

Overview

The Australian Government has an opportunity to unlock value from its data custodians to benefit the Australian Public. As the Productivity Commission Public Inquiry into Data Availability and Use 2017 (PC Inquiry) highlighted, some longstanding legislation has made information sharing between agencies difficult and unwieldy. There is now an opportunity to introduce or amend legislation to align it with recent technological advances, while protecting individual privacy and improving transparency over how data is treated. The new Data Sharing Legislation and the creation of a National Data Commissioner are promising developments.

The responses provided throughout this submission highlight two broad themes for consideration:

1. Non-government participants will be needed to help drive innovation and growth

The importance of non-government organisations (NGOs) appears to be underplayed or absent in several sections in the issues paper.

Common stated benefits for sharing data include economic growth and innovation. However, these benefits can not be significantly achieved by government agencies alone. There are numerous reasons for this including resourcing constraints, incentives to drive innovation, skill gaps in workforce skills and the ongoing rapid pace technology changes.

In addition, it is possible that in the future significant options for public-private partnerships (PPPs) will be proposed, and as much as possible it would be worthwhile laying out the principles now to consider PPPs in the future. PPPs could be around data analytics or with some of the underlying data infrastructure. A recent example of this is the current pilot partnership between Google BigQuery and National Oceanic and Atmospheric Administration (NOAA) in the USA. If this pilot partnership is successful, it could become a model similar partnerships around the world.

I suggest consideration of NGOs and the importance of economic stimulation and innovation be explicitly included in the scope, principles, and design of both the Data Sharing Legislation, and with the mandate of the new National Data Commissioner.

2. Scope of the National Data Commissioner – advocacy role across Government

The PC Inquiry and other studies outline barriers, in addition to existing legislation, that agencies face when releasing data. Examples include but are not limited to technical or staffing capabilities, resourcing, lack of standards and coordination. To unlock the maximum value of Australian Public Data, to benefit all Australians, the National Data Commissioner needs to be given a broad enough mandate to help advocate on all of these issues.

I suggest that the National Data Commissioner be empowered with a broad advocacy role within government which could include any or all of the following activities:

- Understand the barriers - develop and maintain an understanding of barriers that limit data sharing. This could be through benchmarking surveys and case studies.
- Australian Public Sector (APS) capabilities - Input into long range training / development of APS for data analytics / data science / data infrastructure.

- Impact measurement – Understand and measure benefits (and any costs) resulting from data sharing activities, then use this understanding to recommend and guide future investments and reforms.
- Incentivisation - Effective incentivisation of data custodians to share data and recognition of successful data sharing initiatives, including awareness in the community of ‘good news’ data stories.
- Awareness and education on positive outcomes of data sharing – to help improve the culture around data sharing it is crucial that data custodians and members of the public have a holistic picture of what data sharing is and how it is helping citizens.
- Monetisation – Explore effective monetisation of public data, which types of data can be monetised, should they be monetised in a sustainable manner for the public good?

Thank you for the opportunity to participate with this public consultation process. Please let me know if I can provide any more information on anything in this submission.

Regards,

Julian Singh,

31 July 2018

www.linkedin.com/in/julian-singh/ | www.opendata101.com

Contents

- Overview 1
- Contents 3
- Responses to Sections in Issues Paper 4
 - Key Principles of the Data Sharing and Release Bill 4
 - Scope of the Data Sharing and Release Legislation 5
 - Purpose test 6
 - The Five-Safes framework will ensure consistent risk management 7
 - Streamlined data sharing and release agreements 8
- Roles and Responsibilities within the System 9
- National Data Commissioner 10

Responses to Sections in Issues Paper

Key Principles of the Data Sharing and Release Bill

Extracts from issues paper section 3

[The DS&R Bill aims to reflect a balanced approach to realising the maximum benefits of public sector data while meeting community expectations that we handle data safely and appropriately. The Bill will seek to optimise the use and re-use of public sector data by removing inefficiencies and inconsistencies with public sector data use and sharing to increase the social and economic outcomes for all Australians.

The overall aim of the DS&R Bill will be to:

- safeguard data sharing and release in a consistent and appropriate way
- enhance the integrity of the data system
- build trust in use of public data
- establish institutional arrangements, and
- promote better sharing of public sector data.]

