

6 August 2021

Australian Data Strategy

By Email: AustralianDataStrategy@pmc.gov.au

Submission: Australian Data Strategy Discussion Paper - Appendix 3 (Initial Consultation questions)

We are grateful for the opportunity to provide feedback on the Australian Data Strategy (**the Strategy**). This submission is in response to an email received on 20 July 2021 requesting our views in response to Appendix 3 of the Discussion Paper on the Strategy, announced as part of the Digital Economy Strategy.

This is a joint submission prepared by the UNSW Allens Hub for Technology, Law and Innovation (**UNSW Allens Hub**), the Australian Society for Computers and Law (**AUSCL**), the UNSW Data Science Hub (**uDASH**), the UNSW Disability Innovation Institute (**DIU**), the Centre for Social Impact (**CSI**), and the Deakin University Centre for Cyber Security Research and Innovation (**CSRI**).

About us

The UNSW Allens Hub for Technology, Law and Innovation (**'UNSW Allens Hub'**) is an independent community of scholars based at UNSW Sydney. As a partnership between Allens and UNSW Law and Justice, the Hub aims to add depth to research on the diverse interactions among technology, law, and society. The partnership enriches academic and policy debates and drives considered reform of law and practice through engagement with the legal profession, the judiciary, government, industry, civil society and the broader community. More information about the UNSW Allens Hub can be found at <http://www.allenshub.unsw.edu.au/>.

The Australian Society for Computers and Law (**'AUSCL'**) is an interdisciplinary network of professionals and academics focussed on issues arising at the intersection of technology, law and society. It is a registered Australian non-profit charity with a charter to advance education and advocacy. AUSCL was officially launched in July 2020, but its member State societies were formed as early as 1981. AUSCL provides a forum for learned discussion and debate through its Policy Lab, Working Groups and Events Program attracting support and engagement across Australia and globally.

The UNSW Data Science Hub (**'uDASH'**) is a major strategic initiative of UNSW Science. It aims to cultivate and promote foundational and applied research in Data Science with a focus on environmental, physical and health sciences. The Hub provides a world-class environment, with access to state-of-the-art data visualisation and computing facilities. These facilities enable the creation,

development and deployment of transformative data-driven decision-making tools that help us to address future societal challenges.

The UNSW Disability Innovation Institute ('**DIU**') was established as part of UNSW's strategic goal of leadership in disability inclusion. The Institute is grounded in interdisciplinary and inclusive research in which people with disability are involved as co-creators of knowledge. Uniquely among disability research centres in Australia the DIU brings a disability studies approach to STEM as well as HASS subject, with links to the Centre of Excellence in Automated Decision Making and Society and to the Australian Alliance for Artificial Intelligence in Healthcare.

The Centre for Social Impact ('**CSI**') is an interdisciplinary centre established in 2008 with a vision to "foster a collaborative effort in the common and critical cause of building a more socially responsible business community and civil society in Australia. Today, in partnership with three of Australia's leading universities, the University of New South Wales (UNSW) Sydney, Swinburne University of Technology, and the University of Western Australia, CSI is one of the nation's leading voices in researching and measuring social impact at the individual, community and system level. This includes identifying measures and data that are meaningful and have influence; identifying ways to measure that are practical, sustainable and valid within the reality of complex human services; and supporting the organisational and cultural change journey to achieve this. A key element of our work is analysis of complex national and local data sets to inform policy, programs and organisations. Our purpose is to catalyse positive social change to help enable others to achieve social impact.

The Deakin University Centre for Cyber Security Research and Innovation ('**CSRI**') is a Strategic Research Centre that brings together a multi-disciplinary team of researchers drawn from Deakin's four Faculties. CSRI's research program is focussed on the technology, systems, human, business, legal and policy aspects of Cyber Security, and is committed to achieving translational and transformational research outcomes for industry, business and society. CSRI's research program is advised by senior industry and thought leaders through its Executive Advisory Board for Cyber (EABC) and is funded through national competitive grants and industry.

This submission reflects our views as researchers and professionals, and does not reflect the views of our employers, clients, sponsors, workplaces or any other associations of which we may be part.

Questions 1 and 2: To what extent do you agree that the outline of the Australian Data Strategy covers the right issues? What key areas are missing? Why are they key issues?

