



Australian Government  
Department of Industry,  
Science and Resources

Department of Industry, Science and Resources' (DISR) input for the Office of the National Data Commissioner's Consultation on Exposure Draft - Data Availability and Transparency Code 2022

September 2022

Chapter of ONDC's Draft Data Code	Consultation questions in ONDC 's Consultation Paper	DISR's response
4. Data sharing principles	<b>Project principle: project reasonably expected to serve the public interest</b>	
	<p>1. Is the approach to weigh arguments for and against the project serving the public interest appropriate? If not, how else could entities assess whether a project for the purpose of informing government policy and programs, or research and development, serves the public interest?</p>	<p>DISR agrees with the approach of weighing for and against arguments of projects to serve the public interest as appropriate.</p> <p>DISR suggests the inclusion of a weighting method that can be consistently applied across government agencies in additional supporting documentation would be helpful.</p>
	<p>2. If yes to the above are the requirements of what entities must do, to weigh up arguments for and against the project serving the public interest, clear and unambiguous, and is this list proper and pragmatic? In your response, please provide reasons.</p>	<p>Generally, the requirements of what entities must consider to weigh up arguments for and against the project serving the public interest are clear and pragmatic. However, it is not unambiguous – particularly in respect of commercial benefits and its weighting against other arguments for public interest.</p> <p>DISR seeks clarification on the range of weighting allowed for each argument under the Code as part of the public interest 'weighting test' and whether public interests have a greater, equal or lower weighting than commercial benefits. For example, if a data project was considered to have a 60% commercial benefits and 40% national economic interests, would this weighting be acceptable or would it conflict with public trust?</p>
<p>3. Is the list of projects that do not serve the public interest able to be practically applied? What, if any, further guidance is required to support entities consider</p>	<p>DISR agrees that the list of projects that do not serve the public interest can be practically applied. However, DISR suggests that the development of a guide</p>	

	when a project does not serve the public interest?	to assist entities assess projects' public interest, including a 'weighing up' test methodology (as referenced in the consultation paper), would be useful.
	4. Are the notes contained in this section helpful, and would this section benefit from other illustrative examples provided as notes? If yes, what examples and under which subsections?	DISR agrees that the notes in this section are helpful and suggests illustrative examples are not required.
	<b>Any other comments?</b>	No comment.
	<b>Project principle: applicable processes relating to ethics</b>	
	5. Under the draft data code, entities must have regard to <b>any</b> process of ethics applicable. Do you have any comments about this approach?	No comment.
	6. Is the note provided to assist entities identify ethics processes helpful? Why, or why not?	DISR agrees that the notes in this section are helpful. We suggest the inclusion of user case examples in additional supporting documentation would be helpful.
	<b>Any other comments?</b>	No comment.
	<b>People principle: conflicts of interest</b>	
	7. Are the requirements of this element of the people principle clear and unambiguous? What, if any, further details or guidance could assist?	DISR suggests additional information on accountability required for 'appropriate managed' conflicts (e.g. Accredited Users and Data Custodians) are required to appropriately manage conflicts prior to sign off on the data sharing agreement.
	8. Is the example provided under this section helpful? Why, or why not?	Yes, the example provided is helpful.
	<b>Any other comments?</b>	No comment.
	<b>People principle: appropriate persons</b>	
	9. Are the attributes, qualifications and affiliations listed in this section appropriate and easy to understand?	Yes, the attributes, qualifications and affiliations listed in this section are appropriate and easy to understand.
	10. Would this section of the draft data code benefit from other illustrative examples provided as a note? If yes, what examples and under which subsections?	No further examples are required, as the section is self-explanatory.

