

SUBMISSION TO THE DATA SHARING AND RELEASE LEGISLATIVE DEVELOPMENT PROCESS

October 2019

Universities Australia (UA) welcomes the opportunity to make a submission to the Data Sharing and Release legislative development process.

UA is the peak body for Australia's 39 comprehensive universities. Our members are spread across Australia, in both regional and metropolitan areas. They educate more than a million students each year and undertake research that adds to Australia's stock of knowledge, and to Australia's economic and social wellbeing.

KEY POINTS

Universities Australia supports the Government's aim to realise the full potential of public sector data to the benefit of all Australians.

As the primary producers of research for public benefit, universities are one of the key stakeholders in Australia's research system. University researchers are a crucial source of expertise to analyse and extract value from public data and undertake research that has public benefit

University researchers already make significant use of public sector data and work with data custodians. This has led to a multitude of individual agreements. The potential for a single, overarching agreement would enhance clarity, efficiency and timeliness, as well as consistency in the application of privacy safeguards and is welcomed by UA.

UA supports the inclusion of research and development in the 'purpose test' for data sharing and the recognition in the discussion paper of university researchers as one of the key stakeholders. Given this recognition, it is important that the legislation is cognisant of the context in which universities operate and the multiple functions they are seeking to fulfil.

The section below notes concerns that may require further consultation and development. UA would be happy to further engage on these issues.

Collaboration with industry

Collaboration between the university sector and industry is a key policy priority for Government and explicitly encouraged through several policy mechanisms. Universities are highly active in the translation of research into commercial outcomes through collaborating with private industry. Universities are also themselves active in the formation of spin-off companies.

Given the research potential of public data, it would also provide benefit to a collaborative effort between universities and industry. At present, purely commercial benefit is excluded under the purpose test, but instances where there is dual public/private benefit may be included.

Under the current proposal, it appears that it is the data user (for example, the university or the researcher) in collaboration with the data custodian who is required to estimate the ratio of public to private benefit. Not only is this a highly subjective exercise, but it is one that can change depending on the nature of the research findings, something that cannot be predicted *a priori*.

This uncertainty exposes universities and individual researchers to the risk of being non-compliant with the legislation. A mechanism for supplying advice or guidance on this issue would be desirable.

Public interest determination

Under the current approach, UA understands it is solely the data custodian that will determine what is in the public interest, and there is no review on that determination. This contrasts with the accreditation process, where the potential user can appeal the decision by the data custodian to the Data Commissioner.

One of the roles of universities is to foster and facilitate freedom of enquiry, including through the undertaking of research. The current arrangements, where the consent of the public sector data custodian is required and cannot be reviewed, effectively limits this function, even though it potentially satisfies the public purpose test. UA would welcome an appeal process in relation to the public purpose test and suggests the introduction of a merit review process as one potential solution.

Open access

The publication and dissemination of research helps to ensure the reliability and reproducibility of research results. It is a key foundation principle of the research system, in particular research that conducted by universities. These principles are supported and indeed required by funding agencies, and are also expected by Australian and international initiatives such as the FAIR principles (data that is Findable, Interoperable, Accessible, Reusable) and the Plan S principles, which affect university research.¹ These principles however may be in potential conflict with the legislation.

Universities understand the requirement of ensuring that the privacy of sensitive data is protected. UA raises this as an issue where the appropriate balance between open access and privacy needs further clarification.

International collaboration

Research is a highly collaborative effort, often involving international researchers and institutions. UA understands that under the current scheme, foreign collaborators can apply to participate but it is up to the sponsoring organisation to vouch for them. This is potentially highly problematic as universities are not equipped, nor is it their role, to vet researchers as proposed under the current approach. UA submits that further clarification and work is required to realise the full potential that international collaboration can bring to public sector data.

¹ See <https://www.fair-access.net.au/background-information> for further details the FAIR principles and here for [Plan S](#).

Consent

The discussion paper indicates an intent to use an EU style GDPR agreement as it pertains to consent. It is unclear what the implications of this will be on the accredited user (organisation) under such a scheme or what its final form will be. The responsibility of sharing and consent of data is at present placed on the data custodian and the accredited user. Further clarity on this would be welcome.

CONCLUSION

Universities stand ready to assist in the realisation of the full potential of public sector data for the benefit of all Australians. At present, UA's position is that further work and detail is required to ensure that the legislation is sensitive to the context in which universities operate and the roles they undertake. UA would welcome further discussions on the areas identified in the submission or any other matters.