



Data Sharing (Government Sector) Bill 2015 (Proof)

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. John Ajaka.

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism)
[3.34 p.m.]: I move:

That this bill be now read a second time.

In this digital economy data is becoming increasingly valuable to both the private and public sector. Data is the foundation of evidence-based policy and provides the basis for the development of effective tailored services to the community. Currently New South Wales government departments and agencies collect and retain data provided by the people of New South Wales. However, there is no requirement to share data with other departments or agencies that will inform more efficient strategic decision-making. The siloed approach hinders the delivery of service that the people of New South Wales want to experience.

Government cannot continue to operate in this way. To meet the requirements of the people of New South Wales in the twenty-first century government must be more agile, faster and smarter in the way it operates. It must harness data assets to deliver better outcomes for the community. In this vein, on 3 August 2015 Minister Dominello announced the establishment of a New South Wales government Data Analytics Centre [DAC] as a unit within the Department of Finance, Services and Innovation.

I turn next to services and innovation. As part of a central agency the DAC will: collect, aggregate and analyse whole-of-government data, including from State-owned corporations and local councils, in relation to approved projects; coordinate the consistency of definitions and data standards across New South Wales government agencies; establish and maintain a register of data assets in government and provide advice to government on the greater publication of open data; provide advice on how data can inform the digitalisation of the New South Wales Government; and how the New South Wales Government can support the digital ecosystem. Importantly, it will investigate and establish processes and methodologies to enable the protection of personal information and advise the New South Wales Government on best practice analytic processes and data and information security.

This bill will facilitate the sharing of data information with DAC and within government generally. It will enable the Premier, through the Minister for Innovation and Better Regulation, to give direction and, in certain circumstances, require government sector agencies to share government sector data with DAC. It will enable the Minister to obtain information for the DAC from government sector agencies about the kinds of datasets that they control. Importantly, the bill also specifies safeguards to be complied with by DAC and other government sector agencies in connection with data sharing.

It is important to note that the sharing of personal or personal health information is not affected by this bill. The sharing of that information remains subject to existing New South Wales privacy legislation. This bill provides the DAC with the legislative authority to obtain data in certain circumstances from government sector agencies with the appropriate safeguards in place. This power is critical to the design of the DAC. In its development we looked far and wide for best practice data analytic systems around the world. One such centre has operated in New York for a number of years. It was established by the then mayor, Michael Bloomberg. The Mayor's Office of Data Analytics [MODA] seeks to aggregate and analyse New York departmental data. Many of the design features have been incorporated in the DAC. However, when we made inquiries with the architects of MODA they acknowledged that having legislative authority would produce better outcomes.

Hence, this bill is critical to the successful functioning of the DAC. Its significance cannot be overestimated. The Government has consulted broadly, drawing upon some of the best minds in the New South Wales government sector. The steering committee for the Data Analytics Centre included the NSW Chief Scientist and Engineer, the Customer Service Commissioner, the Privacy Commissioner and the Information Commissioner. They consulted broadly with the technology sector and with other independent agencies such as the Ombudsman, the Independent Commission Against Corruption and so on. They know the challenges of antiquated silo-based service delivery and it is no surprise that the committee received an avalanche of support for what is being proposed. I will put on the record extracts from some of the third-party endorsements from highly respected and trusted figures in the government and community sectors in New South Wales. Professor Mary O'Kane, the NSW Chief Scientist and Engineer stated:

Having a Data Analytics Centre will be extremely useful for the State of NSW on many fronts... Being able to draw on this and other well-curated and up-to-date data will better enable NSW to improve critical government functions and solve difficult policy problems. I support the concept of the Data Analytics Centre and look forward to an active involvement in its development.

Dr Elizabeth Coombs, the New South Wales Privacy Commissioner stated:

I note the intention of the Bill is to improve data sharing between NSW Government agencies, outline data sharing safeguards as well as the establishment of a NSW Data Analytics Centre (DAC). I support the outcomes that will be achieved through the establishment of the DAC.

