



NATIONAL ARCHIVES OF AUSTRALIA

Inquiry into the Data Availability and Transparency Bill 2020

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1. INTRODUCTION

The National Archives of Australia (National Archives) provides leadership in best practice management of the official record of the Commonwealth and ensures that Australian Government information of enduring significance is secured, preserved and available to government agencies, researchers and the community. The National Archives:

- sets the information management standards to be met by Australian Government agencies
- authorises the appropriate destruction of Australian Government information of no enduring significance
- manages Australian Government information of enduring significance as part of the national archival collection
- preserves and secures the national archival collection
- ensures that public access to the national archival collection is provided in accordance with the *Archives Act 1983* (Archives Act) to the fullest extent, while taking proper account of privacy, security, confidentiality and public interest.

Our mission is to connect Australians with their identity and history through our stewardship of Australian Government records. In striving to be national and international leaders in information management policy, we are also a foundational institution for transparency, accountability and integrity of the Commonwealth. We thank the Committee for inviting us to prepare a submission for this inquiry. The Data Availability and Transparency Bill 2020 (the Bill) is highly relevant to the National Archives' fundamental role as custodian of the archival resources of the Commonwealth, which by its nature includes data where it meets the definition of Commonwealth record within the meaning of the Archives Act.

2. COMMENTS ON THE DATA AVAILABILITY AND TRANSPARENCY BILL 2020

The National Archives provided comments on a previous version of this Bill to the Office of the National Data Commissioner (ONDC). These comments relate to our views on the definition of a data custodian, and the discretion of data custodians to not share their data. We enclose our comments at Appendix 1 of this submission. We reiterate these comments where they pertain to these items of the Bill, particularly surrounding the definition of 'data' within the meaning of the Bill.

We note that further amendments made to the Bill include requiring data custodians to provide reasons for not sharing data, a charging framework for data custodians, and an accreditation process for accredited users and accredited data holders. We will consider our obligations and response relating to this should the Bill pass in its current form, however we are supportive of the above mentioned charging framework, as this appropriately acknowledges the burden this Bill will have on data custodians' existing resources.

Position:

We note the Bill, and note that while we do not consider the designation of the National Archives as a data custodian as appropriate, we will consider our obligations in light of the directionary

power of data custodians when provided with reasons. We are supportive of the Bill's provision of a charging power for data custodians.

Noting our interest in the Bill and its implications to the archival resources of the National Archives, we look forward to ongoing engagement with the ONDC, and this Committee, as the Bill continues to develop.

3. APPENDIX 1 – COMMENTS TO ONDC ON BILL

Comments to ONDC on Data Availability and Transparency Bill 2020 – 11 August 2020

Thank you for the opportunity to provide comments on the draft Data Availability and Transparency Bill 2020 (2AGsB30).

The National Archives has examined Chapter 2 of the draft Bill, as identified by OPC as relevant to the National Archives, and provides the following comments with respect to its whole-of-government role for setting information management requirements and authorising the disposal of Australian Government information.

Definition and application of 'data custodian'

We note that the definition of data custodian has been amended in the latest draft of the Bill with the effect that a Commonwealth body is a data custodian if the body both controls the data and has the right to deal with the data.

In the absence of a definition of 'control' the National Archives suggests that the Explanatory Memorandum clarifies that, for the purposes of the Bill, the body which originated or received the data in the course of its day-to-day operations is the body that controls the data.

Under this approach, the National Archives would be the data custodian of its own operational records. However, the National Archives also holds data transferred to it by agencies under the statutory obligations imposed by the *Archives Act 1983* (Archives Act).

Under the Archives Act, the National Archives has the right to deal with this data but, if an 'operational records' approach is applied for the purpose of the DAT Bill, the data would remain in the control of the originating agency. This would avoid the outcome of the National Archives being considered to be a data custodian of records transferred to it by other agencies under the Archives Act, which is our preferred position.

Definition of 'data'

The Explanatory Memorandum at para 48 notes that data shared or created under this Bill may be considered a record for the purposes of the Archives Act. For additional clarity, we suggest that an additional sentence be added: 'Where it is a Commonwealth record under the Archives Act, it needs to be handled in accordance with that Act', or words to that effect.