The outline Discussion Paper covers many important issues. We make a few points below that we believe ought to be covered either as separate headings or within current headings.

- 1. Data sharing agreements:** As part of an ongoing research project with Deakin University, funded by the Cyber Security Co-operative Research Centre, the UNSW Allens Hub is exploring deficiencies in how data sharing agreements are framed, particularly in the context of organisations' sharing of personal information or other sensitive data. We would be happy to share our findings with the team developing the Strategy, but believe that well-drafted template contracts would improve data governance and better protect data subjects. Importantly, template agreements should provide clear guidance on core data sharing obligations and responsibilities, and not merely a formal structure.
- 2. International data sharing:** The Strategy should take into account latest legal developments in international sharing of personal data, in particular those under the EU's General Data Protection Regulation and the Schrems II decision. Dr Monika Zalnieriute has written



extensively on this issue,¹ and could provide more information and updates as the Strategy is developed.

3. **Data provenance:** For data to be useful to data scientists, it is important to record and provide access to the process by which data is generated and curated (that is, information about its provenance). This is critical for understanding potential biases and errors in datasets. In particular, such metadata is needed to determine whether samples are random in particular ways and to specify the accuracy, the origin and the manner in which data is collected. All of this is critical for analysing how the presented data can and should be used.
 4. **Data sovereignty:** Data sovereignty means maintaining authority and control of data within jurisdictional boundaries and/or relevant cultural community control. This also includes data residency. The Strategy should consider what types of data should not be disclosed to overseas authorities or be handled by foreign organisations.
 5. **Data quality:** The Strategy should create a process for reporting on data quality or other problems with datasets. This can be used to prevent the prevalence of poor or erroneous datasets contaminating inference and resulting decisions. Data being presumed correct when it is not can have severe negative outcomes for individuals and communities.
 6. **Harmful data uses:** It is important to recognise there are nefarious and undesirable uses of even non-sensitive data by individual, organisational and state actors. The Strategy should both recognise such harms and seek to reduce and mitigate risk of harm.
 7. **Data access:** Where data is collected by the government or with the use of taxpayer funds, there should be simpler, streamlined, uniform processes for access by researchers. This is one aspect of the *Data Availability and Transparency Bill*, which should be a component of the Strategy. We also support the points made in AustLII's submission in relation to the importance of accessibility of public legal information.
 8. **Data traceability:** Apple is taking a first step to inform consumers which apps have access to their information and what types of information they can access. The ACCC's Customer Loyalty Scheme Review final report reveals that large organisations in Australia often partner up with data partners to generate consumer insights for profit. The Strategy should create a process for organisations holding millions of personal records to fully disclose who they share information with and whether they profit from such data sharing in any way so that customers may choose not to join the program.
- Further to this point, certain types of information should be deemed off-limits for organisations to share and profit from. We are happy to engage on the question of where the "red lines" should lie and the Strategy may consider starting a standard in this area.
9. **Standards for data:** As part of its Data Strategy, Australia should invest in data-related standards development work. This includes standards for spatial Digital Twins and object representation developed by the Open Geospatial Consortium, the International Standards Organisation, national standards bodies, and ANZLIC – the Spatial Information Council.
 10. **Data integration:** The Strategy should include ways to improve cross-referencing of relevant data held in different assets and linkage of existing data with planned projects. The outline

¹ Monika Zalnieriute, 'Data Transfers after Schrems II: The EU-US Disagreements Over Data Privacy and National Security' (2022) 55(1) *Vanderbilt Journal of Transnational Law* Forthcoming ('Data Transfers after Schrems II'), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3826878

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document makes no mention of the National Disability Data Asset, for example, which will be relevant to the content and use of other planned initiatives in healthcare and elsewhere.

11. **Data lifecycle management:** The Strategy should encourage organisations to engage in good data lifecycle management. This should include data protection and security considerations, data quality maintenance, data storage (e.g. local or cloud), data availability, and secure disposal or de-identification protocols throughout the data lifecycle. Standards such as the ISO 27000 series may be useful.

Question 3: Are the issues listed important to your organisation; and if so why?