Questions

1. Are these the correct factors to taken into account and to guide the legislative development?
2. What else should the Government take into consideration when designing the legislation?

Response statement

- The principles that have been listed all seem appropriate and consistent with previous publication and public statements.
- There may be a missing principle regarding ‘economic growth and innovation’. Economic growth and innovation are listed as potential benefits in numerous previous government publications and public statements.
- In addition I would suggest an underlying principle around ‘sustainability and/or flexibility’ of the new bill and governance arrangements. Although this might already be implied, these changes are taking place in an external environment of rapid technology change. Arrangements that are established now need to be able to respond to future threats and opportunities.

Question responses

1. Yes the factors listed are relevant.
2. Additional factors should include economic growth, innovation, sustainability and flexibility.

Scope of the Data Sharing and Release Legislation

Extracts from issues paper section 4:

- [The DS&R Bill will cover a broad scope of entities and data
- The Bill will accredit trusted users and data authorities to streamline future interactions.
- The Bill will provide authority for sharing and release of data where currently prohibited
- The Bill will interact with other legislated data safeguards]

Questions

3. Should the scope be broader or narrower?
4. Are there entities that should be included or excluded from scope? How would this be justified?
5. Should any specific categories of data be specifically out of scope? How would this be justified?
6. Should exemptions, for example for national security and law enforcement, occur at the organisational level or for specific data categories?
7. Are there instances where existing secrecy provisions should prevail?

Response statement

- The current scope does not include Non Government Organisations (NGOs). NGOs are a critical section of a health data sharing ecosystem, and are critical to generating new economic activity, new innovation, and potential feedback on share data.
- Given the critical importance of NGOs, I suggest incorporating them in the scope of the new Data Sharing and Release Legislation. This would include for profit organisations, non-profit organisations and individuals – all of who have a part to play in leveraging and contributing to Public Data.

Question responses

3. It needs to cover the sharing of data to NGOs and potential future purchase of datasets.
4. NGOs should be included as these are needed to ensure that the full value of government data is realised. This would include for profit organisations, non-profit organisations and individuals – all of who have a part to play in leveraging and contributing to Public Data.
5. The approach listed in the issues paper seems appropriate. Legislation could outline principles used to list / delist data that can be shared, rather than specific data assets.
6. Examples should occur at the data level in the first instance. This in line with and risk principles contain in both the Data Management Book Of Knowledge (DMBOK) and IT Control Objectives for Information and Related Technologies (COBIT).
7. No comment.

Purpose test

Extracts from issues paper section 6:

[The new legislation will allow data sharing and release for specific purposes only. The legislation will authorise data sharing if the data is to be used to:

1. inform government policy making,
2. support the efficient delivery of government services or government operations]
3. assist in the implementation and assessment of government policy
4. research and development with clear and direct public benefits]

Questions

8. Do you agree with the stated purposes for sharing data?
9. Are there any gaps in the purpose test that would limit the benefits of public sector data use and reuse?
10. What further detail could be included in the purpose test?
11. Should data be shared for other purposes? If so, what are those purposes?
12. Should there be scope to share data for broader, system-wide purposes?
13. Should the purpose test allow the sharing of data to administer or enforce compliance requirements?

Response statement

- The list of stated purposes for sharing data all seem appropriate
- There is a missing focus on economic growth and innovation. This is inconsistent with repeated public statements and previous publications on Public Data. For example page 12 in the issues paper states:
“Improving Australia’s use of data represents a key opportunity to substantially enhance national productivity. Making data more available is an achievable reform and would liberate economy-wide productivity improvements over many years.”
Similar statements regarding Public Data and the opportunity for economic gains appear consistently in many Government publications going back to 2009 and earlier.
- I suggest the list of ‘purpose test’ be expanded to allow sharing and release of data where it can stimulate new economic activity, new innovation, or productivity improvements.

Question responses

8. The listed purposes seems appropriate but the list seems incomplete.
9. There are gaps regarding the sharing of data to where it can stimulate new economic activity such as through new innovation, productivity improvements, or efficiency improvements.
10. See above response (Q9).
11. Yes, see above response (Q9).
12. Yes.
13. This would need to be assessed on a case by case basis as depending on the data involved, as it could raise considerable ethical and privacy issues.

