



The exposure draft of the *Data Availability and Transparency Code 2022* was open for public consultation between 17 August 2022 to 14 September 2022. We received 37 formal submissions. We also met with key stakeholders to gain a better understanding of issues raised. Guided by our approach of 'listen, learn, adapt', this document summarises what we heard and our next steps.

What We Heard

The approach taken in the Data Code received strong support. In addition to the positive feedback, we also heard:

Project Principle – Public Interest Test

- The public interest test criteria should be streamlined to promote ease of use and tailoring to projects with various levels of complexity.
- There should be a presumption that projects which go through a rigorous assessment process already automatically satisfy the test.

Project Principle – Ethics Process

- Strengthen ethics requirements, particularly where no other ethics processes outside the Act are needed.
- Avoid doubling up where ethics processes occur outside the Act.
- Clarify what is meant by 'observe at least one applicable process'.

People Principle – Conflicts of Interest

- Further clarity needed to explain when a conflict of interest arises.
- The example of a conflict of interest provided could be more helpful.

People Principle – Appropriate Persons

- Further clarity needed about which affiliations affect an individual being considered an 'appropriate person'.
- Further guidance sought about involving foreign nationals in data sharing projects.

Data Principle – Appropriate Protection

- The language used for altering or changing data should be clarified.

Privacy Protection – Consent

- The circumstances in which withdrawal of consent applies needs more explanation, as well as when consent is current and can be implied or express.

Indigenous Data

- Issues raised include:
 - Participation of Indigenous controlled community sector organisations in the Scheme
 - Adequate resourcing to strengthen data capability, and to support further engagement with the Scheme, and
 - The inclusion of the CARE principles of Indigenous data governance in the Scheme.

Next Steps

Data Codes

Project Principle – Public Interest Test

- The wording of the public interest test was clarified and separated into factors that 'must' and 'may' be considered.
- Clarification that completing existing rigorous assessment processes for projects, such as medical research projects, will satisfy the Scheme's public interest test.

Project Principle – Ethics Process

- The interaction between ethics tests outside the Act and those required by the Act has been clarified.

People Principle – Conflicts of Interest

- The section has been amended to clarify its application and the example improved.

People Principle – Appropriate Persons

- The factors have been separated into elements that enhance and detract from being considered an 'appropriate person' and a new example has been included.

Data Principle – Appropriate Protection

- Language has been amended for clarity.

Privacy Protection – Consent

- Further explanation about withdrawal of consent has been added. An explanation of consent in further relevant sections of the Act (sections 20C, 20E and 20F) has also been added to ensure a comprehensive approach.

Guidance

Many additional issues raised (e.g. clarifying the meaning of consent and 'delivery of government services') can be addressed through ONDC providing further guidance materials on the DATA Scheme more broadly. In addition to our current website material, we will be releasing further guidance on topics relevant to issues raised through consultation.

Issues Register

Some issues raised, such as eligibility to participate in the DATA Scheme, are more appropriate to address in the Act. We are keeping an issues register to ensure these are tracked and considered as part of the statutory review of the Act scheduled for 2025.

Indigenous Data

- ONDC values the submissions on Indigenous data, and the issues that have been raised.
- Alongside First Nation peoples, ONDC will explore options for addressing issues raised. We will hold a Roundtable in early 2023 to further discuss these issues in-depth and develop a way forward.