

DATA SHARING (GOVERNMENT SECTOR) BILL 2015
Second Reading

Mr VICTOR DOMINELLO (Ryde—Minister for Innovation and Better Regulation) [12.20 p.m.]: I move:

That this bill be now read a second time.

In about 2012, as Minister for Aboriginal Affairs, I visited a school to frame development of the Opportunity, Choice, Healing, Responsibility, Empowerment—OCHRE—strategy. During the morning recess I remember seeing this little girl. She was about five years old. She had long, brown, curly hair and beautiful Bambi eyes. She looked like an angel. I remember that at the time she was playing a computer game: You would press a button and it would predict your mood—curious, happy, bored, et cetera. This little girl approached me and said that she was sad. I looked at the game and I explained to her that the computer screen said she was happy.

However, she insisted that she was sad. Her aunty then approached me and told me that the little girl's mother had passed away a few days ago. I remember going to bed that night and staring at the ceiling, with tears rolling down my face. I am part of the Executive Government in New South Wales. I have significant responsibilities and powers in relation to 7.5 million people in this State. Yet that night I felt utterly powerless. There was not one word I could say, not one action I could take to mend this little girl's broken heart. The following morning I took refuge in the Serenity Prayer:

God, grant me the serenity to accept the things I cannot change,

The courage to change the things I can,

And the wisdom to know the difference.

I dedicate this bill to the little angel: I am sorry that I could not take away your pain. Our community faces many challenges that cause much suffering and destruction at individual, societal and environmental levels. Horrendous domestic violence, unimaginable juvenile incarceration, and mindless pollution of our sacred land and waters all come to mind. There are logistical challenges that we face, such as tangled traffic, that render valuable resources inefficient. There are challenges that Mother Nature poses, such as fires and storms. And there are challenges born of our human condition—blindness, multiple sclerosis, dementia. Regardless of the challenges we face, the best solutions are grounded in data and analysis. They always have been. We can get lucky and stumble across a few pieces of the puzzle that fit together, but the best way is to put all the pieces on the board and work our way through it. Plato once said:

We can easily forgive a child who is afraid of the dark; the real tragedy of life is when men are afraid of the light.

In many ways data is the light. Data, once organised, becomes information. Without information, governments make decisions in the dark. The more information governments have at their disposal, the greater the light and therefore their ability to make decisions that will improve society. With information comes knowledge, and with knowledge comes wisdom. In 2015 in the information age, the primary issue is not the gathering of information but rather the sharing of it, with protections in place for privacy and security. This bill is the first of its kind in Australia and one of the first of its kind in the world. It is a bill that requires courage as it represents a giant stride forward into the light that information provides.

I have no doubt—no doubt at all—that in decades to come people will look back to 2015 as a time in our civil development when our understanding and application of the benefits of big data were still very much in their nascent phase. This bill will be seen as a positive turning point for data sharing. In the burgeoning digital economy, data is becoming increasingly valuable to both the private and the public sectors. Data is the foundation of evidence-based policy, and provides a basis for the development of effective, tailored services to the community. New South Wales government departments and agencies currently collect and retain data provided by the people of New South Wales. However, there is no requirement for the sharing of that data with other departments or agencies to inform more efficient, strategic decision-making.

This siloed approach is a hindrance to the delivery of services that the people of New South Wales deserve. Government cannot continue to operate in this way. Government must be more agile, faster and smarter in the way it operates to meet the requirements of the people of New South Wales in the twenty-first century.

It must harness data assets to deliver better outcomes for the community. In this vein, on 3 August 2015 I announced the establishment of the New South Wales Government Data Analytics Centre—affectionately known as "the DAC"—as a unit within the Department of Finance, 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; provide advice to government on the greater publication of open data; and provide advice on how data can inform the digitisation of the Government and how the 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 Government on best practice analytic processes, and data and information security. This bill will facilitate the sharing of data information with the DAC and within government generally. It will also enable the Premier, through the Minister for Innovation and Better Regulation, to give directions in certain circumstances to require government sector agencies to share government sector data with the DAC. Additionally, it will enable the Minister to obtain information for the DAC from government sector agencies about the kinds of data sets that they control. Importantly, the bill also specifies safeguards to be complied with by the 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, and 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 analytics systems around the world. One such centre has operated in New York for a number of years. Established by then Mayor Michael Bloomberg, the Mayoral 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 have produced better outcomes. Hence this bill is critical to the successful functioning of the DAC.

