

Submission

by the National Centre for Vocational Education Research (NCVER)

To

New Australian Government Data Sharing and Release Legislation

<https://www.pmc.gov.au/resource-centre/public-data/issues-paper-data-sharing-release-legislation>

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New Australian Government Data Sharing and Release Legislation

Name: National Centre for Vocational Education Research (NCVER)

Category: Ministerial Owned Company

RESPONSE TO THE NEW AUSTRALIAN GOVERNMENT DATA SHARING AND RELEASE LEGISLATION: ISSUES PAPER

The National Centre for Vocational Education Research Ltd (NCVER) is an Australian Public Company, limited by guarantee. NCVER provides research and statistics on vocational education and training (VET). It is responsible for collecting, managing, analysing and communicating research and statistics about VET nationally. The Memorandum and Articles of Association show there are nine Members of the Company and nine Directors of the Board. The Members of the Company are the Ministers of the Crown who have responsibility for VET in the Commonwealth, and each state and territory.

NCVER supports better use of government data, while appropriately managing the risks to enhance productivity, increase competition, improve service delivery and provide useful data for research. For example, in NCVER's submission to the Review of the [National Vocational Education and Training Regulator Act 2011](#) (NVETR Act) (NCVER 2017), the legislation which underpins the operation of the National VET Regulator, NCVER reinforced its commitment to a greater public provision of VET data.

NCVER is the national custodian of data about Australia's VET system; indeed, the Australian Bureau of Statistics (ABS) recognises NCVER as holding national essential statistical assets. The administrative datasets NCVER manage include the:

- National VET Provider Collection

- National VET in Schools Collection
- National Apprenticeship and Trainee Collection
- National VET Finance/Funding Collections.

Combined, these datasets tell the story of training in Australia, providing valuable information on student enrolments, vocational qualifications attained and government expenditure on training.

In 2015, NCVER expanded the data holdings under the National VET Provider Collection to include training activity provided by all registered training organisations (RTOs); prior to this, NCVER's data holdings in this collection focused on government funded training activity. This has given rise to new data sets embodied in the *Total VET students and courses* reports. This expansion is significant as it collects and makes available information about the national VET system regardless of funding source and includes private fee-for-service activity.

Added to these datasets, NCVER manages national surveys on:

- VET outcomes - Student Outcomes Survey (SOS)
- employers' perceptions of training - Survey of Employer Use and Views of the VET System (SEUV)
- Apprenticeship & Trainee destination survey
- young people's transition from school to work - Longitudinal Surveys of Australian Youth (LSAY).

Data from these collections and surveys are also used to monitor progress in respect of policies and funding agreed by governments.

Access to data from the National VET administrative collections and surveys is governed by the [National VET Data Policy](#) under the [Data Provision Requirements 2012](#) legislative instrument in force under subsection 187(1) of the NVET Act. In accordance with the principles of the proposed Data Sharing and Release Bill, the National VET Data Policy aims to balance access to these national assets while protecting the privacy of the individuals and the commercially sensitive information of RTOs. NCVER makes a range of data products available where student data are reported in aggregate on its Portal, which can be freely accessed at www.ncver.edu.au.

In addition, data from the National VET Provider and VET in Schools collections are made available for the Unique Student Identifier (USI) Transcript Service, an example of sharing government data to benefit Australians. This is an Australian Government initiative, which gives VET students access to an online record of the training they have done since 1 January 2015. The service allows individuals to grant training providers and other authorised organisations permission to view their USI account or update their personal and contact details. For more information see: www.usi.gov.au.

NCVER's submission provides research findings and draws on experience in data sharing and release relevant to the public consultation into new Australian Government Data Sharing and Release Bill. As such, the submission responds to questions 2, 4, 5, 6, 8, 14, 16, 21, 22, 23, 27, 30, 42 and 43.

Context

NCVER's submission is based on its considerable experience, operating for 36 years as a Ministerial owned, independent not-for profit company that is not a Commonwealth entity or Commonwealth company defined under the Public Governance, Performance and Accountability Act 2013, but one that is the custodian of the national VET administrative collections and surveys.

While NCVER supports greater sharing of government-owned data, of concern is how companies such as NCVER can be brought into the scope of the Data Sharing and Release Bill to the benefit of all Australians. The Bill could also benefit from taking a more citizen centric rather than government focus, and care must be taken not to overburden Commonwealth agencies and entities with compliance in an already heavily regulated area.

Key Principles of Data Sharing and Release Bill Questions

2. What else should the Government take into consideration when designing the legislation?

NCVER agrees with the key principles of the proposed Bill of:

- safeguard data sharing and release in a consistent and appropriate way
- enhance the integrity of the data system
- build trust in use of public data
- establish institutional arrangements
- promote better sharing of public data.

The Bill would benefit from taking a more citizen centric rather than government focus. There is no mention in the Bill of informed consent, which is central to the recent EU General Data Protection Regulation (GDPR) and is at the heart of the proposed Consumer Data Right initiative. For example, a sixth principle could be added 'to assure citizens that they have control over their personal data'.

Unclear, is how personal information should be treated when individuals do not consent to the collection, use and disclosure of their personal information.

Scope of the Data Sharing and Release Legislation Questions

4. Are there entities that should be included or excluded from scope? How would this be justified?

NCVER is concerned that the Bill will not apply to non-Commonwealth entities or companies such as NCVER. The Bill would benefit from an explanation as to how national data assets held and managed by non-Commonwealth entities or companies are authorised with respect to data sharing and release.

