

## **Submission to the Australian Productivity Commission Inquiry into Data Availability and Use**

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On the 3<sup>rd</sup> November 2016 the Productivity Commission published the **draft report** from the Inquiry into Data Availability and Use. At over 500 pages, the scope of the report is wide ranging, proposing a complete overhaul of how data is dealt with in both legislation and practice. The suggestions for change to the culture around how data and personal information is treated by individuals, businesses and government alike would necessitate significant change to privacy legislation granting both new rights to individuals to opt out or access data on us (regardless of who collects it) and new rights to agencies to share that data as never before.

My interest in policy discussions regarding data sharing is as both a privacy and open data/budget transparency advocate. I have built multiple open data projects aimed at providing Australians with financial and political transparency all of which were acknowledged as use cases by data.gov.au. I have advocated for the release and improvements in the quality, timeliness and scope of public data that relates to government spending for the purposes

of identifying where influence has been brought to bear on government spending decisions, through the [request system](#) on data.gov.au, in personal communications with various government agencies, publicly through the existence my projects (while they were online) and the media.

I was also responsible for the inclusion of the Australian Institute of Health and Welfare among the agencies implementing the [Open Government Partnership National Action Plan](#). At the National Action Plan workshop in April 2016 I contributed to the Open Data Commitments that sought to improve responsiveness and quality of data collected for the National Minimum Datasets (the custodian of which is AIHW). These datasets form the basis of funding that is provided from the Commonwealth to the States through which the States deliver social welfare policies and as such, the scope and quality of this data is integral to meeting the needs of the most vulnerable community members and the services who meet their needs.

I was aided in my contribution by my online network of [health inequality](#), [disability](#), [Indigenous](#) and Torres Strait Islander peoples, [domestic violence](#) and [homeless service](#) representatives whose needs for data I sought out in regular Twitter chats.

I also provided a submission using this feedback to the QLD Domestic Violence Prevention Strategy community consultation to inform of the impact on responses to domestic violence of the way differences in recording of data

across multiple jurisdictions works against using data effectively to understand this kind of social issue.

More recently, I contributed a significant submission to the Inquiry into the 2016 Census, the '[CensusFail Submission](#)' explaining how names and addresses collected from the 2016 Census will be used to create keys to link together Census data with multiple administrative datasets, providing evidence that this is not a legal use of administrative data and that the ABS had not provided adequate information to the community of these significant changes breaching not only the Australian Privacy Principles on informed consent and collection limitation but the principles of our democracy. While certain details from my submission were referenced in the [report on the Inquiry into the 2016 census](#), the evidence that I provided for the lack of legislative authority of the uses of 2016 census data (which I repeat below) in integration projects was ignored.

As stated by the Productivity Commission Report, there is clearly a need for a social licence for the uses to which our personal information is put. A social licence can only be created through open and informed decisions regarding what is being done with our data and why. Informed consent requires transparency and that transparency requires public disclosure of the purposes of intended data sharing and linkage including analysis of whose interests are being served in each and every instance.

Joining administrative datasets together that comprise data we provide as individuals in order to obtain a needed service requires scrutiny of the end goals served by that project as well as the risks that accrue when datasets are joined and/or shared. The examples provided by government to date which are **documented** by Prime Minister and Cabinet as justification for data linkage involve increasing scrutiny of vulnerable Australians (teenage mothers and long term welfare recipients, 'troubled families'). p94 Data Inquiry Report

- designing early interventions for troubled families by linking Commonwealth and state data to enable place-based insights into troubled families (NSW Department of Families and Children has expressed interest in being involved with this project) (DPMC 2015)
- using data analysis to target government service provision to address long term welfare dependency (Doran 2016).