The Five-Safes framework will ensure consistent risk management

Extracts from issues paper section 4:

[The five elements of the framework are:

- Safe data: can the data disclose identity?
- Safe people: can the users be trusted?
- Safe setting: does the access environment prevent unauthorised use?
- Safe outputs: are the project results likely to disclose identity?
- Safe project: is the purpose of use appropriate?

This framework will allow data custodians to place appropriate controls, not just on the data itself, but on the manner in which data is accessed. These requirements focus on: the type of data, personnel security, physical and ICT security, access security, data standards, and destruction.]

Questions

14. Is the Five-Safes framework the appropriate mechanism to ensure data is safeguarded?
15. Are there any additional safeguards that should be applied?
16. Are there any instances when the Five-Safes could not be applied?
17. Is the Five-Safes appropriate when data is shared and used for the specific purposes in the purpose test above?
18. How should the responsibility for managing risks be shared in the framework?
19. How would you envisage Five-Safes principles be applied over the life-cycle of data to ensure data safeguards are continually met?
20. Under what circumstances should trusted users be able to access sensitive data?

Response statement

- The five safes framework appears to be an appropriate high level generic framework to start with. There will need to be a continual focus on how the framework is applied to different types of data and incorporated into data custodians existing risk management frameworks.

Question responses

14. Yes it appears to be appropriate.
15. Nothing specific. However other risk management guidance (such as that outlined in COBIT and DMBOK) should continue to be used along side the Five safes Framework.
16. No, as the five-safes is a flexible model.
17. It appears to be appropriate.
18. No comment.
19. The Five-Saes principles need to be embedded into existing risk management frameworks at government agencies. For example, internal audit planning.
20. This would depend on the particular circumstances.

Streamlined data sharing and release agreements

Extracts from issues paper section 4

[The DS&R Bill will require data sharing arrangements between agencies and users to be detailed in data sharing agreements to ensure data is shared under conditions identified through the Five-Safes framework. Data sharing agreements could record information on: what data is being shared; how the purpose test is being met, and how disclosure risk management practices are applied. These agreements may cover similar aspects to Memoranda of Understanding, but in a way that is simpler, streamlined and consistent.

The DS&R Bill would provide for data sharing agreements to be publicly available, unless publishing them would pose personal and national security risks, or be in breach of commercial-in-confidence claims.]

Questions

21. Would this arrangement overcome existing barriers to data sharing and release?
22. Would streamlined and template agreements improve the process?
23. Do you agree that data sharing agreements should be made public by default?
24. What level of detail should be published?
25. What else should a data sharing agreement contain?
26. What other transparency mechanisms could be mandated?

Response statement

- These proposed data sharing arrangements are a step in the right direction, and should help reduce some barriers that prevent agencies from sharing data.

Question responses

21. Yes, this will reduce some of the existing barriers.
22. Direct feedback from the data custodians here is required. Templates could help the process, particularly if parties are unsure what data needs to be disclosed or made public.
23. Yes data sharing agreements should be made open by default.
24. As much detail should be provided as possible – provided that the provision of that data does not become overly burdensome on the data custodians. Just as important as the level of detail published, is the quality of the details that are public. Just as with the data that is shared between agencies, the consistency and accuracy of that data is important.
25. Timing of data sharing agreements, which bodies (ADAs) were involved, any fees charged for datasets that are sold.
26. Transparency around public data that is sold to any NGOs.

Roles and Responsibilities within the System

Extracts from issues paper section 5

[The DS&R Bill will provide for accredited bodies and entities within the data system, each with different roles, skills and expertise. The DS&R Bill will build in accountability for everyone within the system to ensure responsibility for the way data is managed and shared. The DS&R Bill would require agencies to report on decisions in relation to the release of data, similar to provisions in the FOI Act.

- Data custodians: maintain responsibility for the data they collect
- Accredited Data Authorities: technical expertise which could assist data custodians
- Trusted users: accredited after demonstrating safeguards for data handling.]

Questions

27. How long should accreditation as an ADA or Trusted user last?
28. What could the criteria for accreditation be?
29. Should there be review rights for accreditation?
30. Should fees be payable to become accredited?
31. Is the Australian Government Charging Framework fit for purpose in this context?

