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Dear Sir/Madam,

Thank you for providing Curtin University with the opportunity to outline its preliminary views on 'New Australian Government Data Sharing and Release Legislation' as detailed in the Department of Prime Minister and Cabinet's recent *Issues Paper for Consultation*.

Universities are an integral part of the data sharing landscape, being creators, custodians, users and linkers of data across a range of research disciplines. Ongoing access to high-quality data is of fundamental importance in the creation of knowledge and the translation of research activities into public benefit.

Australian University-based researchers are recognised as world leaders in the use of public sector data for research. As examples, health, education and criminal justice datasets have been widely used to gain a better understanding of systems and services. An effective data sharing framework would provide additional opportunities for our researchers by facilitating analyses of complex integrated datasets, opening up avenues for new research that enhances the delivery of public services.

Curtin University is deeply invested in matters of data linkage and secure access environments to improve research outcomes. Curtin's Centre for Data Linkage (CDL) is a national leader in the research and development of technology to safely and securely maximise the value of data available for research. The CDL was established in 2009 within Curtin under the National Collaborative Research Infrastructure Strategy (NCRIS) and is a member of the Population Health Research Network (PHRN).

The Centre's focus has been on the development and implementation of secure, state-of-the-art national infrastructure to enable cross-jurisdictional data linkage for research and it has been an active stakeholder in discussions around national data sharing and linkage frameworks for over a decade.

Moreover, much of our research in public health, epidemiology, education, crime and justice, public policy, and applied economics would simply not be possible without access to data made available by State Governments, the Federal Government and other partners.

As such, we are committed to working towards a legislative and policy environment that provides for effective and efficient access to high-quality data, while protecting the privacy and well-being of individuals and other entities from whom data is sourced.

As an overarching statement, Curtin is encouraged to see the development of a Data Sharing and Release legislative framework, which itself follows on from the 2015 *Australian Government Public Data Policy Statement* and the Productivity Commission's *Data Availability and Use Inquiry*, conducted in 2016/17.

However, Curtin also notes the short consultation timeframe and limited communication regarding the release of the Issues Paper, which has limited our ability to provide commentary beyond preliminary consideration of the issues raised. We would hope that stakeholders are afforded a better opportunity to provide input into subsequent consultation activities undertaken during the *Privacy Impact Assessment* and *Exposure Draft Bill* processes.

This submission addresses some of the questions posed in the *Issues Paper*, categorised by theme. Moving forward, Curtin is keen to remain actively engaged in follow-up activities, including workshops and roundtables. I would also be happy to facilitate the involvement of our leading researchers to provide additional expertise, as required.

Yours sincerely

Professor Garry Allison  
Acting Deputy Vice Chancellor, Research.

## General Issues for Consideration

While it is important for the government to develop methods for more efficient and effective delivery of services, it should not rely on data alone (i.e. automated methods) to make operational decisions about individuals – particularly when such decisions rely on data which has been sourced from different systems.

Data which has been sourced or ‘integrated’ from multiple systems need to be handled with care and should be considered as only one piece of evidence to be used in any operational decision-making process. This type of approach would avoid/avert incidents such as those that arose during the Government’s *Online Compliance Intervention*, in which income data from the Australian Tax Office and were compared with those from Centrelink, with automated notices issued to people with discrepancies. We need to be mindful that poor use of shared data by government users has an impact on the entire community of users (including research bodies and State-based authorities).

## Key Principles of the Data Sharing and Release Bill

### Issues for consideration

The five stated aims of the Bill seem reasonable; however, it is not clear how a commitment to ‘transparency and accountability’ will deal with existing agreements, particularly those with commercial entities that support the provision of Government services. Ensuring that ‘transparency and accountability’ requirements apply to existing and future data sharing agreements will ensure that the Australian public are kept informed of, and are party to, arrangements that involve their data. This would assist in building trust in data sharing.

Moreover, it is not clear how the proposed framework treats the use and management of personal data by international service providers. For example, if a Commonwealth entity utilises a Customer Support company that is based overseas, how are data safeguards ensured in a non-Commonwealth jurisdiction? Alternatively, if international research institutions (independently or in collaboration with an Australian partner) wish to access Australian public data under the Framework, would they be able to and how would they do so?

## **Scope of the Data Sharing and Release Legislation**

### **Issues for consideration**

Although the D&SR Bill is directed towards Commonwealth arrangements, it is important that State Government agencies and entities are also considered and consulted in the process. State-level public sectors are also currently grappling with the issue of data sharing and a consistent national approach, or at least some interoperability between State and Commonwealth approaches would be highly desirable.

It is notable that in the section on Scope of the Data Sharing and Release legislation (Section 3), the list of current laws having data safeguards has no acknowledgement of the existence of State-based laws.

Consistency in approaches to data sharing at State and Commonwealth levels would contribute to efficiency in the longer term, especially in relation to the sharing of health data, which is collected and maintained at both levels. Consistency would also contribute to a greater understanding by the Australian public and increased trust in government activity at all levels.