5. Should any specific categories of data be specifically out of scope? How would this be justified?

An approach to categorise data could follow the lead of the [National VET Data Policy](#), which classifies data at three levels of confidentiality to ensure that access to data balances the needs of data users while protecting the privacy of individuals and commercially sensitive information about RTOs.

Confidentiality of VET data is classified as either:

- Identifiable – data which contains identifiers or which may reasonably enable the identification of an individual or organisation, such as an RTO

- De-identified – data which does not contain government identifiers but which may still enable the identification of an individual or organisation
- Confidentialised data – data provided in a manner that is unlikely to enable the identification of an individual or organisation and therefore is not ‘personal information’ under the Privacy Act.

Specific categories of data are further defined in the [National VET Data Policy](#), which have different publishing rules:

- **RTO level VET Activity Data** – may be published by NCVET in reports, tables and a range of other data products (including data cubes)
- **RTO level VET Outcomes Data** – may be published by governments on websites such as My Skills (which enables students and employers to search for, and compare, VET programs and RTOs)
- **Identified RTO level VET Outcome Data and VET Funding Data** - may only be published by governments, following agreement of Senior Officials responsible for VET in the Commonwealth, states and territories.

There is not a one-to-one relationship between the confidentiality status and data category. For example, VET activity data may be released as identified, de-identified or confidentialised levels, depending on who is requesting the data, and for what purpose.

6. Should exemptions, for example for national security and law enforcement, occur at the organisational level or for specific data categories?

Exemptions should apply where national security would be jeopardised by the release of the data, or where it would conflict with security legislation.

Streamlining Data Sharing and Release Legislation Questions

8. Do you agree with the stated purposes for sharing data?

NCVER agrees with the stated purposes for sharing data (purpose test). It would be useful to have greater clarity around what constitutes ‘Research and development’, with due consideration where access to data would result in commercial gain.

Questions about data safeguards

14. Is the Five-Safes framework the appropriate mechanism to ensure data is safeguarded?

NCVER agrees with the safeguard framework, as outlined in the discussion paper:

- Safe data: can the data disclose identity?
- Safe people: can the users be trusted?
- Safe setting: does the access environment prevent unauthorised use?
- Safe outputs: are the project results likely to disclose identity?
- Safe project: is the purpose of use appropriate?

However, the ‘Safe people’ and ‘Safe project’ items are subjective, and guidelines may be required to ensure consistent application across agencies. For example, with respect to being considered a ‘Safe project’, would one of the following purposes (from the Purpose Test) be considered sufficient in terms of the level of detail required?

- inform government policy making
- support the efficient delivery of government services or government operations

- assist in the implementation and assessment of government policy
- research and development with clear and direct public benefits.

The range of individuals and organisations involved in the collection, use and disclosure of data should also be considered as the framework may need to be applied across multiple levels. For example, in VET, RTOs collect information from students and submit data to the National VET collections (for which NCVET is the custodian) as a condition of their registration. RTOs can do this either directly or via a state training authority or Board of studies. In this example, would the Five-safe framework apply to each organisation involved in the sharing and release of data?

16. Are there any instances when the Five-Safes could not be applied?

Where there is a legal requirement to provide the data, particular elements of the framework may be over-written. For example, if required to provide data for investigations by law enforcement or regulatory agencies.

Questions about public sector data sharing arrangements

21. Would this arrangement overcome existing barriers to data sharing and release?

The institution of a more streamlined process, as suggested, is likely to alleviate some of the existing barriers and encourage data sharing.

22. Would streamlined and template agreements improve the process?

Having streamlined and template agreements would improve the process, particularly if these template agreements assist organisations in ensuring compliance with all relevant governments legislation and policies, as these are often difficult to track and interpret (Osborne, Fowler & Circelli, 2018). These agreements may also make it easier to agree upon reasonable security for the data and provide a framework for securing any shared data. Templates for data sharing and release would also help agencies address and assess each of the safeguard framework attributes, and support information sharing.

23. Do you agree that data sharing agreements should be made public by default?

Yes, in a society that is becoming increasingly nervous about data sharing, privacy and data breaches, data sharing arrangements should be made public by default where possible.

27. How long should accreditation as an ADA or Trusted user last?

The duration of accreditation should be balanced against the cost to the organisation to be accredited as an ADA or trusted data user.

30. Should fees be payable to become accredited?

This will need to be balanced against the costs associated with establishing and maintaining accreditation.

National Data Commissioner Questions

42. To what extent should there be a complaints mechanism and how should it work?

There should be a complaints mechanism, but it should utilise existing mechanisms where possible. As some of these are portfolio specific, organisations that are sector agnostic, such as the Office of the Data Commissioner, or the Office of the Australian Information Commissioner (OAIC), or in some cases the Independent Commissioner Against Corruption (ICAC) may be best placed to handle complaints, depending on the nature of the complaint.

43. Should a complaints mechanism provide for complaints by the public?

A complaints mechanism should provide a means for individuals to complain about an alleged interference with their privacy, as set out in the Privacy Act.

References

NCVER 2017, 'Submission to the Review of the National VET Regulator Act 2011', in Braithwaite, V, 2018, *All eyes on quality: review of the National Vocational Education and Training Regulator Act 2011 report*, Department of Education and Training, Canberra, viewed 23 July 2018, <<https://docs.education.gov.au/node/50866>>.

Osborne, K, Fowler, C & Circelli, M 2018, Data linkage in VET research: opportunities, challenges and principles, NCVER, Adelaide, viewed July 2018, <<https://www.ncver.edu.au/publications/publications/all-publications/data-linkage-in-vet-research-opportunities-challenges-and-principles>>.