All of the issues listed here are important to our organisations; and it is important how the government navigates the intersections between them. A variety of policy development and reform processes across government intersect and overlap. These operate in diverse but intersecting domains such as privacy law, cyber security, critical infrastructure, artificial intelligence, digital identity, and data availability and sharing. For example, data privacy guidelines and instruments often recommend against data accessibility; open data requires particular caution when derived from personal information. All of the different policies have “data” as one of their key elements. There are resulting risks of policy inconsistency, consultation overload, and policy obsolescence. In particular, “actions to build and maintain public trust in data activities in Australia” (mentioned in the Strategy) are already embedded in other policy processes. We therefore suggest more careful staging across government departments so that one policy process is scheduled to start when another moves to implementation so that each can be based on known outcomes of other reforms.

Question 4: What are the top three outcomes from the Australian Data Strategy that you would like to see by 2025?

1. **Better linking-up of policies related to data** across government. For example, data security, data privacy and contextual data integrity combined with competence in data analysis contribute to the trustworthy systems and processes. Currently many of these issues are explored separately with policy focusing on one thread at a time.
2. **Better standardisation of data management** for organisations across different sectors. Not all large organisations maintain an in-house privacy or data governance team, and currently the general public is often unaware who has access to their data, how organisations profit from their data and where their data is stored or accessed from. The Strategy should encourage the development and use of standards for better data governance and transparency.
3. **Better public education and visibility** will be important for the general public to understand what they need to look out for and what they need to consider before sharing their personal information with a third party. It will also be important for organisations to understand what the Australian Government is planning so that they can plan for compliance.

Question 5: Do you have any other comments on the Australian Data Strategy?

We have a number of additional comments on the Strategy as set out in the Discussion Paper:

1. **Government intends to “share and integrate data” (p4):** Personal and sensitive information needs to be handled with additional safeguards; the work of the Australian Computer Society under the leadership of Ian Oppermann may be useful here.
 2. **Trust versus trustworthiness:** The Strategy should focus on principles of “trustworthiness”, not “trust”. Systems and data should be extremely trustworthy. The trustworthiness of systems and data is a preferred approach and a superior target, compared to an approach that
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seeks to build and maintain people's trust in the systems and data. Rather than seeking to establish people's trust, we want people to withhold trust and retain scepticism where, for example, predictions are based on non-representative data.

3. **Public engagement and consultation:** For data and system trustworthiness to develop, and for the government's plans for data to attain legitimacy, there should be a planned and managed process to increase public understanding of and engagement with data and the digital economy. This process should take into account the interests and vulnerabilities of different groups and communities, including those with low digital access or awareness.
4. **Workforce capability:** We agree with the importance of this issue, including the importance of resources for universities that train data scientists and others who will work with data. Training and up-skilling requires in-depth and accessible resources. Resources are required not only to train *data scientists* but also those who *use* the systems and data - ensuring they understand the strengths and limitations of different approaches and processes.

Question 6: How should the Government keep talking about data issues?

When discussing data issues, the Government should:

1. be concrete rather than abstract, using clear and consistent terminology (where possible, referencing legislation or relevant legal frameworks); to address issues of potentially misleading or confusing language (e.g. "real time"), including in legislation;² and to enhance clarity and precision when similar terms are used interchangeably in their common and proper forms in technical contexts (e.g. the government's "data strategy", compared with the "Australian Data Strategy");
2. be open about strategic choices (for example balancing the benefits of data innovation with potential impacts on privacy);
3. be realistic about what data can tell us and the circumstances in which data-driven inferencing should drive decision-making and policy;
4. frame the discussion as being about trustworthiness rather than trust (of data, methods, inferences, systems and decisions);
5. create infographics and short videos for public information;
6. look beyond data ethics to socio-ethics, which involves examination of social and cultural impacts of data practices;
7. create multilingual webpages for Australians from different language backgrounds.

Question 7: How do you see your organisation interacting with the Australian Data Strategy/ What guidance is important to you to help achieve the actions set out in the Strategy?

We would be happy to organise a policy roundtable (or series of roundtables) with academics and professionals as the Australian Data Strategy is developed.

² For a discussion of the challenges raised by vague and meaningless terms used in legislation to identify entities with powers and responsibilities with respect to data, see Lyria Bennett Moses, 'Who Owns Information? Law Enforcement Information Sharing as a Case Study in Conceptual Confusion' (2020) 42(2) *University of New South Wales Law Journal* 615.

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Please contact us if you would like to discuss any aspect of this submission either in person or as a round table discussion.

Yours sincerely,

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