

Australian Computer Society Inc. (ACT) ARBN
160 325 931

Level 27, Tower 1, 100 Barangaroo Avenue
Sydney, NSW 2000
T 02 9299 3666



inspiring success

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Public Sector Reform Unit
WA Department of the Premier and Cabinet
Email: email withheld

Dear Director Public Sector Reform Unit,

ACS submission on the WA Privacy and Responsible Information Sharing discussion paper

Thank you for the opportunity to contribute to this discussion on the ability to share information to help build a high-performing and collaborate public sector that can deliver improved outcomes for Western Australia.

The Australian Computer Society (ACS) is the professional association for Australia's information and communications technology (ICT) sector. We are passionate about the ICT profession being recognised as a driver of innovation and business value – able to deliver real, tangible outcomes.

Our vision is for Australia to be a world leader in technology talent that fosters innovation and creates new forms of value. The ACS have over 46,000 members and seek to influence policy and positive change within industry and in the area of public policy via publications that leverage the knowledge capital of ACS members.

The ACS is especially pleased to have this opportunity to contribute to the future directions for privacy protected data sharing and the expanded use of information being considered by the Western Australian Government ¹. The ACS has Cyber Security and the Data Sharing Technical Advisory Committees, who are comprise of some of the most experienced and capable data scientist and cyber security professionals in Australia.

The ACS strongly supports improved governance and the streamlining of the authorising environments required to demonstrate privacy protected data access and use, importantly providing the necessary capability to provide confidence to citizens, consumers and the community on the use of their data to improve services, and service improvement activities ². At its best, the integration, analysis and sharing of government data within an effective governance framework enhances the ability to:

¹ **Privacy and Responsible Information Sharing – Discussion Paper, WA Government, August 2019**
http://www.wa.gov.au/sites/default/files/2019-08/Discussion%20paper_Privacy%20and%20Responsible%20Information%20Sharing_1.pdf

² **Privacy in Data Sharing - A Guide for Business & Government, ACS, November 2018**
<https://www.acs.org.au/insightsandpublications/reports-publications/privacy-in-data-sharing.html>

1. Evaluate government policy and funded programs
2. Monitor the program outcomes across multiple organisations
3. Inform service design and planning
4. Support digital enabled innovation and activities such as Smart Cities and IoT
5. Contribute to public good research and analysis on the provision of publicly funded services and infrastructure, and importantly
6. Benefit citizens and the community from improved data driven services and information.

The Western Australian Government can build on the excellent work of the Western Australian Data Linkage system (WADLS), which is recognised nationally as a leading and trusted third party linkage capability, facilitating the integrated analysis of de-identified and privacy protected linked data from multiple sources. The introduction of Privacy and Data Sharing legislation operating together with enhanced and clarified governance frameworks would greatly enhance the ability to partner with the Australian Government, as well as the non-government sectors on public good data initiatives and projects. Legislation would strengthen WADLS's ability to securely share data within an appropriate privacy framework including access to additional data sources not currently available due to the lack of privacy legislation in WA.

Introducing robust and effective legislative which ensures the protection of privacy while enabling sharing of data, underpinned by cyber resilient information systems, and technically competent staff, would allow WA to meet the Australian Government's current Integrating Authority accreditation requirements³. It is important for the reforms to demonstrate significant benefit to the community. As seen from other state examples, the benefit of the proposed legislation to enable digital services, underpin reform and deliver greater citizen outcomes is very significant.

The proactive and long-standing leadership by Fiona Stanley and commitment of the Telethon Institute to engaging with the community on the benefits of privacy protected data sharing and linked data analysis, provides a strong basis for WA to continue to build citizen trust (social licence) for digitally enabled citizen centric services and the evaluation of government funded activities. Consideration should be given to establishing a community engagement program specifically for any integrated data assets created without specific citizen consent. Given the proposed expansion across a number of domains of government activity, a Consumer and Community panel could be a means of providing transparency and accountability for this trust building (social licence) activity.

