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Public Submission

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formation of the [OPEN Government Data Act](#) (U.S. HR 1770).*

Goals of the Data and Transparency Act 2022 & DATA Scheme

- The Data Availability and Transparency Act 2022 (the Act) aims to establish a data sharing process whereby Commonwealth entities have a clearly defined mechanism with 'guardrails' to share public sector data between state/territory & federal entities, and Australian universities.
- The stipulated purpose should be for the provision of government services, informing public policies and programs, and R&D.
- Data sharing under the DATA Scheme must adhere to the Act's data sharing principles and a *registered* data sharing agreement.

Executive summary

The Productivity Commission's 2017 report on *Data Availability and Use* provided in-depth insights and findings. While the consultation on the Data and Transparency Act 2022 was impressive, the resulting guidance is unfortunately overly *restrictive* and *bars* rather than promotes the availability and use of government data.

The *Data Availability and Transparency Code 2022 [Exposure Draft]* does not contain a single reference to the word '*open*.' 'Transparency' occurs only the name and in footers but is otherwise silent in the Code itself.

The Code fails to incorporate knowledge and practice that has been codified during the last decade of robust scholarship on **Indigenous data sovereignty**, **data best practices**, and recent data legislation in other liberal democracies that could serve as a guide (e.g, U.S. Open Public, Electronic,

and Necessary Government Data Act or the [OPEN Government Data Act 2019](#)). These are glaring omissions in legislation being drafted and implemented in 2022. We can and must do better, leveraging the considerable scholarship and practice available on data stewardship, Indigenous data sovereignty and governance, and internationally recognised data exchange standards and documented best practices specifically envisioned for government entities publishing data internally and on the public Web (see W3C).

If *Data Availability and Transparency Code 2022 [Exposure Draft]* is intended for use by data custodians, public servants and civil society (to include academia), is currently missing the mark. The Scheme is bloated with verbose legalese and fails to incorporate guidance available through international collaborations and peer review by leading data stakeholders in Australia, New Zealand, the UK, the US, Canada, and Estonia. The DATA Scheme is practically *not actionable* by information professionals and researchers (broadly defined). It is cumbersome and legalistic, and not fit for the purposes of informing government policies and rulemaking. Nor does it incorporate data stewardship, co-design and genuine co-development approaches. There is sufficient in-country expertise to improve the contemplated DATA Scheme.

However, without genuine engagement and iteration, public data custodians, healthcare providers, academics, contractors, and consultants are likely to see the DATA Scheme as cumbersome and difficult to decipher; 'as is' it will serve to suffocate data availability for use by the research community, public servants, and industry.

Recommendations

This submission implores the Office of the National Data Commissioner to serve as a catalysing force to address the widespread **data culture that is overly risk averse** within the APS.

Specific recommendations include:

Simplify the language in the Act such that it provides useful guidance in statute, rather than policy, that is based on contemporary digital information governance versus obfuscated legalese. (No one wins when lawyers draft documents that are meant to be simple, concise and actionable).

The Five Safes Framework is a great start but there is more to be incorporated. Keep the principles simple, concise, and actionable. User-centred design must be paramount so that communities who report and use data (e.g., healthcare practitioners, Indigenous community members, academia, regulated entities) benefit from *their data* and *other public interest data*. Government must view itself more as a steward of public data, rather than its overlord.

Supporting the coterie **data stewards within the APS**. There are numerous examples where the culture of data stewardship and transparency has been promoted (e.g., UK, Canada, New Zealand, Estonia, others). Encourage and support members of the APS to work with data champions within Australia and among other countries' working groups and communities of practice. Currently, members of the APS who do this, do so on a volunteer, often out-of-hours basis.

Build skills for public data stewardship within state/territory & federal government entities, and Australian universities by **embedding a data sharing culture** that encourages (1) *publishing metadata about enterprise data inventories data using standardised, machine-readable data formats on data.gov.au*, and (2) *designating a point of contact to assist the public and respond to complaints about adherence to open data requirements*. This approach also recognises that for privacy, security, confidentiality, or regulatory reasons, agencies may maintain non-public portions of their inventories.

Enshrine in law that a suitable **government agency** (overseen by the ONDC) **maintain an online repository of tools, best practices, and schema standards** to facilitate adoption of open (as in **interoperable**) data practices across the federal government. This repository will be available through data.gov.au. This cannot be entirely outsourced to CSIRO.

Empower leaders within the APS and **grassroots actors** (within civil society) with funding not just accolades (lip service). Numerous communities of practice (e.g., Australian Government Linked Data Working Group, others), academic and practice forums (e.g., Indigenous Data Network), and the ARDC *could* be working with more data custodians to effect knowledge exchange.

Each of the above recommendations *can* be supported through (applied) research underway in Australia's universities and civil society organisations. However, it cannot be a 'tick & flick' exercise. Genuine co-design over the next decade will be required.

Public data stewardship records and reflects our *past, present & future*. Government data policy should not squeeze the life out of public data supply because of shame and embarrassment over past performance. Public trust grows when government embraces its limitations and engages with civil society meaningfully and productively.

References:

Australian Government DATA Scheme's Legislative Framework, <https://www.datacommissioner.gov.au/legislation> (Retrieved 8-Sept 2022)

Australian Government Office of the National Data Commissioner, Data Availability and Transparency Code 2022, Consultation Paper (Aug 2022)

Australian Government Linked Data Working Group, <https://www.linked.data.gov.au> (Retrieved 8-Sept 2022)

Data Availability and Transparency Act Passes Parliament, Paving the Way for Greater Sharing and Use of Public Sector Data
<https://www.kwm.com/au/en/insights/latest-thinking/data-availability-and-transparency-act-passes-parliament.html> (Retrieved 8-Sept 2022)

Melbourne University, School of Population and Global Health, Improving Indigenous Research Capabilities: An Aboriginal and Torres Strait Islander Research Data Commons
<https://mbspgh.unimelb.edu.au/centres-institutes/centre-for-health-equity/research-group/indigenous-data-network/projects/improving-indigenous-research-capabilities-project>
(Retrieved 8-Sept 2022)

Shergold, P. 2008, Governing through Collaboration, in O'Flynn, J. & Wanna, J., Collaborative Governance. <https://www.jstor.org/stable/j.ctt24h315.7> (Retrieved 8-Sept 2022)

Shergold, P. 2016, Learning from Failure: Why large government policy initiatives have gone so badly wrong in the past and how the chances of success in the future can be improved. Australian Public Service Commission. <https://apo.org.au/node/62938> (Retrieved 8-Sept 2022)

Stanley, F., Langton, M., Ward, J., McAullay, D., Eades, S., Australian First Nations Response to the Pandemic: A dramatic reversal of the 'gap', *Journal of Paediatrics and Child Health*. DOI: 10.1111/jpc.15701 2021

U.S. Data Availability and Transparency Code 2022, Exposure Draft dated 2022
OPEN Government Data Act, <https://www.congress.gov/bill/115th-congress/house-bill/1770>
(Retrieved 8-Sept 2022)