The New South Wales Ombudsman, Professor John McMillan, AO, formerly the Australian Information Commissioner, Commonwealth Ombudsman and Integrity Commissioner for the Australian Commission for Law Enforcement Integrity, stated:

Information collected and held by government is a unique resource that enables a better understanding of community trends, challenges and expectations. The value of information lies in using it, having regard to privacy and security concerns... The data analytics centre can play a central role in ensuring that public sector information is used wisely and managed appropriately.

Hugh Durrant Whyte was quoted as follows in the *Australian* of 1 September 2015 in an article entitled "Data initiative a breakthrough but it's not all smooth sailing":

When the NSW Minister for Innovation and Better Regulation, Victor Dominello, announced his intention to establish the DAC he said its purpose was to liberate all of the government's data—too often buried away in silos—and provide a centralised analytics and insight capability for government decision making...

For those of us at the data analytics forefront the DAC announcement is terrific. By bringing information together, the government will be able to make more informed decisions and better allocate scarce resources...

NSW is taking a transformational lead in data science."

In these circumstances of strong support from government, universities and industry alike, I am pleased to introduce the Data Sharing (Government Sector) Bill 2015. The bill is an important marker; it signals that New South Wales is ready to embrace the power of shared data. Doing nothing is not an option. In order to serve the people of New South Wales, the Government needs to adopt or develop best practice. The bill enables the Government to make the best use of its data assets so that together it and the people of this State can achieve better outcomes.

The objectives of the bill are: to facilitate the sharing of government sector data within government, including with the newly established NSW Government Data Analytics Centre [DAC]; to enable the Minister to give directions in certain circumstances to require government sector agencies to share government sector data with the DAC; to enable the Minister to obtain information for the DAC from government sector agencies about the kinds of datasets that they control; and to specify safeguards, including in relation to the collection, use, disclosure, protection, keeping, retention or disposal of health information or personal information of individuals as well as commercially sensitive information, to be complied with by government sector agencies in connection with data sharing under the bill.

It is recognised globally that public sector sharing of data results in the facilitation of high-quality, policy-relevant research by sharing and combining data from a variety of sources; promoting new research and allowing for testing of new or alternative methods of service delivery; reducing costs by minimising duplication of effort, particularly in collecting and storing data; and reducing the burden on New South Wales citizens in providing data multiple times to multiple agencies. Currently, agencies agree to share data that is non-personal or de-

personalised by way of a memorandum of understanding [MOU]. The MOUs set out what data is to be provided to whom, when and so on. The development of MOUs is time-consuming and a new MOU is required for each instance of data sharing. Where multiple agencies agree to share information, an MOU would need to be created with each of those agencies participating in a single project. Where traditionally agencies have been frustrated with the cumbersome, long-winded, entangled, bloated system for sharing information across government, they will now be able to share information in an efficient manner in a protected environment.

This bill complements the existing legislative responsibilities of government sector agencies that collect, publish and provide access to data. Key legislation governing the sharing of data and operational arrangements in New South Wales includes the Privacy and Personal Information Protection Act 1998 [PPIPA], which governs the way agencies can use or share personal information. It provides for the use of public interest directions to enable data sharing and analysis for time-limited projects, and privacy codes of practice to enable data sharing and analysis in the longer term. The Health Records and Information Privacy Act 2002 [HRIPA] governs the way agencies can use or share personal health information. It offers a model of how a group of agencies, or perhaps the broader government sector, could be considered as a single entity for the purposes of sharing data. The Government Information Public Access Act 2009 [GIPA] establishes that agencies must provide public access to certain datasets and reports. The State Records Act 1998 ensures that agencies maintain records of their activities.

Areas of policy with standing operating arrangements similar to this legislation include the Bureau of Crime Statistics, which operates under a privacy code of practice to conduct research and analysis across crime and criminal justice issues. It offers a model of how the DAC can use privacy codes of practice to manage data-sharing for projects where personal identified data is involved. Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 provides for the sharing of information for the broad purpose of promoting the safety, welfare or wellbeing of children or young persons. This legislation offers a model of how legislation can authorise sharing for approved purposes in the public interest. The Service NSW (One-stop Access to Government Services) Act 2013 privacy code of practice regulates the disclosure of personal information held by public sector agencies by agencies and the collection, use and management of that information by Service NSW to exercise customer service functions for the agency, or other related functions.

