

# ACOSS Briefing Note

## The proposed Commonwealth Data Sharing Legislation and Consumer Data Right.

24 June, 2019



**This briefing paper was developed by ACOSS as part of our work on digital inclusion, data and technology. This work was made possible as a result of ACOSS and Infoxchange's partnership – working together to advance equity through digital inclusion.**

### Introduction

Data is a major national, and individual resource that provides governments, researchers and service providers with opportunities to make better policy, undertake better research, create more targeted and innovative services. At the same time the collection, use and sharing of data by governments and the private sector presents risks to people experiencing poverty and disadvantage. There are obvious risks to privacy, but also that data will be misused, either by the application of inappropriate algorithms, because the data is incorrect or incomplete, or because it is used in a way that is inconsistent with the purpose for which it was collected.

The Federal Government is currently reforming the way that data is used and shared to improve the availability of data, particularly public data, and create a Consumer Data Right. This briefing note was developed by ACOSS to provide a sketch of the Federal Government's current and proposed approach to data availability and use in Australia, and point to other resources that our members may find useful.

### Productivity Commission Inquiry and Federal Government Response

In 2016, the Productivity Commission released a [report](#) (with [overview](#)) on its inquiry into data availability and use. The purpose of the inquiry was to understand the benefits and costs of options for increasing the availability and improving the use of public and private sector data by individuals and organisations. The COSS Network made a [submission](#) to this inquiry where we advocated that consumers should be able to access their own data, to empower them to make informed choices about services and care; and for improved use of data for policymaking and service design and delivery.

The inquiry's report made a number of recommendations to the Federal Government, principally, that Australia's future data framework should include two facets:

"1. A new right that enables both opportunities for active data use by consumers and fundamental reform in Australia's competition policy; and

2. A structure for data sharing and release that would allow access arrangements to be dialled up or down according to the different risks associated with different types of data, uses and use environments.”<sup>1</sup>

The Federal Government [responded](#) to the Productivity Commission’s report in May 2018, accepting most of the inquiry’s recommendations, and committing \$65 million over the forward estimates to reform the Australian data system and implement the Productivity Commission’s recommendations. In short, the Federal Government has committed to introduce:

- A new **Consumer Data Right**, that “...will give citizens greater transparency and control over their own data”<sup>2</sup>
- A **National Data Commissioner** to implement and oversee the data sharing and release framework
- New legislation and governance arrangements to enable better use of data while protecting sensitive information

The Department of Prime Minister and Cabinet (DPMC) has responsibility for issues related to the implementation of data governance reforms, including the National Data Commissioner and the Data Sharing and Release legislation. DPMC published an [issues paper](#) that informed a consultation period over the new approach and legislation, which has now closed. The Treasury is responsible for the implementation of the Consumer Data Right. Treasury has undertaken two rounds of consultation on the Consumer Data Right legislation and policy, and you can access information about their consultation processes, and information about the Consumer Data Right [here](#).

## A new Consumer Data Right

The Federal Government has committed to introduce changes to the *Competition and Consumer Act 2010* to enable consumers to access digital data that businesses hold on them, in a “useful digital format”<sup>3</sup>. The Consumer Data Right will mean that consumers have the right to access information held on them by businesses, and transfer that data to accredited, trusted third parties that they choose. The Government has announced the first three sectors to which the right will apply – banking, energy and telecommunications. Further sectors will follow over time. It is unclear at this stage when or if the Consumer Data Right will apply to the community sector.

You can find out more about the Consumer Data Right [here](#).

---

<sup>1</sup> Productivity Commission 2017, *Data Availability and Use*, Report No. 82, Canberra

<sup>2</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, *The Australian Government’s response to the Productivity Commission Data Availability and Use Inquiry*. <https://dataavailability.pmc.gov.au/sites/default/files/govt-response-pc-dau-inquiry.pdf>

ibid

## A National Data Commissioner

The Federal Government has established a National Data Commissioner and appointed [Deborah Anton](#) to undertake this role. The National Data Commissioner will develop and implement a data sharing and release framework, aimed at “...breaking down the barriers which prevent efficient use and reuse of public data, while maintaining the strong security and privacy protections that the community expects”<sup>4</sup>. The National Data Commissioner will work with the Australian Information Commissioner on privacy issues, and the Australian Bureau of Statistics on technical issues.