The significance of this bill cannot be underestimated. We have consulted broadly, drawing upon some of the best minds in the Government. The steering committee for the Data Analytics Centre, which included the NSW Chief Scientist and Engineer, Customer Service Commissioner, the Information and Privacy Commissioner. In addition, we consulted broadly with the technology sector and with other independent agencies such as the Ombudsman, the Independent Commission Against Corruption et cetera. They know the challenges of antiquated, silo-based service delivery, and it is no surprise that we received an avalanche of support for what is being proposed. Let me put on record extracts from some of the third party endorsements from highly respected and trusted figures in our government and community in New South Wales. Professor Mary O'Kane, NSW Chief Scientist and Engineer, said:

Having a Data Analytics Centre will be extremely useful for the State of NSW on many fronts. ... NSW is in a good position to take advantage of a DAC because it has considerable research expertise and capacity in data collection and analytics, including within its universities and organisations like NICTA and INTERSECT. In this way the data that sits in the DAC will not be idle but can be used extensively for policy and research purposes.

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. There are many examples of areas to benefit from the DAC most notably in health, education and transport. I support the concept of the Data Analytics Centre and look forward to an active involvement in its development.

NSW Privacy Commissioner Dr Elizabeth Coombs said:

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

NSW Ombudsman Professor John McMillan, AO, who was formerly the Australian Information Commissioner, Commonwealth Ombudsman and Integrity Commissioner for the Australian Commission for Law Enforcement Integrity, said:

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 Ombudsman's office has seen how data driven service provision can assist Government agencies to tackle key challenges in areas such as service provision to Aboriginal communities; better identifying and responding to at risk children and families; and diverting young people from the criminal justice system. The data analytics centre can play a central role in ensuring that public sector information is used wisely and managed appropriately.

Alex Scandurra, Chief Executive Officer of Stone and Chalk, FinTech Knowledge Hub, said:

I wish to congratulate you on the announcement of the DAC. We think this is going to provide an incredible platform that will help drive digital innovation within NSW, provide incredible insights and actionable data for Government and the private sector. Importantly, it will also enable an unprecedented level of collaboration between start-ups, innovators more broadly and Government. In doing so, this will facilitate the delivery of additional services to the people of New South Wales at marginal cost to the Government. Clearly there is an immeasurable upside to such an initiative in terms of the new companies, jobs and wealth creation that is likely to occur. It will help position Sydney & New South Wales as leading the way for innovation and collaboration in Australia.

Hugh Durrant-Whyte said the following in an article published in the *Australian* on 1 September 2015:

This era of big data presents incredible opportunities—smarter cities, stronger companies, new jobs and better medicine—but it also presents challenges. The establishment of the recently announced New South Wales Government Data Analytics Centre is a unique opportunity for business, universities and the state Government to forge a partnership and deliver on data-driven opportunities.

When the New South Wales 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. It also allows the New South Wales Government to consolidate the expertise held in the data analytics centres in its Health, Justice and Education departments.

The opportunities start with the use of data in making more informed decisions.

There's also an opportunity to drive innovation in the private sector. International studies have shown that open data in Government allows private firms to make better decisions around investment in infrastructure and skills. One local example of this is National Map (nationalmap.gov.au) that provides an open portal to spatial data from over 30 Government agencies (federal, state and local), allowing companies engaged in areas as diverse as agriculture, construction and retail, to make use of data in making more informed investments.

Another related opportunity is the development and growth of new data technology companies and knowledge jobs. Analytics is already playing a big role in the fintech and medtech sectors and the DAC could help extend this trend into start-ups in other sectors, such as transport or agriculture.

But it's not all smooth sailing, because managing privacy and security concerns won't be easy. Locking all the data up is clearly not the answer but personal, sensitive data will need to be secured, controlled and managed. There's an opportunity here for the DAC to be innovative with new ideas in security, from the use of encrypted data portals to concepts such as personally controlled data vaults.

The involvement of the New South Wales Information Commissioner and the New South Wales Privacy Commissioner on the inaugural DAC Board is a good start but the DAC needs to engage the technology community in the discussion.

A second challenge for Government is to resist thinking of the DAC as just another "large IT system". There is a sorry record for the development of large IT or database systems in the public service sector and data does not need to be handled this way. The DAC should focus on connecting data and creating open tools that make this information available and useful to the right decision makers.

NSW is taking a transformational lead in data science. It is critical the potential of this partnership between businesses, universities and citizens is realised.

New South Wales Customer Services Commissioner Mike Pratt said:

The Data Analytics Centre is fundamental to continuing the improvement in the lives of our citizens through an enhanced understanding of their needs and our ability to provide superior solutions. This is a legitimate and powerful tool for the New South Wales Government to improve service delivery in line with true customer co-design principles. It brings a customer-inside lens to the architecture of service delivery, focusing on the growing appetite for online services. This is more than conducting focus groups. It is about using the richness of customer data in a smart, coordinated and innovative way to design service delivery models that make sense, reduce cost to serve and ultimately improve the experience for citizens.