Recognising that many data custodians and public sector officers remain hesitant to sharing data and information, a prescribed legislated authorising environment could also be used to communicate the community benefit derived from the State and Australian Government data assets. While data custodian's main concerns are centred on appropriate use and interpretation of data and the unintended consequences and risk from sharing data, including accidental release of sensitive data, an overarching privacy legislation framework and clear data governance policies will provide greater capacity for data custodians to participate. Other essential components include the need for a digitally skilled workforce and an informed and educated community who are aware of the benefits of data sharing in the form of improved government services and citizen outcomes.

While acknowledging that the efficient and responsible sharing of data within the WA Public Sector is important, the value to tax payers and the community generally is from sharing data across organisational and jurisdictional silos. In progressing the proposed legislative reforms in WA, it is critically important to recognise the value from having an efficient authorising mechanism across all government funded activities, with the legislated and regulated governance processes able to support and empower and incentivise public sector officers to share data and information. This is a nationwide capability, with the privacy protecting and secure data and information sharing essential to a digitally enabled future for Australia.

³ https://toolkit.data.gov.au/Data_Integration_-_Interim_accreditation_process_for_Integrating_Authorities.html

Managing expectations of various stakeholders and interest groups will be a key consideration. The expansion of the data driven environment from Smart Cities and IoT, will be seeking near real-time information flows as well as analytical insights, similar to some citizen critical operational government activities. Given the growing demand for data to inform decision makers, improve services and monitor and evaluate inter-related activities and outcomes across complex and integrated service models, there is the need to establish a federated national network of data analytics centres across Australia. The network of analytics centres would be authorised under legislation to operate as accredited and trusted third parties, able to broker privacy protected data access and approved use across jurisdictions and organisational silos. While the technical design of this federated national analytics capability is still to be finalised, the opportunity now exists for the legislative environment to be considered, informing and enabling the necessary authorising environment, governance and community support (both within WA and across Australia) that is appropriate.

The proposed WA Public Sector Reform can draw on the experience gained from the NSW, Victoria and South Australia's Public Sector Data Sharing legislation, and the proposed direction being taken on the *Australian Government Data Sharing and Release Legislation*⁴. Recognising that the effectiveness of the WA reforms will be judged on the ability to share and integrate data in a timely and efficient manner, whilst maintaining appropriate privacy with information security protections, the interaction of citizens across multiple agencies, departments and often the State, Territory, Local and Australian Government funded services is important. The governance and processes underpinned by legalisation must be scoped in a way that covers broad interaction and provision of services from a citizen centric perspective.

There is an opportunity for innovative policy to be considered to optimise the sharing of government data. In the US, if one dollar of Federal Government funding is provided into an activity, it is legislated that the resultant data must be shared. This has led to a culture of proactive data sharing, greater accountability, transparency and collaborative use of citizen's data for economic as well as social good purposes. In Australia, the current data sharing limitations caused by organisational silos, IP rights of the private sector and government jurisdictional barriers add to prevent the effective release, sharing and integrated analysis of government funded activities. These barriers could be addressed by committing to a harmonised legislative approach across the Australian jurisdictions moving forward. The approach being considered in WA can address the State Government funded activity, but significantly more value can be gained from integrating WA State data with the information collected by the Australian Government again within a clear privacy preserving frameworks. Consideration should be given to ensuring the inclusion of the commissioned government funded services records that are delivered by the Non-Government organisations; including both the for-profit or non-for-profit organisation's records.

For Australia's digital future there is an opportunity to consider innovative government policy that optimises the privacy protected sharing of data and information on citizens. By following the money, which is the case in the US where it is legislated that data must be shared, if one dollar of (federal) government funding is provided into an activity, the data must be shared. As a result, in the US there is a culture of proactive data sharing, greater accountability, transparency and collaborative use of citizen's data for both economic returns, as well as social good purposes.