This legislation will change the way New South Wales government sector agencies interact with each other. It makes it easier for agencies to share data by providing the authority that was until now lacking. The most complex issues society faces require a multiagency approach. I reiterate that using the current data- and information-sharing framework to tackle these issues is antiquated. The systems that we have in place now are anchored in the past century, when the pace of new information compared to today was pedestrian. However, we are now well and truly past the dawn of the information age. At the heart of this age is knowledge and insights driven by data. Accordingly, we need a framework for data sharing in 2015 that reflects the age in which we live. I now turn to the detail of the bill. Part 1 sets out the objects and definitions. The objects include:

- (a) to promote, in a manner that recognises the protection of privacy as an integral component, the management and use of government sector data as a public resource that supports good government policy making, program management and service planning and delivery, and
- (b) to remove barriers that impede the sharing of government sector data with the DAC or between other government sector agencies, and
- (c) to facilitate the expeditious sharing of government sector data with the DAC or between other government sector agencies, and
- (d) to provide protections in connection with data sharing under this Act by:
 - (i) specifying the purposes for, and the circumstances in, which data sharing is permitted or required, and
 - (ii) ensuring that data sharing involving health information or personal information continues to be in compliance with the requirements of the privacy legislation concerning the collection, use, disclosure, protection, keeping, retention or disposal of such information, and
 - (iii) requiring compliance with data sharing safeguards in connection with data sharing.

Part 5 deals with the relationship of this bill with other legislation. It makes disclosure of government sector data by a government sector agency to the DAC or another government sector agency lawful for the purposes of any other Act or law that would otherwise operate to prohibit that disclosure. The bill does not apply to information considered to be "excluded information of an agency" specified in the schedule and information of a kind referred to in schedule 1 of the GIPA, or any personal or health data as defined in privacy legislation.

Part 2 of the bill relates to facilitating government sector data sharing. This includes voluntary data sharing with the DAC or between other government sector agencies, and data sharing with the DAC. If government sector data is shared under this section, the data provider and the data recipient must comply with all data sharing safeguards that are applicable to them in connection with the sharing. Part 2 (7) introduces the power for the Minister for Innovation and Better Regulation to direct a government sector agency in writing to provide specified government sector data that it controls to the DAC within 14 days or such other period specified in the direction if the Premier has advised the Minister that the data is required for the purpose of advancing a government policy.

Part 2 (8) introduces the power for the Minister for Innovation and Better Regulation to direct a government sector agency in writing to provide the DAC with such information concerning the government sector data that it controls as the Minister may require so as to enable the DAC to determine the number and kinds of sets of data that the agency controls and the kind of information collected in those datasets. However, this power to direct does not extend to universities. Part 2 (9) sets out the data sharing safeguards for the purposes of this bill that are applicable to the sharing of government sector data under this bill with the DAC or between other government sector agencies.

Privacy safeguards include: without limiting section 5 (2), a data provider and data recipient must ensure that health information or personal information contained in government sector data to be shared is not collected, used, disclosed, protected, kept, retained or disposed of otherwise than in compliance with the privacy legislation; if a data recipient that is provided with government sector data that contains health information or personal information becomes aware that the privacy legislation has been or is likely to have been contravened in relation to that information while in the recipient's control, the data recipient must, as soon as is practicable after becoming aware of it, inform the data provider of the contravention or likely contravention.

Confidentiality and commercial-in-confidence safeguards include: a data recipient that is provided with government sector data that contains confidential or commercially sensitive information must ensure that the information is dealt with in a way that complies with any contractual or equitable obligations of the data provider concerning how it is to be dealt with. Data custody and control safeguards include: a data provider and data recipient must ensure that the government sector data that is shared is maintained and managed in compliance with any legal requirements concerning its custody and control—including, for example, requirements under the GIPA or State Records Act 1998—that are applicable to them.

