



New South Wales

# Data Sharing (Government Sector) Bill 2015

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to enable government sector agencies to agree to share government sector data with the Data Analytics Centre (the **DAC**) in the Department of Finance, Services and Innovation (the **Department**) or other government sector agencies for certain purposes, and
- (b) to enable the Minister to give directions in certain circumstances to require government sector agencies to share government sector data with the DAC, and
- (c) to enable the Minister to obtain information for the DAC from government sector agencies about the kinds of data sets that they control, and
- (d) to specify safeguards (including in relation to the collection, use, disclosure, protection, keeping, retention or disposal of health information or personal information of individuals) to be complied with by the DAC and other government sector agencies in connection with data sharing under the proposed Act.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** states the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act.

The **DAC** is defined to mean the DAC or such other government sector agency (or part of a government sector agency) as may be prescribed by the regulations.

**Data** is defined to mean any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means).

**Data analytics work** is defined to mean the examination and analysis of data for the purpose of drawing conclusions about that data (including, for example, conclusions about the efficacy of Government policies or service delivery by government sector agencies).

A **government sector agency** is defined to mean each of the following:

- (a) the DAC,
- (b) a government sector agency within the meaning of the *Government Sector Employment Act 2013*,
- (c) a statutory body representing the Crown,
- (d) a council or county council within the meaning of the *Local Government Act 1993*,
- (e) a State owned corporation,
- (f) a body (whether incorporated or unincorporated) established or continued for a public purpose by or under the provisions of an Act or statutory instrument,
- (g) a wholly-owned subsidiary of the Crown in right of the State or an agency, council, corporation or other body referred to in paragraph (a), (b), (c), (d), (e) or (f),
- (h) a person or body exercising public official functions declared by the regulations to be a government sector agency for the purposes of the proposed Act.

**Government sector data** is defined to mean any data that a government sector agency controls, but does not include data of a kind excluded by the regulations.

The **privacy legislation** is defined to mean:

- (a) the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, and
- (b) any regulation or code of practice made, and any public interest directions or guidelines issued, under either of those Acts.

**Clause 5** provides that a disclosure of government sector data by a government sector agency to the DAC or another government sector agency that is authorised by the proposed Act is lawful for the purposes of any other Act or law that would otherwise operate to prohibit that disclosure (whether or not the prohibition is subject to specified qualifications or exceptions). However, the proposed section also makes it clear that nothing in the proposed Act authorises, permits or requires the DAC or another government sector agency:

- (a) to collect, use, disclose, protect, keep, retain or dispose of any government sector data that is health information or personal information otherwise than in compliance with the privacy legislation, or
- (b) to disclose any government sector data that is:
  - (i) excluded information of specified agencies referred to in Schedule 2 to the *Government Information (Public Access) Act 2009*, or
  - (ii) information of a kind described in Schedule 1 to that Act, or
- (c) to deal with any government sector data to which the *State Records Act 1998* applies after it is shared under the proposed Act otherwise than in compliance with the *State Records Act 1998*.

## **Part 2 Facilitating government sector data sharing**

**Clause 6** authorises a government sector agency (other than the DAC) to agree to share government sector data with the DAC or with any other government sector agency for any of the following purposes:

- (a) to enable 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 the government sector agencies,
- (b) to enable related agencies (such as branches, offices and other agencies within or otherwise related to a Public Service agency) to develop better Government policy making, program management and service planning and delivery by the agencies,
- (c) such other purposes as may be prescribed by the regulations.

**Clause 7** enables the Minister to direct a government sector agency (other than a university) to provide specified government sector data that it controls to the DAC within 14 days or such longer 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.

**Clause 8** enables the Minister to direct a government sector agency to provide the DAC with information about the government sector data that it controls 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 data sets.

**Clause 9** authorises the DAC to share with government sector agencies the results of data analytics work that it has carried out on data provided to it by a government sector agency under the proposed Act, but is not authorised to share that data with any other agency, person or body.

**Clause 10** provides that the Minister may give a direction under this proposed Part to a State owned corporation only with the approval of the Premier and after consulting the portfolio Minister of the corporation. The proposed section also enables a State owned corporation to be reimbursed for certain costs it incurs when complying with a direction that is not in its commercial interests.

## **Part 3 Data sharing safeguards**

**Clause 11** declares that the data sharing safeguards set out in the proposed Part are the safeguards that the DAC and other government sector agencies must comply with in connection with data sharing with the DAC or other government sector agencies under the proposed Act.

**Clause 12** sets out the privacy safeguards that require health information and personal information to be dealt with in compliance with privacy legislation.

**Clause 13** sets out safeguards in relation to confidential or commercial-in-confidence information.

**Clause 14** sets out data custody and control safeguards.

**Clause 15** enables other safeguards to be prescribed by regulations.

## **Part 4 Miscellaneous**

**Clause 16** provides that the proposed Act binds the Crown in all of its capacities.

**Clause 17** enables the Secretary of the Department to report failures by government sector agencies to comply with the proposed Act, the regulations or directions under the proposed Act.

**Clause 18** enables the Minister to delegate the Minister's functions under the proposed Act to the Secretary of the Department.

**Clause 19** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 20** provides for the review of the proposed Act in 5 years.

## **Schedule 1      Savings, transitional and other provisions**

**Schedule 1** enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act or any other Act that amends the proposed Act.