

NSW Government Submission on the Productivity Commission Draft Report on Data Availability and Use

December 2016

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Introductory comments

The NSW Government is supportive of the direction set out in the Productivity Commission's Draft Report as it promotes a more open position on making data available in a range of situations, to help improve services and productivity.

The Productivity Commission's conclusions about the benefits of data sharing align with the NSW Government's direction. It is clear from the Draft Report that Australia risks lagging behind competitor economies by not placing greater value on its data and deriving a better return on its data investments.

Broadly, the Draft Report highlights a growing need to provide consumers with more control over their data.

The proposed framework, if well planned and implemented, will provide greater clarity on data use, and practical mechanisms for data governance and release. The final report should provide much greater detail on how the proposed framework would function in conjunction with state and territory policy and legislation on data availability and use. This must address the following considerations:

- / Further detail on the operation of the National Data Custodian (NDC) and state and territory-based Accredited Release Authorities (ARAs) including resourcing, governance and data custodianship arrangements.
- / An appropriate intergovernmental forum that would act as the authorising environment to agree and oversee the new framework.
- / A process to support development of enabling state legislation for new arrangements under the proposed Data Sharing and Release Act, where state legislation requires alignment.
- / Resourcing required to enable government agencies to address the Comprehensive Right for consumers and to align information management processes.

Once further details are available, NSW would have to consider how the proposed arrangements intersect with NSW policy and legislation.

The Commission's final report should consider how the proposed framework and recommendations address the following specific challenges to greater data availability and use:

- / Building a positive data sharing culture and developing a better understanding of public views on the use of personal data, particularly secondary use of data.
- / Improving the quality and consistency of existing datasets, including drawing value from unstructured data and information such as case notes and files.
- / Improving the capability and capacity of public sector agencies and employees to work with data. The role of ARAs and the NDC could be used to provide mentoring, support, and opportunities to identify core competencies in public sector role descriptions.

Information presented in the case study on pages 503 and 504 (Box D.2) of the Draft Report is outdated. The statement that "NSW Health appeared to be nearing an initial trial roll-out in late 2015" should be updated to reflect that NSW Health has almost completed the first phase of the implementation of the Electronic Recording and Reporting of Controlled Drugs.

Findings and recommendations

As stated in the Introductory Comments, NSW is supportive of the direction set out in the Productivity Commission’s Draft Report and provides the following information and commentary.

Addressing specific impediments to *public sector data access*

| Draft Recommendation | Response |
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| Rec 3.1 | <p>NSW has established two data registers:</p> <ul style="list-style-type: none"> the Data NSW catalogue for open data (which is already available through data.gov.au) and the Information Asset Register (IAR) for data which is not publicly accessible, but is available for sharing between agencies. <p>There is work in progress to combine these registers. They are aligned with cross-jurisdictional agreements on metadata.</p> <p>A definition of what constitutes high sensitivity datasets should be agreed to provide consistency across registers.</p> |
| Rec 3.2 | <p>These registers should also be linked to the government data registers as indicated in Rec 3.1 and should follow the same metadata and publication standards.</p> |

Addressing specific impediments to *private sector data access*

| Draft Recommendation | Response |
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| Rec 4.2 | <p>NSW recognises the benefits of considering data created through the delivery of public services by the private sector when developing a contract. The report should also consider contracts between agencies and the not-for-profit sector.</p> |

The conundrum of personal data

| Draft Recommendation | Response |
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| Rec 5.1 | <p>NSW is supportive of clear guidance on de-identification processes. Any national standard or certification process should be developed in collaboration with state and territory information and privacy offices.</p> |
| Rec 5.2 | <p>NSW is supportive of the development of guidance material to assist in establishing a public interest case. A clear definition of public interest should be agreed across jurisdictions to ensure consistency.</p> |

| Draft Recommendation | Response |
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| | NSW has recently amended the <i>Privacy and Personal Information Protection Act 1998</i> to provide an exemption for NSW agencies from certain obligations with respect to sharing of personal information for the purpose of research (or compilation or analysis of statistics) in the public interest. There are also further obligations when relying on this exemption in terms of taking steps to de-identify the information, not publishing identifiable information and complying with guidelines issued by the Privacy Commissioner. |
| Rec 5.3 | The NSW framework enables data custodians to use a risk-based approach to establish data retention and disposal requirements through instruments issued under existing legislation. |
| Rec 5.4 | NSW has an established policy detailing the rights and responsibilities of data custodians. Annual reporting requirements would emphasise the importance of providing data access. There is also value in reporting on data security incidents, data usage, complaints or abuses to support transparency and build public confidence. |
| Rec 5.5 | NSW supports the concept of accrediting additional entities that can link Commonwealth Government data. The final report should consider additional resourcing for state-based organisations like the Centre for Health Record Linkage (CHeReL) to enable organisations to take on the additional workload associated with this recommendation. |

