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6 November 2020

Dr Phillip Gould
Office of the National Data Commissioner
Department of the Prime Minister and Cabinet
Barton ACT 2600

Submitted online: https://www.datacommissioner.gov.au/exposure-draft/submission

Dear Dr Gould

Data Availability and Transparency Bill Exposure Draft and Accreditation Framework Discussion Paper, September 2020

Thank you once again for inviting the University of Sydney to comment on the exposure draft of the *Data Availability and Transparency Bill 2020 Cth* and respond to the accompanying Accreditation Framework discussion paper.

We would like to express our appreciation to the Office of the National Data Commissioner (ONDC) for the exemplary way it has consulted with the research and wider community over the last two years to develop this important legislation. The thorough and open policy process has delivered a comprehensive and thoughtful design for a new national data sharing framework. The successful implementation of this legislation will have significant public benefit through research-initiated innovation and insights. It will also support improvements to the delivery of public services by Commonwealth agencies and open up commercial opportunities while ensuring vital privacy and other safeguards are in place.

We have reviewed the exposure draft of the Bill and the Accreditation Framework discussion paper and are broadly supportive of the proposed structures and instruments. We do, however, wish to provide feedback in three broad areas where we believe there remains scope to strengthen the Bill's design and, ultimately, its operation once enacted. These areas are (a) governance and compliance processes and associated costs that will be borne by the research community (b) resourcing of regulatory functions, and (c) sensitive data sharing requests.

a) Governance and compliance processes

Development of the regulations

The success of the Commonwealth's data strategy will ultimately depend on the practical implementation of the legislation rather than its drafting. As we have recommended in previous submissions, we believe there would be great value in the ONDC convening an 'expert advisory panel' of researchers, research administrators and data experts to work with it to develop the regulations that will support the legislation.

The role of 'Accredited Entities'

We recognise and support the proposal that research institutions will need to become accredited entities - allowing them to endorse their researchers as accredited users.

However, we note that:

o The institutional accreditation application process will have substantial administrative overheads for large institutions (requiring evidence of processes, policies and infrastructure that control and govern data security, data management and storage, cybersecurity, privacy, risk, training, skills competency etc.).

o Institutional re-accreditation is proposed every 3 years but may be required more frequently at the discretion of the ONDC. We suggest that re-accreditation should be a more streamlined and less onerous process than the initial accreditation. Costs levied by the ONDC for institutional accreditation and re-accreditation should be minimal or waived.

o The definition of the role of sub-units (schools, departments) within an accredited institution needs to be better defined. It is unclear how sub-units will be treated within the proposed Accreditation Framework. For a large research institution, defining sub-units could be a substantial task, e.g. at University of Sydney, there are >100 organisational entities that could qualify as a 'sub-unit' (e.g. schools, departments, institutes, research centres), with many likely to have researchers who will request access to sensitive data through this mechanism.

o Accredited institutions will oversee the endorsement of researchers to become accredited users. This will require investment in new administrative processes by research institutions.

o Accredited institutions will be required to provide annual reports to the ONDC on data activities, ethics approvals, compliance by researchers etc., which may require substantial effort to compile.

o Researchers will be required to undergo training and testing by the ONDC before endorsement can be given by an accredited institution. An individual's accreditation will last for 3 years. It is unclear whether accreditation/re-accreditation of researchers will incur a charge from the ONDC.

o Accredited institutions will need to invest in developing mature sensitive data environments (or outsourcing to service providers), to comply with Data Sharing Principles.

The role of Accredited Data Service Providers (ADSPs)

ADSPs will be responsible for providing complex data integration services (similar to existing Integration Authorities) but ADSPs may be used by Data Custodians to process some or all data sharing requests. A likely outcome is a 'bottleneck' where demand for ADSP services greatly exceeds their capacity to deliver services in a timely manner, as we do not know how many:

o ADSPs there will be, or what their capacity will be for servicing requests
o Data Custodians will decide to use ADSP services for data sharing requests that do not require complex integration
o complex integration requests from researchers (that will require ADSP services) will be generated.

Financial incentives may be needed to encourage institutions/agencies/consortia/industry to establish new ADSPs if demand for services consistently exceeds capacity.

b) Resourcing of regulatory functions

There are various areas where inadequate resourcing of the ONDC or departments/agencies that have custodianship of sensitive datasets could significantly delay the processing of reasonable Data Sharing Requests:

o   Data Sharing Request processing timeframes need to be defined. There are no acceptable performance indicators specified for time taken by Data Custodians to process requests. Processing times should be reported to the ONDC.

o   Data Custodians of 'popular' high demand datasets may lack capacity to handle high volumes of requests.

o   The ONDC must be adequately resourced to:
   –   process institutional accreditation requests in a timely manner; acceptable timeframes to process requests should be defined
   –   administer the legislation efficiently and effectively e.g. cancellation and subsequent renewal of accreditation
   –   oversee the accreditation of ADSPs. It is unclear how many (potential) ADSPs may apply for accreditation.

c) Sensitive data sharing requests

o   Data Custodians can refuse data sharing requests; there is no 'duty to share'. These should be reported to the ONDC annually, and in the interests of transparency, the ONDC should publish the reasons given for refusal.

o   Indigenous data sovereignty needs to be acknowledged specifically in the Bill.

Finally, we make two recommendations around the assessment and implementation of the new legislation and data sharing framework:

1.   Cost of compliance to research institutions needs to be recognised and considered carefully as part of the Regulatory Impact Assessment PM&C will complete to accompany the Bill. For large research institutions, investment in sensitive data infrastructure will be required. Accreditation and administration costs will need to be considered.

2.   Once passed into legislation, a review should be carried out after 2 years to evaluate the effectiveness of data sharing and access instruments. The Review should include a quantification of the costs for accredited research institutions of implementing and administering any new requirements, and if necessary, consider options to minimise cost and regulatory compliance burden.

We thank you again for the opportunity to continue to contribute to this process and to engage with other interested stakeholders to help develop this important legislation and supporting accreditation framework. It is gratifying to see that we are making excellent progress, which will hopefully result in the passage of the legislation early in 2021.

Please do not hesitate to contact me should you wish to discuss any aspect of this submission. Alternatively, please liaise with Dr Adele Haythornthwaite, Research Data Consulting Lead, The University of Sydney Informatics Hub (adele.haythornthwaite@sydney.edu.au, 02 9351 1908) who continues to lead our detailed consideration of these reform proposals.

Yours sincerely

(signature removed)

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