*John Daley from the Grattan Institute notes that: '[m]ore unit data needs to be released that would enable us to do more longitudinal research: specifically social security census and tax longitudinal data' in the DPMC's (2015, p. 16) report, Public Sector Data Management. p120 Data Inquiry*

Rather than targeting society's weakest individuals, public data and linkage projects can and should be used to expose influence and corruption among the rich and powerful as is mentioned in passing in the Report:

*Data on public sector contract procurement can help to expose corruption. The Brazilian government releases a range of data, including that related*

*to government expenditures, expenses of elected officials, and companies that are blacklisted from public contracts. This data has been used by journalists and activist groups to expose corruption (Chui, Farrell and Jackson 2014). p72 Data Inquiry Report*

Corruption and the lack of transparency that enables it impacts on the distribution of wealth in society ([Transparency International](#)). The [Panama Papers](#) have demonstrated the role of transparency in making the tax system work for citizens and not just to the benefit of the rich and powerful. Social justice is aided by transparency of how influence operates in society and the data to support this goal exists and should be prioritised for release as Nationally Important Datasets.

The datasets that contribute to financial and political transparency are Commonwealth and State budgets, tenders, grants, political donations, pecuniary interests and lobbyist registers. I have provided a [submission](#) (included as Appendix) to the Open Government Partnership National Action Plan in support of these datasets being designated as Nationally Important Datasets under the framework proposed by the Data Access & Use Report as well as requesting the Beneficial Owners Register proposed in the [National Action Plan](#) be made available as open data for use in transparency by media, researchers and citizens.

In contrast with this priority to create financial and political transparency to improve social justice outcomes, the thrust of the Data Availability and Use report is on linking and providing access to data about the general public, loosening the legislative environment so that this data can be used for purposes other than for which it was provided. The Report recommends that the provision for administrative data to be repurposed for research be widened from the current application of health care data to all other administrative datasets determined to be in the public good.

#### DRAFT RECOMMENDATION 5.2

The Privacy Act 1988 (Cth) exceptions that allow access to identifiable information for the purposes of health and medical research **without seeking individuals' agreement**, should be expanded to apply to all research that is determined to be in the public interest.

This suggestion is clearly outrageous. It is my opinion that the proposals outlined in the Data Availability and Use Report are an attempt to create a legislative environment to enable the linkage projects that have been planned for some years by the ABS under the new data linkage oversight mechanism

put in place late last year which replaced the Cross Portfolio Data Integration Oversight Board with the Secretaries and Deputy Secretaries Data Group.

Under the oversight of the Secretaries Data Group, the ABS are creating Statistical Linkage Keys using our personal information for data linkage projects that have no social licence and which are not currently permitted under existing legislation. Under existing legislation, data collected for statistical purposes can not be used for administrative ends and data other than administrative health care datasets can not be repurposed for research. Given the current legislative framework it takes some explaining as to how it is that the ABS was able to put plans in place to both collect personal information in order to create these linked data projects and also create 'catalyst' data integration projects using past census and administrative data? This question is evidenced in comments by past Statistician Dennis Trewin that such data linkage projects would require changes to existing law.

In the words of [Dennis Trewin, Australian Statistician \(18 August 2005\)](#):

***The ABS in 2005 points out that non-statistical or administrative uses would only be possible if radical changes were made to the authorising legislation.***

***The ABS believes that such changes are extremely unlikely. It would require a Government that would want to use Population Census data***

***in this way, both Houses of Parliament to approve the change in legislation and a compliant Australian Statistician. Changes of this nature would be in clear breach of the United Nations Fundamental Principles of Official Statistics.***

The Inquiry into the 2016 Census did find that the ABS had misinformed the public of the significance of the changes to usage of the 2016 data during the 2015 consultation and, presumably when informing the media in the lead up to the census that nothing significant had changed. The inquiry into the 2016 Census had this to say about parliamentary oversight of significant changes to collection of census data:

***Was parliament properly informed of the change***

4.50 Under section 6(3) of the *Australian Bureau of Statistics Act 1975*, the ABS must lay before both houses of Parliament 'each new proposal for the collection of information for statistical purposes' before its implementation.<sup>54</sup>

4.51 The committee was informed that:

[This] provision was added as an amendment to the Australian Bureau of Statistics Bill with the express intention of giving Parliament the opportunity to review, and if necessary, intervene to alter or even halt proposed collections of information for statistical purposes in instances where the proposed collection would be on a compulsory basis.<sup>55</sup>

4.52 The ABS tabled in the Senate 'Proposal No. 6 of 2016: 2016 Census of Population and Housing and Post Enumeration Survey' (Proposal) on 17 March 2016.<sup>56</sup> The Proposal made no mention of names and addresses being retained, nor did it mention that this represents a break from past censuses. The ABS appears to have been firmly of the belief that the changes around name and address information were an incremental change that did not require parliamentary oversight.



