

Data Availability and Use  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

9 August 2016

Online submission: [www.pc.gov.au/inquiries/current/data-access](http://www.pc.gov.au/inquiries/current/data-access)

***Public inquiry into Data Availability and Use***

As the organisation representing its 750 members with a subscriber base of 40,000 individuals, many of whom are on the cutting edge of the data revolution, the Association for Data-driven Marketing & Advertising (ADMA) is pleased to submit its response to the ***Public inquiry into Data Availability and Use*** (the “Inquiry”).

The Association for Data-driven Marketing & Advertising (ADMA) is the principal industry body for data-driven marketing and advertising in Australia.

Data-driven marketing and advertising includes any marketing communication which uses data-insights, including personal information, to engage with a consumer with a view to producing a tangible and measurable response.

However, whilst ADMA supports innovation and expansion of the use of data, including open data, it must occur in a regulatory environment that is both balanced and flexible.

Care needs to be taken to ensure that any new government initiatives strike an appropriate balance between protecting consumers and not interfering with legitimate business activities.

This submission contains responses to the key issues raised in the issues paper: Public inquiry into Data Availability and Use.

Should you have any questions about our submission, please contact Murray Hyde

Kind regards

Jodie Sangster  
Chief Executive Officer

# ADMA Response to Productivity Commission Issues Paper

We assert that:

## 1. Government must create a framework that promotes innovation

Innovation is critical to Australia's future success as a developed nation; one that does not rely solely on primary industries, mining or manufacturing. Innovation is a vital requirement in order to compete in a fully globalised marketplace, to secure jobs and grow the domestic economy.

Key to this innovation led future is the role of data. Data will drive the new economy.

A flexible and sensible regulatory framework is essential to support a data-driven, innovation economy. It needs to be principles-based to ensure it can keep pace with the rapidly changing landscape and can be applied to new and varied scenarios that may not have yet being contemplated.

Any regulatory framework must also maintain an equal balance between allowing data flow to drive innovation and the protection of consumers.

The alternative of not having a good useable regulatory framework will likely lead to;

- i. **A stifling of innovation.** The breeding of a culture of confusion and anxiety amongst the business community who are never quite sure of their position.
- ii. **A high level of regulatory burden.** Where the regulatory burden is too high, the central concern becomes compliance over development and growth. This will be expensive for medium and large businesses, and a near impossibility for Australia's 2.1 million small businesses.

## 2. Clear distinction between data and personal data is required

At their core, individuals need the protection of the law to feel confident and equally the business community needs boundaries.

A legislative approach should only be adopted where there is a mischief that the law is trying to correct or if a level of consumer protection is required. This applies in relation to Personal Information (PI) where consumer protection is currently provided under Australian Privacy legislation, a regulatory framework that is currently understood by business and its practitioners. Further, our view is that where further clarity is required in relation to PI, guidelines developed by industry would be best in assisting business to understand new uses of personal information.

Where there is not a mischief for the law to correct and the consumer protection requirements are low, ADMA recommends that there be no regulation whilst the industry is in its nascence and potential for innovation not yet fully realised. This will apply in most instances where data does not include PI. Light-touch approach will allow innovation to

thrive and market forces to determine appropriate use behaviours. Industry will also play a role in this regard, educating consumers about their data practices, providing consumers with control tools to manage their data settings and where appropriate providing self-regulatory guidance aimed to the industry sector to develop appropriate behaviours and approaches. This allows sensible compliance frameworks to evolve and avoids restrictive and inflexible legislation.

ADMA's position is clear: with in a context where only the lightest touch is required, the distinction between personal and non-personal data must be maintained.

### 3. **Public Sector**

#### **(a) General support for Public data Access**

There are a number of substantial benefits to both government and citizens in allowing broader access to Public Sector datasets. An example of these would be allowing for greater efficiencies in data processing and linkage across legal, administrative, regulatory, business, economic, geographic and even meteorological disciplines.

The opportunity to maximise efficiencies in accessing this public data should be grasped. However given the breadth of the issues outlined in the Productivity Commission's paper, the amount of datasets that currently exist and the sheer volume of those that will exist in the future mean that we cannot address each on a case-by-case basis.

#### **(b) Framework approach required**

What is required is a future framework where everyone understands the rules around types of data that can be accessed and the use of data in innovation. A framework should also investigate issues around accuracy and what to do with regard to adverse reactions.

Once a framework is developed and in order to provide clarity, a strong set of guidelines around what, how and when data can be accessed and used would need to follow.

