



Australian Council of Social Service

22 October 2019

Office of the National Data Commissioner
PO Box 6500
CANBERRA ACT 2600

Dear Commissioner,

Submission: Data Sharing and Release – Legislative Reforms

The Australian Council of Social Service (ACOSS) is a national advocate for action to reduce poverty and inequality and the peak body for the community services sector in Australia. Our vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life. ACOSS welcomes the opportunity to contribute to the work of the Commission in this important area.

This submission 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.

Data is a major national, and individual, resource that provides governments, researchers and service providers with opportunities to make better policy, undertake better research, and create more targeted and innovative services. At the same time the collection, use and sharing of data by governments presents risks to people experiencing poverty and disadvantage and potential challenges for the community services sector.

ACOSS considers that 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.

In this context ACOSS provides the following feedback on the National Data Commissioner's *Data Sharing and Release Legislative Reforms Discussion Paper*.

Recommendations:

1. *That data sharing for research and development purposes be subject to a "public benefit" test (particularly where it has a commercial application), and that the concept of "public benefit" is clearly defined in the legislation.*
2. *That data held by community sector organisations, even where the funder asserts ownership of the data, should not be subject to the new data sharing and release regime.*



3. *That the Commission continue to work with the Maiam nayri Wingara Indigenous Data Sovereignty Collective to ensure that the legislation properly addresses issues of Indigenous Data Sovereignty.*
4. *That the Commission establish an Aboriginal and Torres Strait Islander Data Expert Panel that could provide guidance on how the data and data infrastructure are best used to provide meaningful collective benefit for Aboriginal and Torres Strait Islander people and the policies that impact on their daily lives.*
5. *That Aboriginal and Torres Strait Islander people who are experts in data issues are represented on the National Data Advisory Council.*

Data Sharing for Compliance and Assurance Purposes

ACOSS supports the decision to remove data sharing for compliance and assurance purposes under the Data Sharing and Release legislation. We agree that compliance and assurance activities are better carried out under the legislation that provides the basis for compliance and assurance decisions, rather than a broader data sharing and release regime.

Data Sharing for Commercial Purposes

ACOSS is concerned about the prospect of government data being shared for purely commercial purposes. While we accept that some research and development may have commercial applications, government data that is not already publicly available via data.gov.au or other media should not be shared unless there is a clear and direct public benefit.

One of the key challenges when drafting the legislation will be ensuring that the concept of public benefit is well defined. Clearly defining public benefit will ensure that when research takes place that has a commercial application, the public also benefits from that research, rather than just one firm, individual or sector.

At a minimum, the public benefit test should require that:

- there be a direct and identifiable benefit to the health and wellbeing of the public arising from the research;
- the research not cause any detriment or harm; and
- the benefit be to the public or a significant section of the public, and not merely to individuals or firms undertaking the research or development.

ACOSS considers that general claims of economic benefits (such as increased economic activity) arising from research should not be considered sufficient to warrant approval of a data sharing request for research and development purposes. Data sharing proposals for research and development should only be approved where they directly improve the health and wellbeing of the public (or significant section of the public).



Recommendation: That data sharing for research and development purposes be subject to a “public benefit” test (particularly where it has a commercial application), and that the concept of “public benefit” is clearly defined.

Data Held by the Community Services Sector

Community services sector organisations hold a considerable amount of data on the services they deliver, the people that use their services and their community. Where appropriate, community sector organisations have already been making confidentialised data available through public repositories, such as the Australian Data Archive.

A significant proportion of the community sector is funded by federal, state and territory governments, and these funders have often placed contractual obligations on service providers in relation to the collection, storage, use and disposal of the data held. In some cases, funders have asserted ownership of the data, even when they do not fund the full cost of delivering the service.

ACOSS considers that data held by community sector organisations, even where the funder asserts ownership of the data, should not be subject to the new data sharing and release regime. There are a number of key reasons for this:

- When service users provide information about their lives to community services sector organisations, they have different expectations than when they share their information with government, and they do not expect that it will be shared without their consent. Making the data held by community sector organisations subject to the data sharing and release legislation will potentially erode the trust that community sector organisations have built with the people and communities they work with, and make it less likely that they will provide sensitive data to those organisations.
- Aggregate (deidentified) data and information about service delivery is already provided to funding bodies via performance and outcome reporting. This data would be appropriate for data sharing.
- Community organisations are not resourced to participate in data sharing. Any obligation placed on community organisations to provide data that is then shared must come with additional resourcing to facilitate that.

If the data held by community services sector organisations is to be subject to the data sharing and release legislation, then it will be important that those organisations are able to refuse requests that the data that they hold be shared.

Recommendation: That data held by community sector organisations, even where the funder asserts ownership of the data, should not be subject to the new data sharing and release regime.



Indigenous Data Sovereignty

ACOSS supports self-determination for Australia's First Peoples. We also support the right of Aboriginal and Torres Strait Islander peoples to govern the creation, collection, ownership and application of their data. ACOSS provides this input and makes these recommendations after consultation with representatives of the Maiam nayri Wingara Indigenous Data Sovereignty Collective. We encourage the Commission to continue to work with the Maiam nayri Wingara Indigenous Data Sovereignty Collective to ensure issues of Indigenous Data Sovereignty are appropriately dealt with in the legislation.

ACOSS recognises the potential collective benefits to Aboriginal and Torres Strait Islander peoples in the use of data and emerging data technologies. That said, we also recognise that there are risks of harm to Aboriginal and Torres Strait Islander peoples, families and communities from wrong or inadequate use of the data. Aboriginal and Torres Strait Islander peoples, families and communities are heavily over-represented in data about disadvantage, and will be over represented in the analysis.

Aboriginal and Torres Strait Islander people who are data experts must be part of the decision making processes established as part of the data sharing and release regime. To achieve this, we recommend that the Commissioner establish an Aboriginal and Torres Strait Islander Data Expert Panel that could provide guidance on how the data and data infrastructure are best used to provide meaningful collective benefit for Aboriginal and Torres Strait Islander people, and the policies that impact on their daily lives. In addition, we consider that it is essential to the work of the Commission that experts in data issues who are Aboriginal and Torres Strait Islander people are represented on the National Data Advisory Council.

Recommendation: That the Commission continue to work with the Maiam nayri Wingara Indigenous Data Sovereignty Collective to ensure that the legislation properly addresses issues of Indigenous Data Sovereignty

Recommendation: That the Commission establish an Aboriginal and Torres Strait Islander Data Expert Panel that could provide guidance on how the data and data infrastructure are best used to provide meaningful collective benefit for Aboriginal and Torres Strait Islander people and the policies that impact on their daily lives

Recommendation: That experts in data issues who are Aboriginal and Torres Strait Islander people are represented on the National Data Advisory Council



If you have any questions regarding this submission, the ACOSS contact person is Senior Advisor John Mikelsons, on (02) 9310 6212 or john@acoss.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "C. Goldie".

Dr. Cassandra Goldie
CEO