Effective use of data will drive customer focused service delivery and provide the ability to make informed decisions—decisions driven by our customers. The Data Analytics Centre will provide a focal point for whole of Government data and promote cross agency data sharing in a way that protects customer privacy, whilst enabling the Government to see a "holistic" view of the customer.

University of Technology Sydney Vice-Chancellor Professor Attila Brungs said:

I am writing to congratulate you on your announcement and your leadership in driving real transformation in a whole-of Government approach to data. This is a huge and complex task and I know that the community, industry and research sectors and other Governments will benefit from your ground breaking move. These kinds of initiatives have the potential to be far reaching and are to be applauded ...

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 the Government and the people of New South Wales can create better outcomes. When it comes to data analytics the DAC and this bill will provide the platform for this change.

The objectives of the bill are: to facilitate the sharing of government sector data within government including with the newly established New South Wales Government Data Analytics Centre; to enable the Minister to give directions in certain circumstances, which I will elaborate on in a moment, 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, that are 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, reduction in costs by minimising duplication of effort, particularly in collecting and storing data; and a reduced 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 and to whom and when, et cetera.

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. Occasionally, MOUs are also used to support sharing of personal information. MOUs developed between agencies do not always contain adequate provisions for the protection of personal information in data sharing arrangements. Where traditionally agencies have been frustrated with the cumbersome, long-winded, entangled, bloated system for sharing information across government, they will now be enabled 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, and 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 [GIPAA] 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 NSW Bureau of Crime Statistics and Research, 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. The Children and Young Persons (Care and Protection) Act 1998 at chapter 16A 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. In the Service NSW (One-stop Access to Government Services) Act 2013 a 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. The bill makes it easier for agencies to share data by providing the authority, up till now lacking, for agencies to actively share data. The most complex issues society faces require a multiagency approach. I reiterate that using the current data and information sharing framework to try to tackle these issues is antiquated. The systems that we have in place now are anchored in the last century, where 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 that we live in. I 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 1 (5) deals with the relationship of this bill with other laws. This bill 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 schedule 2, and information of a kind referred to in schedule 1 of the GIPAA, 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.

This supports data analytics work to be carried out on the data to identify issues and solutions regarding government policy making, program management and service planning and delivery by government sector agencies. It enables related agencies, such as branches, offices and other agencies within or otherwise related to a government department, to develop better government policy making, program management and service planning and delivery by the agencies. 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 GIPAA or State Records Act 1998—that are applicable to them.

If a data recipient that 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, and 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 directions given under the bill. In the design of the bill the safe handling and protection of privacy around personal information has been, and remains, paramount. Whilst it is government that 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. Central to this mission is the non-negotiable instrument of trust. This is why 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 had dedicated to making this bill a reality, which includes the safeguards and protections that she helped to design.

The bill facilitates the sharing of government sector data by government sector agencies to deliver more effective service delivery and better social and economic outcomes for the people of New South Wales. 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 [PPIPA]. This is supported by privacy codes of practice and public interest directions issued by the Privacy Commissioner under section 41 of the PPIPA. The bill has been drafted in close consultation with the Privacy Commissioner.

Moreover, all data identified in the Government Information (Public Access) Act [GIPAA] as exempt from public release in schedules 1 and 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—that is, 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 NSW Government Digital Information Security Policy. All New South Wales public service agencies and shared service providers must comply with this policy and it is recommended for adoption in State-owned corporations, as well as local councils and universities. The NSW Government Digital Information Security Policy aims to ensure that the following objectives are achieved by the New South Wales Government: confidentiality, integrity, availability, compliance and assurance, to provide assurance to this Parliament and to the people of New South Wales that information held by the Government is appropriately protected and handled. This policy is informed by the Australian Government Information Security Manual [ISM], which is 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, I thank the Department of Finance, Services and Innovation, in particular Martin Hoffman, William Murphy, Dawn Routledge, Rosemary Chandler, Sonya Sherman, and especially Dr Kate Harrington and the "DAC-lings", as well as the other muchachos and muchachas who were instrumental in the formulation of this bill. I also acknowledge the herculean efforts of Bay Warburton, Matt Crocker and Sam Rutherford. They are true warriors for reform. I thank my staff, in particular Matt Dawson and Tom Green. I pay special tribute to my senior policy adviser, Caity McLoughlin. Put simply, this bill would not have been possible without her. I commend the bill to the House.