## **Streamlining Data Sharing and Release**

### **Issues for consideration**

Curtin supports the use of the Five-Safes framework as part of the new arrangements. This is a popular framework that considers risk as a multi-dimensional concept. However, we are also conscious that other frameworks may emerge over time which may be better suited to addressing current and future issues relating to data sharing. As such, caution should be applied before deeply embedding the Five-Safes framework into legislation, rather than subsidiary legislation.

Curtin supports the creation and use of template agreements as a means of streamlining the approvals processes. These resources can also be used by smaller agencies or organisations who do not have the resources to customise requests easily or quickly.

In terms of transparency (Q26), we would suggest that the processes and timelines relating to data sharing and release approvals be clearly articulated (and followed) by agencies involved in the process. This would include specification of the steps involved in gaining approvals, the group or section involved in each stage of sign-off, the likely time taken for each step, the frequency of approval meetings, and the contact details of liaison staff.

Curtin supports the use of a purpose test to determine whether data should be shared or released, as this is consistent with tests currently applied by University Human Research Ethics Committees in determining whether the conduct of research is such that the public benefit outweighs privacy risks, assuming the latter are effectively managed.

However, greater detail needs to be provided on the mechanics of this process. For example, if the purpose test is applied by the 'data custodian' and that decision runs counter to the view of a Human Research Ethics Committee or other independent party, what avenues are there to reconcile views? Additionally, there is no discussion around a process to appeal decisions in the event that a request to access data was refused (in a manner perceived as being incorrect) or was not handled within a reasonable timeframe.

While the issues paper notes that "the sharing of data is at the discretion of the data custodians" (p18), what happens if a data custodian continues to act in a manner that appears to run counter to the overall aims of the Bill? The Commissioner may have a role to play in this regard – as an independent umpire – to adjudicate when decisions are appealed.

## **Roles and Responsibilities within the System**

### **Issues for consideration**

#### **Accreditation systems**

Accrediting parts of the data system is a good approach to building accountability for actors within the system and to ensure that each takes responsibility for the management and use of data. Curtin supports this approach in principle but holds some reservations as to how this will be operationalised. This is because previous systems (e.g. Integrating Authority accreditation) were established without adequate consultation with relevant stakeholders and the result has been to limit, rather than enable, data linkage and integration at a national level. Accreditation systems should not result in the monopolisation of activities by one or two organisations. Care must also be taken to ensure that there is no conflict of interest, or perceived conflict of interest, between those bodies who develop the accreditation criteria and those who apply for and then receive an accredited status.

Curtin agrees with the view that accreditation would need to be maintained and audited. To ensure rigor and consistency, we believe that auditing should be conducted on a regular basis by an external and independent body (i.e. self-assessment is insufficient), with results that could be forwarded to the NDC. Fees should not be payable for becoming accredited; however, the cost to attain certification status should be borne by those wishing to be accredited.

Further, having attained Accredited Data Authority (ADA) status and provided that a purpose test is met, there should be no reason for a Data Custodian to withhold the release of data to an organisation. Preferences to release data to one ADA over another should not be permitted.

### **Trusted User Status**

Trusted user status is an important element of the new arrangement. More clarity will be needed around how this status is defined and allocated, and by whom. We believe the status should be allocated at the highest possible level (i.e. at organisational level, where possible). For example, 'trusted user' status should be granted to organisations whose primary activity is to use data to inform government policy and improve service delivery and outcomes, such as an academic research institution, and where that organisation can demonstrate compliance with data safeguards.

This approach encourages efficiency in the data sharing and release process but requires setting of clear standards/requirements for status attainment. Responsibility for ensuring teams/individuals within the organisations meet standards, would rest with the organisation itself.

Equity is also important in defining/allocating trusted user status. Persons/teams/bodies within government should be expected to meet the same standards as those outside of government.

## **National Data Commissioner**

### **Issues for consideration**

We support the role of the NDC, although we believe that it should seek advice and guidance from a broader range of stakeholders including research institutions, State and territory level governments and community and consumer groups.

The academic research sector has a vast amount of expertise that could be used to support the NDC, especially in relation to social licence. Universities have extensive experience in the responsible use of administrative data for public benefit and work with a broad range of stakeholders to ensure that research outcomes can be achieved in ways that are attuned to government and community needs and yet do not compromise on privacy.

In terms of regulation of the new arrangements, we are supportive of a regime that encourages compliance through openness and accountability (rather than through a strict criminal liability approach), and through engagement with stakeholders including state-level bodies, the research sector and consumer and community groups. We are strongly supportive of a proportionality model.

In terms of non-compliance, we would encourage the NDC to consider intentional or unreasonable delay by Data Custodians as a form of non-compliance, and to act accordingly.

We support the intent for the NDC to seek technical and other advice from organisations with experience and expertise. However, we would caution against the naming of any specific advisor, as we believe there is much to be gained from taking advice from a broad range of organisations. This would support the NDC's role as an independent national body and enable the Commission to form views based on expertise and experiences from different vantage points. The relationship between the NDC and the Government's largest data custodians (for example, the Australian Bureau of Statistics) should also be transparent to help mitigate potential perceived or actual conflicts of interest that may arise.

We believe there is likely to be some confusion over the roles of the NDC, the OAIC and similar state bodies (e.g. Privacy Commissioners and Ombudsmen) and would recommend that, in time, these bodies work towards streamlining and clarifying their roles and functions.