Making data more useful

| Draft Recommendation | Response |
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| Rec 6.1 | Data standards are a vital and valuable tool for improving the quality, consistency and usability of datasets across different agencies and jurisdictions. NSW has established a business-driven approach to the implementation of data standards, overseen by a cross-government Information Management Community of Expertise. Data custodians should generate or capture, and publish metadata for all datasets. This will help users to correctly understand, compare and use data. Metadata should conform to agreed industry standards. The final report should consider how standards can be retrospectively applied to existing data and how this would be resourced. |
| Rec 6.2 | NSW agrees that the private sector is best placed to develop sector-specific standards. |

Information request:

“The Commission seeks more information on the benefits and costs of a legislative presumption in favour of providing data in an application programming interface (API) format, specifically:

- *In which sectors would consumers benefit from being able to access data in an API format?*
- *What are the main costs and barriers to implementing APIs?”*

NSW Response:

NSW has published a standard to assist agencies to procure APIs in software that they develop or commission (available [online](#)). NSW has also published guidance to assist agencies to use web services and APIs to release open data, including identifying data that is most suitable for release via API and developing open APIs (available [online](#)).

See also our response to Draft Recommendation 7.1.

APIs can be used to minimise administrative overheads and improve the efficiency of data release. They can also be used to provide controlled release of data, without revealing sensitive information.

Valuing and pricing data

| Draft Recommendation | Response |
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| Rec 2.1 | <p>NSW is supportive of processes that improve and streamline access to public sector data. NSW has developed guidelines to help agencies identify and prioritise the release of high value public data.</p> <p>The publication of explanations as to why data was not released is also supported as a mechanism to improve transparency. This is a requirement under the NSW Open Data Policy.</p> |
| Rec 7.1 | <p>NSW takes the approach that data should be open by default, free where appropriate, and released as close as possible to its primary form and in a timely manner.</p> <p>Releasing data in a relatively unprocessed form can increase its reusability and speed of release. A related issue that could be discussed in the final report is the need for Government agencies to increase the efficiency in providing data such as the development of APIs, and to reduce costs wherever possible. This should also inform investment in IT infrastructure, and expertise to extract and link data more efficiently.</p> |
| Rec 7.2 | <p>NSW would take interest in the findings of an independent review of public dataset pricing.</p> |
| Rec 7.3 | <p>There is currently no formal pricing mechanism for release of government information in NSW.</p> <p>Both the NSW Open Data Policy and the Government Information (Public Access) Act 2009 (GIPA Act) provide flexibility for the release of government information to the public. Both the Open Data Policy and the GIPA Act support and encourage the proactive release of government information where appropriate, and this facilitates most public access to government information.</p> <p>However, in some circumstances, when formal information access applications are made that require significant additional resources from an agency, the GIPA Act allows agencies to impose charges to cover the costs of providing information.</p> <p>Making public sector datasets available at marginal cost requires careful consideration, particularly given the public interest rationale, where there is the potential for an organisation to profit from the access to and use of this data. In determining costs of providing data requests, there needs to be transparency and consistency in cost breakdowns.</p> <p>In making pricing decisions, consideration should be given to different</p> |

| Draft Recommendation | Response |
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| | sectors, such as research and non-government organisations, and for different purposes of the data request. This reflects differences in the public and private value from the intended use of the data, capacity to pay and whether the new data generated will become public or will only be accessible to the secondary user. |
| Rec 7.4 | <p>In general the costs of releasing data should be addressed by agencies as part of business as usual and be factored into commissioning, regulatory and service planning activities. A by-design approach to identifying data for release will enable costs to be incorporated into operating budgets. This approach is being implemented by some NSW agencies but further guidance is needed to widen public sector capability in this area.</p> <p>Supplemental funding may be appropriate where significant additional effort is required to make data available or where release would impose a significant additional burden on an agency's IT infrastructure or support staff. Supplemental funding may also be required for state datasets identified as having national public interest.</p> <p>The funding request should be supported by a business case that justifies the additional data effort proposed.</p> |

Fundamental reform is needed

| Draft Recommendation | Response |
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| Rec 9.1 | State and territories should be consulted during the development of this definition to ensure consistent use across jurisdictions. |
| Rec 9.2 | NSW would consider how state legislation will interact with any proposed Commonwealth legislation, based on the Australian Government's response. |
| Rec 9.3 | <p>There will be costs associated with enforcement depending on the complexity of the rules adopted.</p> <p>The Australian Competition and Consumer Commission should be provided with the opportunity to comment on how market dominance and competitiveness may be affected.</p> |

Information request:

"The Commission seeks further views on datasets that are of national interest and that could feasibly be designated as such under the process proposed."

