

SUBMISSION TO THE DATA AVAILABILITY AND TRANSPARENCY BILL 2020 INQUIRY

March 2021

Universities Australia (UA) welcomes the opportunity to make a submission to the Senate Finance and Public Administration Legislation Committee on the *Data Availability and Transparency Bill 2020 and Data Availability and Transparency (Consequential Amendments) Bill 2020*.

UA is the peak body for Australia's 39 comprehensive universities. Our members educate 1.4 million local and international students each year, and undertake research and development that adds to Australia's knowledge, and economic and social wellbeing.

UA has engaged with a number of consultations since the Productivity Commission began its work on data availability and use. These include when exposure drafts were made available in September 2020. A number of issues that were initially raised remain of concern. These are dealt with in this submission.

KEY ISSUES

Review processes

UA notes the concerns raised in the Standing Committee for the Scrutiny of Bills *Scrutiny Digest 1 of 2021* about review and complaints mechanisms. Confusion may result from varying channels of review, lack of clarity around certain terms and the broad scope for discretionary decision-making by data custodians. Establishing clear definitions and consistent channels for review would address this possibility.

UA is concerned that decisions by data custodians are not subject to internal or external merit review. The Standing Committee raises similar issues, given "the lack of clarity round certain terms in the data sharing principles and purposes"¹ combined with the level of discretion provided to data custodians".²

Alignment with Open Access

UA expects Australia will, at some point, transition to a Plan S or equivalent scheme that focuses on open access. Several key international research funding bodies that fund Australian research already require open access publishing (such as the US National Institute of Health). UA anticipates that Australian research funding agencies will, in time, move to a requirement for open access of publicly funded research.

¹ Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2021*, Section 1.19

² Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2021*, Section 1.19

It remains unclear how the requirement to be open and accessible under these schemes interacts with requirements under the Act.

Charging of Fees

The scheme is expected to operate on a cost-recovery basis with services withheld until payment of fees. UA notes that fees may be charged to cover costs incurred by the Commonwealth itself, or when it arranges and pays for another person to perform functions or exercise powers. The bill allows for fees to be charged by the Commissioner, data custodians and accredited entities.

The scheme provides for data to be used for research and development purposes. Universities are likely to be participating in this manner. Much of this research is likely to be supported, in part, or full, by the Commonwealth, through competitive and block grants. Given the emphasis by Government on university research supporting Australia's economic and social recovery, it would be unfortunate if the prospect of significant fees dissuaded university researchers from conducting valuable research.

UA would welcome discussion on waiving of fees for university research and development, given the principle intent that data sharing serve the public interest.

Legislative Instruments

UA notes that many of the details of the program are to be contained in yet to be developed legislative instruments (data codes) rather than the primary legislation. As UA noted in its submissions to consultations on the *Security Legislation Amendment (Critical Infrastructure) Bill 2020*, leaving a range of significant matters to legislative instruments without significant guidance in the primary legislation does not support certainty. As a matter of principle, UA would like to see Government take the time to develop the details of important legislation before the bill passes through Parliament.

CONCLUSION

UA supports the concept of data availability and transparency, and appreciates the Commonwealth's efforts to make data available for research and development.

UA welcomes the opportunity to continue to work with Government on these important issues. UA believes a higher education advisory panel with researchers, research administrators and data experts would assist Government in designing the necessary governance processes to help operationalise the legislation.