<p><b>Any other comments?</b></p>	<p>DISR suggests additional information be provided on who is responsible for the verification of clearances and/or relevant qualifications.</p>
<p><b>Setting principle: reasonable security standards</b></p>	
<p>11. Is this section adequate in clarifying what are reasonable standards?</p>	<p>DISR suggests the addition of ‘secure’ to subsection 16(5) so that it reads “...appropriately secure controlled environment.” This provides greater clarity to entities on the required environment.</p>
<p>12. Would this section benefit from an illustrative example provided as a note? If yes, what are some proposed examples?</p>	<p>Yes, the section would benefit from an illustrative example. DISR suggests an example that covers security, controlled environments, and data breach plan requirements.</p>
<p><b>Any other comments?</b></p>	<p>DISR suggests the inclusion of Appendix A – Key Terms of the Consultation Paper into the DAT Code under the Definitions section.</p>
<p><b>Data principle: appropriate protection – whether data should be altered</b></p>	
<p>13. In practice, this element of the data principle, the privacy protections, and three data services set out in the Act, all work together to provide a framework to appropriately protect data. ONDC acknowledges there is a need to strike the right balance between taking a layered approach and not making the DATA Scheme too complex. Could the draft data code be improved to better assist entities apply this element of the data principle?</p>	<p>DISR notes that the draft code in this subsection is reasonably defined. DISR suggests that an additional supporting document (e.g. a guide) to better assist entities apply this element of the data principle would be helpful.</p>
<p><b>Any other comments?</b></p>	<p>DISR suggests that this principle could emphasise that data custodians have the right to alter data in order to protect privacy.</p>
<p><b>Data principle: appropriate protection - data sharing must be reasonably necessary</b></p>	
<p>14. Is the ‘reasonable person’ test adequate in this section? If not, how could this section be improved to allow the entities to test whether the data proposed to be shared, collected and used is reasonably necessary to achieve the data sharing purpose?</p>	<p>Yes, the ‘reasonable person’ test in this section is adequate.</p>

	<b>Any other comments?</b>	No comment.
	<b>Output principle</b>	
	15. In practice, the output principle requires entities to agree how the accredited user will use shared data. Overall, how could the draft data code be improved to best assist entities apply the output principle?	DISR suggests the inclusion of intended uses of data that are not acceptable, including an example.
	<b>Any other comments?</b>	DISR seeks clarification on whether an accredited user approaching another entity regarding validity of the output data provided is acceptable or not under the Code.
<b>5. Privacy protections</b>	16. One of the objects of the Act is to enable the sharing of data consistently with the Privacy Act and appropriate safeguards. Does this part of the draft data code strike the right balance between holding data custodians accountable to seek consent, and providing data custodians with an exception to collect consent in circumstances where it is genuinely unreasonable or impracticable to seek consent? How could the draft data code be improved to achieve the right balance? For example, could the National Health and Medical Research Council waiver of consent guidelines be used here?	Additional clarification is required for ‘excessively burdensome’. For example, there is missing data or original data is de-identified in a dataset, however requesting consent to approach entities may be impracticable.
	17. Is this part of the draft data code adequate in providing further clarification for what considerations should be taken into account when determining whether it is necessary to share personal information to properly deliver a government service? How could this section be improved?	Reference to precluded purposes could be included here as a point of differentiation to the necessary sharing of personal information.
	18. Does this part of the draft data code provide an adequate list of factors for data custodians to consider when determining whether the public interest justifies the sharing of personal information without consent? Would this section benefit from an example provided in a note, and if so, can you suggest one?	Yes, the list of factors appears adequate.
	<b>Any other comments?</b>	No comment.

<b>6. Data sharing agreements</b>	19. Should the data sharing agreement include any additional details about the designated individual who is a foreign national?	DISR suggests that additional detail related to employment outside the project could be provided in the data sharing agreement, such as how long they've been employed at the institution, other projects they have participated in, or other current employers or affiliations (including foreign nationals).
	<b>Any other comments?</b>	How does the status of a designated individual interact with appropriate person? Is a designated individual required to be an appropriate person as well to participate on the project? This could be better clarified.  Related to the above, Section 20 requests that 'due diligence' is undertaken for designated individuals who are foreign nationals. However, is the due diligence process different from the requirements for determining whether an individual is an 'appropriate person' or whether conflicts of interests are present?
<b>7. Miscellaneous</b>	20. This part of the draft data code is informed by the list prescribed in section 130 of the Act. Is this an appropriate approach, and are there any additional details that should be provided to the Commissioner outside of that list?	No additional details required.
	21. Is the 31 July an appropriate deadline for data custodians to provide information and assistance to the Commissioner to prepare for the annual report?	The deadline is appropriate for providing information to the Commissioner.
	<b>Any other comments?</b>	No comment.
<b>8. Potential additions to the data code</b>	22. What additional topics could the data code include to assist the establishment or integrity of the DATA Scheme?	No comment.
	<b>Any other comments?</b>	Cost recovery.