With these future protections in place, it also means that should Public Sector data include any personal data then it would need to apply the standards of the Privacy Act.

#### **(c) Data Linkage**

The linking of personal data needs careful handling. It requires the establishment of a set of benchmarks or a clear litmus test.

#### 4. Private Sector

There are many benefits to being able to access Private Sector data, not the least of which is the drive for innovative solutions. However, access to Private Sector data should only be at the choice of the company concerned, not as a mandatory or legislated requirement.

**(a) Business choice**

Business must not be compelled to provide access to its data to other private sector organisations. Data is an asset which companies invest heavily in to provide competitive advantage. Obligations to share data will likely stifle investment in data and thereby impact on innovation and progress. Those companies that identify value in open data frameworks will develop data sharing models independent of regulation.

**(b) Business trust**

Trust is not a tradable commodity. It remains an imperative that is central to all entities, in particular where consumers and Private Sector data intersect. Some consumers are fierce in their desire to protect their private data, however as discovered in a recent UK government inquiry, they could tend towards more flexibility if they perceived that there may be some personal benefit. The current framework works well: A principles-based Privacy Act, one that is not too prescriptive, that simultaneously does a good job of protecting consumers.

It is ADMA's firm view the current legislative framework provides a good framework within which business can operate. Where further detail is required, ADMA recommends Industry Guidelines (by industry, for industry) be developed to assist the business community to understand the rules around use of Private Sector data.

#### 5. Consumer Access & Control

**(a) Consumer trust as a business differentiator**

It is essential businesses take on responsibility for providing consumers transparency and choice. Those that adopt this wholeheartedly will be rewarded with consumer trust and confidence. Businesses that follow a transparent process and offer consumers choice, will win. Naturally, consumers will gravitate towards brands that they feel they can trust and market forces will prove them right.

There are current measures in place that remain effective in terms of consumer choice e.g. the Privacy Act requirements and Opt In-Opt Out provisions.

A prescient example is the recent concern shown by consumers over the 2016 Australian Census. Consumers have shown clearly that they will push back on governments (and businesses) that obfuscate, remove their ability to choose or make the understanding of what is happening with data too hard.

**(b) Voluntary schemes**

There are a number of voluntary schemes currently in place that practice this type of transparency where the consumer is placed at the centre of consideration; Google's My Account ([google.com/myaccount](https://google.com/myaccount)) is one such example. It is a dashboard that places all of the elements of a consumer's Google account, in particular their Privacy Check-Up, in a single easy to access space. Consumers are enabled to dig deeply into their own data and assert a level of control over their data and preferences.

It is important to allow business to develop schemes rather than mandating practices. In the body of the issues paper, reference is made to the United Kingdom's Midata initiative. This is a program intended to provide consumers with the ability to have access to all their personal data held by companies. In theory it would enable data portability and place a competitive advantage in the hands of consumers.

However, ADMA's view is that Midata is a solution in vain search of a problem.

It seems clear that the program has been developed along ideological lines without necessary reference to consumer behaviour. Midata's aspiration is that consumers could access their data, take it to companies and enable them to compete for the consumer's business.

One of the areas where competition is at its fiercest in the UK is supermarkets. While most supermarket advertising is based on price, it is not the sole motivator for why consumers shop with particular stores. Factors like location, convenience, product range and staff all have an effect. Further, most consumers are time poor and the idea of accessing and downloading all of their data to enable a comparison is an anathema.

Interestingly, the Sainsbury chain has recently commenced voluntarily displaying savings, as a measure of comparison with their competitors (using publicly available data e.g. Aztec), on consumer receipts. In this case, it effectively renders Midata pointless.

**(c) ADMA's commitment to transparency and choice**

ADMA, through its commitments to members, education and advocacy, is building ways for Australian businesses to differentiate themselves in a highly competitive and increasingly global market. This includes research, which provides insight into consumer preferences, guidelines to assist with achieving transparency and a trust mark program.

## **6. Summary**

ADMA's position is clear: We urge the government to approach the issue of data availability with due caution. Undue haste in terms of laws made may stifle innovation and lead to confusion and the burdening of business with over-regulation, which in turn may create such inflexibility that it will reduce Australia's ability to compete on the global stage.

ADMA is committed to its support for innovation. Bringing change that adds value will enable Australian businesses to compete on a global scale, create jobs and grow the economy.

ADMA is clear in its support of the need for frameworks that lead to clear guidelines for business.