If a data recipient arranges for a person or body other than another government sector agency to conduct data analytics work using government sector data with which it has been provided, the head of the data recipient is to ensure that appropriate contractual arrangements are in place before the data is provided to ensure that the person or body deals with the data in compliance with any requirements of the privacy legislation, the State Records Act 1998 and any government data security policies that are applicable to the data recipient.

Part 3 includes the power for the Minister to issue a direction to a State-owned corporation to provide data to the DAC only if the direction is given with the approval of the Premier and, where the portfolio Minister of the State-owned corporation is neither the Premier nor the Minister administering the proposed Act, the Minister has consulted the relevant portfolio Minister about the direction before it is given. Part 3 also provides the power for the Secretary of the Department of Finance Services and Innovation to report to the Minister responsible for a government sector agency or the Public Service Commissioner any failure by an agency to comply with the requirements of the proposed Act or with a direction given under it, or any other matter of concern to the secretary with regard to the agency's obligations. The secretary can include in the annual report of the department a report of any incidences of failure by government sector agencies to comply with the requirements of the bill or the regulations or with any directions given under the bill.

I turn to the management of personal information. In the design of the bill, the safe handling and protection of privacy around personal information has been and remains paramount. Whilst the Government is the custodian of the data it collects, it ultimately belongs to the people. With this in mind, it is the duty of any government to ensure that the information it holds is used for the purpose of generating greater social outcomes and tailored, citizen-centric services. The Privacy Commissioner has been instrumental in both the steering committee for the Data Analytics Centre and the policy design behind this bill. I thank the Privacy Commissioner, Dr Elizabeth Coombs, for the many hours she dedicated to making this bill a reality which includes the safeguards and protections that she helped to design.

The provisions of the bill do not extend to the use of personal and health information and sharing of personal data remains within the protections of the existing privacy legislation in New South Wales. The principal and mandatory mechanism to enable the sharing of personal information is the Privacy and Personal Information Protection Act 1998, which is supported by Privacy Codes of Practice and Public Interest Directions issued by the Privacy Commissioner under section 41 of the PPIPA. Moreover, all data identified in the GIPA as exempt from public release in schedule 1 and schedule 2 of that Act is also specifically exempt from this bill. These are schedule 1, information for which there is conclusive presumption of overriding public interest against disclosure; and schedule 2, excluded information of particular agencies.

It is important to note that whilst information contained within these schedules is not explicitly authorised, permitted or required to be shared by government sector agencies as per clause 5 (2), clause 5 (3) makes it clear that the bill is not intended to prevent or discourage the sharing of government sector data by government sector agencies. The provision does not act to specifically prohibit the voluntary sharing of such information within government.

The DAC will apply best practice processes and methodologies to prevent the re-identification of de-identified, aggregated personal data. When it comes to the issue of cyber security, we will ensure that the DAC will comply with the New South Wales Government Digital Information Security Policy [DISP]. All New South Wales public service agencies and shared service providers must comply with the DISP which is informed by the Australian Government Information Security Manual issued by the Australian Signals Directorate. The DAC will require a privacy code of practice and will investigate and establish processes and methodologies that enable the safe use of personal information in de-identified, aggregated or linked datasets so as to protect the privacy and personal information of individuals.

The DAC's collection and analysis of data from a variety of sources will facilitate the delivery of better services and build a much improved evidence base to support policy development, informed by trusted data. The DAC will become custodian of any new data "products" created through the aggregation of datasets where there is no other natural custodian, reducing the burden on agencies to continually extract and provide exports of the same data for different research queries.

In conclusion, before I commend this bill to the House, I would like to thank the Minister for Innovation and Better Regulation, the Hon. Victor Dominello, who has also asked me to acknowledge the Department of Finance, Services and Innovation—in particular, Martin Hoffman, William Murphy, Dawn Routledge, Rosemary Chandler and especially Dr Kate Harrington and the "DAC-lings", who were instrumental in the formulation of this bill. I commend this bill to the House.