Response statement

- A key component in a healthy data ecosystem includes NGOs, who maybe listed as potential trusted users. As much as is practically reasonable the new bill should establish parameters for what the roles and responsibilities of trusted data users, outside government, might be.
- Consideration needs to be given to how mergers, acquisitions, or departmental restructures would be treated and whether individuals can be a trusted user or whether only organisations can be.

Question responses

27. As ADAs may be more stable and more effort would be required to assess them, a longer period of accreditation makes sense. Example periods could be 5 years for ADAs, and 2 years for Trusted users.
28. No comment
29. No comment
30. Yes, providing those fees didn't dissuade innovative start-ups or NGOs from requesting access to the data.
31. Yes.

National Data Commissioner

Extracts from issues paper section 6

[The National Data Commissioner (NDC) will champion greater data sharing and release by providing consistent leadership and well-defined technical direction for implementing reforms to Australia's data system.

- Promoting best practice through guidance and reporting
The NDC will promote best practice by issuing guidance on how the data sharing and release framework will operate, including how to proactively manage whole-of-government risks of public sector data use. This guidance will draw from and complement guidance issued by other bodies (such as the ABS, AIHW, DTA, Finance, NAA or OAIC).
- Monitoring and oversight of the integrity of the system
The DS&R Bill will take a multi-tiered approach to compliance and enforcement. For individuals and businesses to be assured that their data is being appropriately protected, the DS&R Bill could include consequences for non-compliance with the framework, to be overseen and enforced by the NDC.
- Engaging with other entities and bodies
The National Data Commissioner will engage widely, including establishing, and consulting with, a National Data Advisory Council. Ongoing dialogue with the public, business and public service will build trust in how data is being shared and released by agencies.]

Questions

32. Are these the right functions for the National Data Commissioner?
33. What review powers should the National Data Commissioner have?
34. Should the NDC have the power to conduct an investigation into system wide issues?
35. What other actions could the NDC be able to take?
36. Are there other ways community values and expectations can be captured and addressed?
37. What aspects should be taken into consideration when considering consequences for non-compliance with the DS&R Bill?
38. Should the consequences differ depending on the type of data involved or the type of misuse, e.g. harsher penalties for intentional misuse?
39. Should penalties be strict liabilities?
40. What would be an appropriate penalty for intentional misuse of data?
41. How would responsibility for misuse of data be shared across the data system?
42. To what extent should there be a complaints mechanism and how should it work?
43. Should a complaints mechanism provide for complaints by the public?

Response statement

- These functions for the Data Commissioner appear appropriate, but
- Legislation is only one of the barriers data custodians face when sharing data. The PC Inquiry and other studies have outlined many other barriers that agencies face when releasing data. Examples include technical or staffing capabilities, resourcing, lack of standards amongst others.
- I suggest that the National Data Commissioner build an ongoing understanding of what these barriers may be and perform an ongoing advocacy role with other government agencies:

- Understanding these barriers data custodians face with data sharing - picking up the findings from the PC Inquiry, establish annual 'pulse checks' to assess these barriers and any new ones.
- APS capabilities - Input into long range training / development of APS for data analytics
- Impact measurement - Understanding / measuring benefits delivered from data sharing activities
- Incentivisation - Effective incentivisation of data custodians to share data and recognition of successful data sharing initiatives, building awareness in the community that data sharing can be safe and does not need to include personal data.
- Monetisation - Effective monetisation of public data, which types of data can be monetised, should they be monetised in a sustainable manner for the public good?

Question responses

32. Yes. May also need additional functions that could cover any or all of the following:
- Understanding barriers / concerns to data sharing
 - Training / capability requirements for APS to leverage public data
 - Impact measurement – of data sharing initiatives
 - Incentivisation – positively nudging data custodians to share more data
 - Monetisation – inform a whole of government understanding and strategy.
33. No comment.
34. Yes.
35. No comment.
36. No comment.
37. No comment.
38. Yes.
39. Treated as a criminal act, which could include fines or jail.
40. Depends on the crime, it could include fines, jail, or blacklisting from accreditation as a 'trusted user'.
41. No comment.
42. A public complaints mechanism should be setup, complimenting existing public agencies that members of the public can go to with concerns. Public trust is critical for the long term success of data sharing, and there needs to be an outlet for their individual voices to be heard.
43. Yes.