

Department of the Prime Minister and Cabinet
PO Box 6500
Canberra ACT 2600
Australia

Sent via - <https://www.pmc.gov.au/resource-centre/public-data/issues-paper-data-sharing-release-legislation>

27 July 2018

Dear Sir/Madam,

RE: SUBMISSION TO THE AUSTRALIAN GOVERNMENT'S CONSULTATION PAPER ON AUSTRALIAN GOVERNMENT DATA SHARING AND RELEASE LEGISLATION.

About AMSRO

AMSRO is the peak body for close to 100 organisations with over 5000 employees involved in market and social research across Australia.

The collection and analysis of personal data is a central function of AMSRO members, much of that data serving the planning and improvement initiatives of both governments and private sector organisations.

Critical to our mission is consumer trust in our members' integrity, competence and commitment to good privacy principles and best practice.

AMSRO has sought to maintain that trust through a number of industry leading initiatives.

Since 2014, AMSRO is the only industry body which has a specific Privacy Code registered under the Australian Privacy Act (1988). The Code has force of law with the Australian Office of the Information Commissioner in the role of Code adjudicator. There has been no complaint about any member of AMSRO upheld under the Code.

AMSRO has a long-established Privacy Compliance Committee (PCC) which meets twice a year and has in place ongoing training, awareness and educative initiatives for its members, in addition to commenting on important privacy issues that affect the Australian community. The Privacy Compliance Committee has an independent Chair with representatives from the social and market research industry plus a consumer representative.

AMSRO's KEY SUGGESTIONS FOR THE DATA SHARING LEGISLATION

1. In broad terms AMSRO is supportive of the Government's proposal to simplify, unify and improve data services that apply to both the private sector, Government agencies and business enterprises that serve critical infrastructure in our community. Such a move which could integrate government

and critical private sector data bases may be necessary in an era where links between governments and other sectors are necessary for the performance of many critical functions such as banking, health services and transport security.

2. However, Government and those tasked with the data reform must ensure that technical and procedural data management improvements are accompanied by effective cultural, strategic and open thinking about the privacy and ethical risks. There have been a number of recent major data breaches in both the private sector and in government that have diminished public trust in the competence and sensitivity of those in charge of collecting, managing and using personal data.
3. We understand the value of the Five Safe's methodology as guiding principles for privacy protection. However, the proposed system of data sharing across whole-of-government and even related private sector systems can create a larger dividend for those illegally attacking or gaining access to that system.

AMSRO therefore strongly suggests that the following principles also be written into legislation and best practice guides:

- a) Citizens should be able to appeal and obtain timely redress whenever their personal data are breached or they are disadvantaged by inaccurate recording and poor management of their personal data.
- b) Outsourcing or sub-contracting of the collection, management, distribution and use of personal data should not diminish the responsibility of the primary data collector to whom a person has entrusted their personal data. This custodian principle should be written into all sub-contracts and service delivery agreements and be accompanied by the primary data collector actively auditing compliance of all sub-contractors. In an age where the internet is no respecter of state or national boundaries, it is essential that primary data collectors remain in charge of the data movement chain.
- c) The proposal for a National Data Commissioner is strongly supported but AMSRO stresses that the Commissioner should be adequately resourced and given an independent stature free of political interference. This principle is the essential lynch-pin of the proposed system and its implementation would send a strong and essential signal to the community that their governments are privacy respectful.
- d) Since the proposed data system implicitly and explicitly involves some linking of personal data between governments and the private sector, it is essential that highly sensitive personal data such as health profiles be protected at the highest level and any transfer of that personal data from government to the private sector be the subject of public and parliamentary scrutiny especially if there is outsourcing of current government services.
- e) AMSRO has been so concerned about fake polling or illegitimate research that it has established a special site called [Phish of the Day](#) which informs the public about "shonky" operators who masquerade as pollsters when they are in fact selling or pushing product or services, gathering personal information for illegitimate purposes or pushing particular views.

AMSRO believes that public trust in social and market research is vital in order that the planning and other benefits of that research can be utilized by the Australian community and its governments. To achieve this goal of ethical controls, AMSRO suggests that the Australian competition and consumer legislation be amended to specifically define and proscribe false or misleading conduct by fake pollsters or survey companies.

- f) AMSRO suggests that past experience has shown that internet based, whole of enterprise systems must be supported by alternative hard copy and person-to-person back-ups. Western security authorities have indicated clearly that malevolent governments and other players have been attempting to access personal, government and commercial data for some time. Total reliance on electronic collection, use and storage of sensitive data, which can include citizen personal data, is a risk that increases when a system moves to a whole of government structure. The risk becomes even higher when government data bases share personal data with the private sector. AMSRO would assume that a comprehensive Privacy Impact Assessment would be conducted in association with the Office of the Australian Information Commissioner prior to any decision about the architecture of any whole-of-government electronic sharing system.
- g) Since outsourcing and sub-contracting is built into most significant data-based projects, AMSRO also suggests an end to the current exemption of small business from the provision of the Privacy Act. Any exemptions from the Act can be seen as a weak link in the security chain. It should be noted that all AMSRO members, large and small, must adhere to AMSRO's Privacy Code and therefore, the Australian Privacy Principles.

Thank you for providing AMSRO the opportunity to comment on the proposed legislation. Should the opportunity to engage further with the Department on this issue arise, please contact Sarah Campbell, Executive Director, AMSRO at sarah@amsro.com.au or telephone (02) 8017 6717. For further information regarding AMSRO please refer to www.amsro.com.au.

We look forward to hearing from you.

Kind regards,



The Hon. Terry Aulich
Chair
AMSRO Privacy Compliance Committee