose of Data Availability and Transparency Bill is to authorise the sharing of public sector data. Subsection 10(2) of the Draft Bill defines public sector data as "*data lawfully collected, created or held by or on behalf of a Commonwealth body*". The IDN submits that this definition poses a risk to the interests of Indigenous Australians in data that has been collected from or created about them and which is currently held by or on behalf of a Commonwealth body, or which has been collected or created by or on behalf of a Commonwealth body (Indigenous public sector data).

In particular, we submit that the Draft Bill does not give regard to the provenance of Indigenous public sector data as a consequence of historical acts previously deemed lawful but which would now likely be regarded as unlawful. Much so-called 'archival' Indigenous public sector data bears such a provenance.

Furthermore, we submit that much Indigenous public sector data, whether archival or contemporary, is of disproportionately inconsistent and unreliable quality, such that its sharing under the terms of the current Draft Bill does not serve the interests of Indigenous Australians.

In light of these concerns, we recommend that the Draft Bill be amended to reflect the distinct interests of Indigenous Australians in Indigenous public sector data. In particular, we recommend that the Draft Bill be amended to explicitly exclude its application to any and all Indigenous public sector data, as defined above. We recommend further that an auxiliary bill be drafted, to operate in conjunction with the Data Availability and Transparency Bill, which gives specific regard to the interests of Indigenous Australians in such data.

### **Data Governance Roles**

The Data Availability and Transparency Bill defines three roles at Subsection 11(2) and 11(4) with respect to implementation of the accompanying data scheme, including: (a) *data custodians*; (b) *accredited data service providers*, and; (c) *accredited data users*. This classification of roles, including their functions and relations, falls short of international benchmarks for best-practice data governance. We submit that, with regard to the interests of Indigenous Australians in the appropriate governance of Indigenous public sector data, as set out above, this shortfall presents an unacceptable risk.

The definitions of the roles of *data custodians*, *accredited data service providers*, and *accredited data users* set out in the Draft Bill, both omit and conflate key roles in standard data governance conventions, as set out in other international data governance regulations, principles and guidelines. Examples of such regulations, principles and guidelines include the European Union's

General Data Protection Regulation<sup>2</sup>, the Five Safes Framework<sup>3</sup>, the ALCOA Data Integrity Principles<sup>4</sup>, and the FAIR Guiding Principles on Scientific Data<sup>5</sup>.

More specifically, these leading international regulations, principles and guidelines set out three broadly accepted roles essential to any effective data governance framework, including (a) *data owners*; (b) *data custodians*, and; (c) *data stewards*. In its current form, the Availability and Transparency Bill omits the role of *data owner* from the accompanying data scheme altogether, and conflates two varieties of *data steward* role in the roles referred to as *accredited data service provider* and *accredited data user*.

We submit that these shortcomings in the Draft Bill's definition of data governance roles pose a risk to the interests of Indigenous Australians. More specifically, we submit that the role of Indigenous Australians in relation to data collected from or created about them by historical acts now likely to be regarded as unlawful, is that of *data owner* according to international benchmarks for best practice data governance.

On this point, we recommend that the roles currently defined by the Draft Bill be amended to reflect international benchmarks for best practice data governance in line with the regulations, guidelines and principles outlined above. Specifically, we recommend that the role of *data owner* be incorporated into the Draft Bill, and that the roles of *accredited data service provider* and *accredited data user* currently set out in the Draft Bill, be subsumed as two variations of the single role of *data steward*.

### **National Data Advisory Council**

The Draft Bill proposes to establish a National Data Advisory Council in order to advise the Commissioner on a number of relevant matters relating to sharing and use of public sector data. Subsection 61(1) of the Draft Bill sets out the membership of the National Data Advisory Council and states that in addition to 4 pre-determined members, there shall be "*at least 5, and no more than 8, other members appointed by the Commissioner*". We note that none of the 4 pre-determined Council members is an Indigenous representative.

The omission of an Indigenous representative from the pre-determined membership of the proposed National Data Advisory Council, represents a risk to the interests of Indigenous Australians in Indigenous public sector data. In particular, this omission precludes an appropriate mechanism for the review of applications to share Indigenous public sector data.

This is the case especially in relation to both the provenance of much so-called 'archival' Indigenous public sector data, and to the disproportionately inconsistent and unreliable quality of much contemporary Indigenous public sector data. We therefore recommend that at least one member of the proposed National Data Advisory Council be an Indigenous representative.

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<sup>2</sup> <https://gdpr-info.eu/>

<sup>3</sup> [http://csrcm.cass.anu.edu.au/sites/default/files/rsss/Ritchie\\_5safes.pdf](http://csrcm.cass.anu.edu.au/sites/default/files/rsss/Ritchie_5safes.pdf)

<sup>4</sup> [https://www.who.int/medicines/areas/quality\\_safety/quality\\_assurance/QAS19\\_819\\_data\\_integrity.pdf?ua=1](https://www.who.int/medicines/areas/quality_safety/quality_assurance/QAS19_819_data_integrity.pdf?ua=1)

<sup>5</sup> <https://www.go-fair.org/fair-principles/>

## Summary

In summary, in relation to the September 2020 release of the Data Availability and Transparency Bill exposure draft, the Indigenous Data Network holds concerns regarding:

- a) The Draft Bill's lack of regard for the distinct interests of Indigenous Australians in Indigenous public sector data, where that data:
  - i. has been previously collected from or created about Indigenous Australians by historical acts that would now likely be regarded as unlawful, and;
  - ii. is of disproportionately inconsistent and unreliable quality, such that its sharing does not serve the interests of Indigenous Australians.
- b) Shortcomings in the definition of roles with respect to implementation of the accompanying data scheme, such that key roles defined by the Draft Bill do not adhere to international benchmarks for best practice data governance. Most significantly, the omission of the role of *data owner* from the Draft Bill infringes upon the interests of Indigenous Australians.
- c) The omission of any identified membership position on the National Data Advisory Council for an Indigenous representative.

We therefore recommend that:

- a) The Draft Bill be amended to reflect the distinct interests of Indigenous Australians in Indigenous public sector data, such that:
  - i. the Draft Bill explicitly exclude its application to any and all Indigenous public sector data, and;
  - ii. an auxiliary bill be drafted, to operate in conjunction with the Draft Bill, which gives specific regard to the interests of Indigenous Australians in Indigenous public sector data.
- b) The role of *data owner* be incorporated into the Draft Bill, and that the roles of *accredited data service provider* and *accredited data user* currently set out in the Draft Bill be subsumed as two variations of the single role of *data steward*.
- c) At least one member of the proposed National Data Advisory Council be identified an Indigenous representative.

Yours sincerely,



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