NSW Response:

Datasets of national interest may include the Essential Statistical Assets for Australia (Australian Bureau of Statistics); the Foundation Spatial Datasets (ANZLIC and State authorities); data that meet the criteria that define National and State archives; and raw data which underpins any published government report. Telecommunications and cell tower information that show movement around the city or the state are highly valuable for transport and infrastructure projects, planning for public transport, roads and services. It may also improve the accuracy of population models in between census periods.

| Draft Recommendation | Response |
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| Rec 9.4 | <p>The process of sharing National Interest Datasets (NIDs) with trusted users would provide invaluable input into policy decision-making and enable more targeted resourcing and policy responses.</p> <p>Community confidence can be built through a transparent review process and understanding of protections for privacy and confidentiality. The report should consider a variety of mechanisms for community input and review of NIDs, beyond a parliamentary committee. For example, this could include an online consultation forum similar to NSW's "Have Your Say" forum.</p> <p>The final recognition of NIDs should be made through an agreement by governments (in consultation with the original data custodians). The determination should be made public and reasons provided when a recommendation from the independent assessment is not implemented.</p> <p>The final report should offer definitions of 'sensitive data', 'community wide benefit' and 'national interest' to provide further clarity on the key recommendations.</p> |
| Rec 9.5 | <p>This should be subject to a consideration of the costs and benefits of implementation. The final report should consider any overlap with the functions of existing bodies such as the Australian Bureau of Statistics and National Archives of Australia and whether the role of National Data Custodian could reasonably be managed by one or jointly.</p> <p>The final report should provide clarification on the governance structure and decision making powers of the National Data Custodian as it relates to State and Territory governments, as well as original data custodians. Consideration should also be given to the role that the National Data Custodian would have in maintaining National Interest Datasets.</p> |
| Rec 9.6 | <p>Similarly to NSW's comments on recommendation 5.5, while NSW welcomes the concept of establishing Accredited Release Authorities, this will come at additional cost to State and Territory governments. An appropriate interjurisdictional forum should be tasked with developing a national agreement on how State and Territory governments will be resourced to take on this additional activity.</p> |
| Rec 9.7 | <p>Arrangements for obtaining trusted user status should be robust but also facilitate access for organisations with limited resources, including not-for-profit and research bodies. The report should address the treatment of independent researchers not affiliated with an organisation.</p> <p>The final report should also consider how to administer this recommendation equitably and efficiently, given the potential costs and complexity of managing trusted user access over time.</p> |
| Rec 9.8 | <p>NSW supports the notion of streamlined access to NIDs through the NDC.</p> <p>NSW would consider how state legislation will interact with any proposed Commonwealth legislation, based on the Australian Government's response.</p> <p>NSW suggests it should be a condition of access that Trusted Users will consult with data custodians to understand any limitations in the data, and prior to the release of results or reports derived from NIDs.</p> |

| Draft Recommendation | Response |
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| Rec 9.9 | <p>Consideration could also be given to the outcomes of the research and potential for releasing data to the wider public.</p> |
| Rec 9.10 | <p>There is a need to develop a consistent, cross-jurisdictional definition of “sensitive” and “non-sensitive” public sector data.</p> |
| Rec 9.11 | <p>NSW is, in principle, supportive of legislation that facilitates the process of releasing and sharing data.</p> <p>NSW notes that careful consideration and consultation is required on the development of the proposed Data Sharing and Release Act, in relation to its interaction with the Commonwealth Privacy Act and existing legislation in states and territories that provide a right of access to government information, protections for personal information and other provisions which prohibit or restrict disclosure of certain information.</p> <p>The final report should confirm legal advice on whether the Commonwealth has a constitutional basis for passing this class of legislation, or if supporting state legislation is required. This should assess how state legislation will interact with any proposed Commonwealth legislation, and whether this will lead to consistent outcomes for all jurisdictions.</p> <p>Proposed legislative changes should be flexible enough to allow for rapidly changing technologies, as well as changing social expectations around data usage and privacy protections.</p> |