## National Data Sharing and Release Legislation

The Department of Prime Minister and Cabinet has concluded a consultation process on new Data Sharing and Release legislation, informed by an [issues paper](#) developed by the Department. The legislation has not yet been drafted, however is slated for introduction in the second half of 2019. The purpose of the legislation will be to “streamline the process for sharing public sector data and improve data safeguards across the public service”<sup>5</sup>. The legislation will apply to Commonwealth entities and Commonwealth companies and encompass all data collected by these entities. Exceptions will apply for national security and law enforcement data.

## ACOSS perspective on these reforms

The draft legislation on data sharing has not yet been released. That said, the proposed creation of a framework for sharing data is overall, a positive development. It has the potential to create opportunities for better service planning and policy development and ensure that artificial barriers to the sharing of data are not erected or maintained. It could also enable many more data sets to be available for research into some of the key issues faced by people experiencing poverty and disadvantage.

It will be important in the new legislation that the lessons of Robodebt – the Commonwealth’s automated debt collection program or Online Compliance Intervention – are learned. Robodebt is a Federal Government program that matched taxation data with social security data to determine whether social security recipients (or former recipients) owe a debt to the Commonwealth, and then automatically generate debt notices to social security recipients, mostly without human intervention. This program is an abuse of power, is one of the most significant failures in government administration in recent history and has caused extensive distress and human suffering. What this program demonstrates is the risk to people, particularly people on low and modest incomes, of sharing and using data and applying automated decision making with minimal human intervention. In any system of data sharing there must be robust checks and balances in place, including human involvement,

---

<sup>4</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Governing the National Data System*, <https://dataavailability.pmc.gov.au/governance-national-data-system.htm>

<sup>5</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, 2018, *New Australian Government Data Sharing and Release Legislation Issues Paper for Consultation* [https://www.pmc.gov.au/sites/default/files/publications/australian-government-data-sharing-release-legislation\\_issues-paper.pdf](https://www.pmc.gov.au/sites/default/files/publications/australian-government-data-sharing-release-legislation_issues-paper.pdf)

to ensure that inappropriate action is not taken against vulnerable people. You can read more about ACOSS perspective on Robodebt [here](#).

It will also be important that issues of privacy are adequately addressed in the legislation. This legislation will interact with the *Privacy Act 1988*, and it will be important that some of the protections that we all rely on regarding how our personal information is dealt with are maintained. The controversy over the implementation of the Commonwealth's My Health Record demonstrated the importance that people place on the maintenance of their privacy. We need to learn the lessons of this implementation and ensure that our sensitive, personal, identified information cannot be used without appropriate oversight (including judicial oversight in some instances), and recognise that some information is too sensitive to be shared. You can read more about ACOSS perspective on My Health Record [here](#).

While ACOSS has not engaged in the process to shape the Consumer Data Right, two ACOSS members have been heavily engaged – CHOICE and the Australian Communications Consumer

Action Network. They support the spirit and intent of the Consumer Data Right, however have concerns, particularly around privacy, consent and competition. You can read the ACCAN submissions [here](#) and [here](#), and the CHOICE submissions [here](#) and [here](#).

## **What do ACOSS members and stakeholders say**

*The Productivity Commission Inquiry into Data Availability and Use:*

[The Joint Councils of Social Service Network](#)

[Federation of Ethnic Communities' Councils of Australia](#)

[Australian Communications Consumer Action Network](#) and [Round Two](#)

[CHOICE](#) and [Round Two](#)

[Brotherhood of St Laurence](#)

[People with Disability Australia](#)

*Data Sharing and Release Legislation:*

[Federation of Ethnic Communities' Councils of Australia](#)

*Consumer Data Right Legislation:*

[Australian Communications Consumer Action Network](#) and [Round Two](#)

[CHOICE](#) and [Round Two](#)

## **More Information**

For more information, contact John Mikelsons, Senior Advisor (Community Services and Health) [john@acoss.org.au](mailto:john@acoss.org.au) or 02 9310 6212