

Data Sharing and Release Legislation: Issues paper

Submission to the Department of the Prime Minister and
Cabinet
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Enabling open data and data sharing

The Australian Chamber of Commerce and Industry (Australian Chamber) welcomes the opportunity to provide feedback on the New Australian Government Data Sharing and Release Legislation Issues Paper.

The Australian Chamber has been supportive of the Australian Government's expansion of its open-data policy. Australian businesses are increasingly data-driven in their decision making and benefit from access to more complete datasets. However, there is more that can be done.

Other governments, such as the United Kingdom and Canada, are ahead of the Australian Government in terms of open data¹. Encouraging the use by the broader Australian community of data in making decisions, and highlighting the benefits that come from data-driven decision making, it is important the government apply best-practice principles using and sharing data.

It is vital for businesses to have access to cohesive and complete public datasets. Datasets provided by the Government that are more complete can, in turn, produce more accurate analytics, drive efficiencies and productivity in both the public and private sectors. If the range and breadth of raw government data increased, it would encourage digital integration between the public and private sector in Australia.

As such, the Australian Chamber welcomes initiatives that streamline the way public data is shared and released. The Australian Chamber notes that the proposed Data Sharing & Release Bill (DS&R Bill) is to sit alongside existing requirements that apply to data. The Australian Chamber would like to draw attention to The Australian Government Guide to Regulation, particularly principle 3: 'The cost burden of new regulation must be fully offset by reductions in existing regulatory burden'.

National Data Commissioner

The Australian Chamber supports, in principle, the creation of a National Data Commissioner (NDC). However, we are concerned that the creation of an NDC adds another level of bureaucracy in public data sharing and release. As the issues paper notes, the ABS, AIHW, DTA, Finance, NAA and OAIC all have guidance material on the use of data.

Guidance material issued by these bodies could contradict one another, become out of date or create ambiguity. The Australian Chamber recommends the NDC oversee guidance material produced by different government agencies, and provide recommendations where it doesn't support

the Government's open data policies or contradicts other guidance material. A consistent approach to anonymisation, for example, will be very important in securing privacy of data.

The Australian Chamber supports transparency and accountability in government agencies' progress in sharing and releasing data. It is vital that the data released provides a complete dataset, to allow the most value to be derived from the data. Partial datasets, when used for analysis, will not be as insightful.

The Australian Chamber recommends a framework for oversight, review and redress. This will be important where the NDC has made a decision about non-compliance with the framework or a negative determination from an audit of an Accredited Data Authority. As the NDC is proposed to have the power to penalise non-compliance, opportunities for review are required.

The Australian Chamber would also encourage the NDC to consider an event of non-compliance in context, on a case-by-case evaluation. For example, unauthorised access to, use of, or sharing or release of data could occur because of a significant breach of an entity's cyber security measures. Recent examples show that, even with the best of intentions and significant cyber security measures deployed, unauthorised access to data can still occur.ⁱ

The different jurisdictions in Australia have different approaches to open data. The Australian Chamber recommends developing a national, integrated policy approach that would align privacy and open data policies to reduce the administrative burden on entities building on these datasets (be they public or private). There are opportunities where all three levels of government could collaborate on providing comprehensive datasets, creating a chance for insightful data analysis on a wide range of factors.

A large piece in enabling the Government's open data policy is the need to increase capabilities in the public sector and promote understanding of open data. Cross-agency collaboration in developing datasets would be invaluable in providing the ground work for in-depth, comprehensive and productive data driven decision making. The NDC would be in a position to facilitate cross-agency collaboration and identify capability gaps in particular agencies. A broader piece about promoting a culture that supports open data within public agencies would also be valuable.

The Australian Chamber also recommends clarity around the purpose of the NDC and other government agencies involved in the open data policy. There is potential for work to be duplicated between the NDC and other organisations, particularly as digital initiatives undertaken by government are spread across a number of government agencies.ⁱⁱⁱ

There needs to be a clear vision for government in its approach to open data, and digital transformation more broadly. For example, if ICT systems in each government agency cannot work together, the ability to produce complete datasets will be limited and will impact the analysis conducted on these datasets.

Legislation

The Australian Chamber recommends that the proposed Bill mandate that data released by government is machine-readable and in a standardised format. This will allow advanced analytics and innovative applications.

The Australian Chamber supports a principle-based approach in the design of the DS&R Bill. Overly prescriptive legislation will increase compliance and administrative costs. Additionally, a principles based approach will allow provisions to have the flexibility to adapt appropriately to particular circumstances.

Given the introduction of the DS&R Bill will increase already existing data safeguards in other pieces of legislation, we caution against the unnecessary expansion of regulatory burden. While the DS&R Bill's intention is to provide a flexible and modern framework, it is important to ensure that the legislation it sits alongside with also has the same effect.

The DS&R Bill should also not duplicate provisions already enshrined in other pieces of legislation, particularly privacy protections. The *Privacy Act 1988* already encompasses significant privacy protections – unnecessary duplication of these provisions in the DS&R Bill will create ambiguity.

The *Privacy Act 1988* and DS&R Bill, in combination, need to be fit for purpose to ensure that the Australian community trusts that their data is secure. This includes having appropriate sanctions in place to ensure there are consequences, and remedial measures, in place for data breaches. A consistent approach to anonymisation of data will be particularly important in safeguarding privacy of data.

ⁱ World Wide Web Foundation, OpenData Barometer Global Report, 4th edition

ⁱⁱ <http://www.abc.net.au/news/2018-07-06/chinese-hackers-infiltrate-anu-it-systems/9951210> ,
<https://www.smh.com.au/politics/federal/major-universities-hit-by-data-breach-affecting-thousands-of-job-applicants-at-top-firms-20180608-p4zkd9.html>

ⁱⁱⁱ Senate Finance and Public Administration References Committee, 'Digital delivery of government services', June 2018



About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

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