It is obvious from this that the ABS deliberately mislead the media, the public and the bureaucracy regarding the legal tenor of the plans it had for 2016 census data, failing to establish legislative authority, much less a social licence for its activities. It would seem that steps now need to be taken by the government to establish a case for the changes introduced without informed consent of the Australian citizenry, plans which in the words of the ABS move from using Census data to create a 'snapshot' of life in Australia to create a 'movie' of the lives of each Australian by joining together multiple administrative datasets using 2016 census data.

Case by case linkage projects may be made possible by the new Data Sharing and Release Act however these linkage projects need to have the consent of the public who provide the data and one assumes, should be the end beneficiaries of data linkage projects. It would seem appropriate for the parliament (through the structures proposed in the Data Access Report) to publicly evaluate not just each dataset but each integration project in which administrative data is included.

The purpose of the designation of Nationally Important Datasets by these structures was described by Commissioner Harris during the public hearing in Melbourne as providing the legislative basis to prevent individuals from taking advantage of the proposed right to opt-out of data collection. Given the intention to use the NID framework as the means to over-ride the ability opt-out of certain data collections under the Data Sharing & Release Act, it is

necessary to provide transparency and informed consent over decisions to initiate data linkage projects for which Nationally Important Datasets will form a part.

The end uses of NID's and the data integration projects they will form the basis of need to be made explicit. If the purpose of this designation is to provide the legislative basis for linking data collected under various legislative instruments for the purpose of creating data integration projects which we will be unable to opt out of, this needs to be made clear to the public and provision needs to be made by the institutions and processes that make up the framework for the public to play a role in these decisions.

It was this very failure to follow legislation and democratic principles that led to the campaigns to boycott the census. It is important to put processes in place to make the intentions of government clear when dealing with public data and for those intentions to be sanctioned by the citizenry. Without this there can be no social licence.

To provide the transparency required for a social licence to repurpose data collected from us while we do business with government and to allow individuals to access personal data held by government it would be useful for the government to provide a register of the metadata of all the datasets it holds. This is consistent with the Report's Recommendation 3.1:

*All Australian Government agencies [both state and federal] should create comprehensive, easy to access data registers (listing both data that is available and that which is not) by 1 October 2017 and publish these registers on data.gov.au*

There should be a portal that individuals can use to find which information is held on us by which agency, specifically, the fields of all administrative datasets and this portal should provide the means for the public to request access to this data held on us as intended under the Data Sharing and Release Act. This portal should also list all the projects that make use of this administrative data.

To further protect the privacy of the general public, it is recommended that administrative datasets that contain unit record level data about individuals (unless they are datasets specifically relating to politically exposed persons) be made available only to trusted users. It is important to note that a single dataset can be made available across the framework at different levels of abstraction so that unit record level data about individuals (when de-identified) would only be available to trusted researchers and not published as open data. Under this scheme presented in the Data Inquiry report, identified data would only be made available to trusted researchers for 'targeted integrated products/services and program enforcement and regulation'. This would

appear to be a sensible way to balance the desire to use information about individuals while providing protection to data providers.

I conclude this submission with an additional but no less pressing recommendation that while the government is in a mood to amend the Privacy Act it should use this opportunity to remove the exclusion enjoyed by political parties from the Act. Most Australians are completely unaware that political parties are specifically excluded from the operation of the Privacy Act. If this fact was known widely, I think it is safe to conclude that most people would not be comfortable with this state of affairs. If the government would like to make changes to the Privacy Act to modernise it for current expectations, it is important that the public be made aware of issues that could reasonably be expected to have an interest in and would like to see changed. Bringing political parties under the administration of the Privacy Act is one such issue.

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Please see the attachment Submission to the Open Government National Action Plan for Open Government. My OGP submission contains important information about the datasets that need to be included in either/both a High Value Dataset Framework or Nationally Important Dataset Framework.

See also attachment Submission to the Inquiry into the Privacy Amendment Re-identification Offence Bill.