



Australian Government
**Department of Agriculture
and Water Resources**

Dr David Gruen
Deputy Secretary
Economic
Department of Prime Minister and Cabinet
1 National Circuit
Barton ACT 2600

Via online submission

Dear Dr Gruen

Thank you for the opportunity to provide a submission on the principles proposed to guide the development of the Data Sharing and Release Legislation.

The Department of Agriculture and Water Resources supports the establishment of the legislation and continues to support the establishment of the National Data Commissioner, including the appointment of an interim Commissioner.

The department works closely with other government agencies on a number of data-centric initiatives. This involves sharing and using data to undertake research and analysis and to provide advice to inform decision makers on issues affecting Australia's agriculture, fisheries, forest and water industries. The principles proposed to guide the development of the legislation, streamlining the way public sector data is shared and released within government and trusted users, will provide opportunities to make better use of data assets and assist the department deliver its objectives.

The department agrees with the proposed principles and has provided comment on issues raised in the paper on the scope, exemptions and non-compliance with the legislation, statutory duty of confidentiality and potential to also streamline data sharing and release with state and territory governments. **Attachment A** provides further information.

Thank you again for the opportunity to make a submission on this important initiative.

Malcolm Thompson
Deputy Secretary
Department of Agriculture and Water Resources

1 August 2018

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The following are the Department of Agriculture and Water Resources' (the department) comments on the issues presented in the Issues Paper.

Scope of the Data Sharing and Release Legislation

The department agrees the new *Data Sharing and Release Bill* (DS&R Bill) should apply to all Commonwealth entities and Commonwealth companies (as defined under the *Public Governance, Performance and Accountability Act 2013*). Other entities the DS&R Bill could apply to include entities (for example, research and development corporations (RDCs)) and grant recipients that are funded in part or in full by the Commonwealth.

The department considers Commonwealth funded projects and entities should be within scope of the DS&R Bill as there is a perception the Commonwealth can access the results and data of programs and projects it funds. In many cases this is not currently possible. While many programs and projects funded by the Commonwealth are required to publish final reports, this is not a default requirement and underpinning data is often not included. The application of the DS&R Bill is appropriate as interested parties may request access to Commonwealth funded programs and projects data via this pathway. For example, while final reports are required for projects funded under the Rural Research and Development for Profit program, a pathway to access the information and data which informed the report does not currently exist.

Implied statutory duty of confidentiality through the delivery of government operations

The department agrees the DS&R Bill should provide an alternative pathway for sharing and releasing data when existing avenues are not available, complex or ineffective. The department is of the opinion careful consideration will need to be given to how the DS&R Bill will interact with implied statutory duty of confidentiality as per the principles set out in *Johns v Australian Securities Commission* (1993) 178 CLR 408 (*Johns*). In *Johns*, the High Court held that a statute that confers a power to obtain information for a particular purpose limits, expressly or impliedly, the purposes for which that information can then be used or disclosed. As such, the person obtaining information in exercise of a statutory power must treat the information as confidential.

When managing biosecurity risks the department may be required to use the coercive powers it has been granted under the legislation it administers. When information is obtained in this manner, the department can only use the information for the specific purpose of addressing the immediate biosecurity issue. The information is then held under an implied statutory duty of confidentiality and cannot be used for any other purpose. The department is of the opinion information and data collected in this manner will need to be given careful consideration as to whether it should be exempt from the DS&R Bill.

Instances where existing secrecy provisions should prevail

The department is of the opinion secrecy provisions for some legislation it administers should prevail over the DS&R Bill as the legislation was made or amended recently with clear policy reasons for restricting the use and disclosure of particular information. Further investigation into the policy reasons behind secrecy provision in legislation is recommended to ensure the DS&R Bill does not prevail where it should not.

For example, amendments were recently made to the *Primary Industries Levies and Charges Collection Act 1991* (PILCC Act) in relation to the sharing of levy payer information (including

information that may fall under the DS&R Bill) with the RDCs, imposing particular restrictions on the disclosure and use of that information by the RDCs. These provisions were inserted to allow the RDCs to consult directly with the levy payers who fund their activities, but there were clear policy reasons for imposing restrictions on the use and further disclosure of that information. This is an example where careful consideration is required to ensure the right balance is maintained between existing secrecy provisions and the new DS&R Bill.

Consequences for non-compliance with the DS&R Bill

The department agrees the DS&R Bill should incentivise data sharing without creating a 'strict criminal liability culture' and ensures data custodians are not dissuaded from releasing data because of the possibility of a data and/or privacy breach. Further the department notes de-identification of large and rich datasets for publication is extremely difficult, especially considering the possibility of matching other available data or reversing encryption. The department strongly agrees immunity should apply for data custodians who release data under the DS&R Bill under good faith so they are not criminally liable.

The department also agrees appropriate consequences for non-compliance with the DS&R Bill should be scaled in proportion to the sensitivity and type of data, extent of non-compliance, and whether the non-compliance was intentional or not. The department is of the opinion all government data should be valued as an asset, and that consequences for non-compliance should not discourage sharing of data where the appropriate protections have been observed.

Maximising the opportunity to share data with State and Territory governments

The department agrees the vast range of data held by the Commonwealth agencies is a valuable national resource that has the potential to deliver immense social and economic benefits, and the implementation of the DS&R Bill will increase the use and re-use of public sector data. The department is of the opinion the benefit of the DS&R Bill could be maximised if consideration is given to extending the scope of the DS&R Bill to include State and Territory governments.

The department works collaboratively with its State and Territory counterparts to manage the biosecurity risk to Australia and help the agricultural food and fibre industries be sustainable, productive and internationally competitive. To efficiently and effectively meet these objectives the department and its State and Territory counterparts routinely share information and data. For example the Commonwealth, State and Territory governments have a shared responsibility to manage biosecurity under the Intergovernmental Agreement on Biosecurity (IGAB). Under the IGAB governments have agreed to take a collaborative approach to collecting, collating, analysing, storing and sharing biosecurity information to improve decision making and enhance operational efficiency. However current legislative barriers exist that impede the sharing of information and data to manage biosecurity risks and the export of Australian agricultural products across governments. The department considers that maximising the benefit of implementing the DS&R Bill, by including the sharing of data between Commonwealth and State and Territory governments, will facilitate more effective and efficient cross-government collaboration to achieve the objectives of the governments.