The ACS recommends that the scope of the legislative reform for data and information sharing be as wide as possible, inclusive of all government funded human services and other related activity. Given this, agency or organisational exemptions are to be strongly discouraged. The experience gained from NSW, the first state jurisdiction to introduce the Public Sector Data Sharing legislation, showed that limitations in the scope of data sharing legislation has impeded efficient authorised use of integrated government data. It is recommended to scope the legislative reform to cover all government funded services and infrastructure; including health, education and human services, as well as environment,

⁴ <https://www.pmc.gov.au/resource-centre/public-data/issues-paper-data-sharing-release-legislation>

transport and criminal justice system records. In accordance with the proposed Australian Government data sharing legislative reforms, the proposed State legislation should align with the Australian Government, allowing the WA Government legislation to provide a consistent and optimally efficient process that promotes reduced complexity and reduced duplication of processes.

An important governance aspect of this proposed whole of WA Government reform is promoting the culture and environment that recognises the benefit and promotes more efficient data and information sharing and greater use both within government, and across entities outside of government. By recognising the service flows and information lifecycles of the delivery of services to WA citizens, and creating an evidence base scoped as wide as possible, this reform needs to be positioned with appropriate executive support to avoid maintaining the information silos within agencies or organisations responsible for the providing the government funded services. To optimise success and value from this reform, effort must be focussed on creating an effective and efficient authorising environment, underpinned by legislation, with considered controls and processes that can avoid the existing pitfalls and reluctance of officers to authorise the release and sharing of data and information. The ACS also recognises that technology has and will continue to play a major role in enabling innovative analytical outputs, based on skilled and qualified IT professions and data savvy executives, as important success factors for the reforms moving forward.

Specific Notes - Privacy Preserving Data Sharing

Concerns raised by privacy advocates on the aggregation and associated risks from automated flows of data, both by government and non-government entities, has heightened as the capability of data analytics increases. The benefits from integrating data from multiple sources, predicated on protecting the privacy of individuals and communities, is an essential safeguard, that can allow this reform to demonstrate its value to the community, especially from integrating and analysing datasets within government. The ACS draws attention to the work done by the ACS Data Sharing technical committee at address these problems in a practical manner.

Through the ongoing work of the ACS Data Sharing Taskforce led by Dr Ian Opperman, NSW Chief Data Scientist, supported by ACS Technical Committees, systemised approaches to address privacy disclosure risks are being considered and the learnings published⁵. This is collaborative work of the Taskforce is open to participation and contribution from State, Territory and Australian Government officers, privacy consultants and non-government personnel from Universities, For-Profit and Non-For-Profit organisations.

There is a need for great consistency in the definition of personal information. As personal data covers a very wide field and is described differently in different jurisdictions, and with the introduction of the GDPR in Europe in May 2018, the challenge of identifying the presence of, and ensuring appropriate use of, personal data has become more urgent. This challenge is magnified when data sets are linked to create smart services, and the expansive adoption and use of IoT. The lack of appropriate, standardised frameworks to unambiguously determine if personal information is present in linked data creates a challenge for compliance with these and other frameworks and will ultimately limit the creation and uptake of smart services.

The ambiguity about the presence of personal information within sets of data, especially when integrated from multiple data sources, highlights the limitations of existing Privacy regulatory frameworks globally. The inability of human judgment to determine “reasonable” likelihood of reidentification when faced with sets of large complex data limits the ability to appropriately apply the regulatory test.

⁵ ACS Privacy Preserving Data Sharing Frameworks Report on July 2019 Directed Ideation #2 Series Workshop of ACS Data Sharing Taskforce, version 1.0, August 2019
<https://www.acs.org.au/content/dam/acs/acs-publications/ACS%20Directed%20Ideation%20Report%20Aug%202019.pdf>

Development of standards around what constitutes “anonymised” would help to address the challenges of dealing with privacy. In all parts of the world, there is currently only very high-level guidance, and certainly nothing quantitative, as to what “anonymised” means, hence many organisations must determine what “anonymised” means to them based on different data sets.

Technology will play a role to address this challenge but agreeing and then communicating what an acceptable degree of anonymisation is, and how to achieve it in quantitative terms, would also greatly improve data sharing. The ACS in partnership with Standards Australia are actively collaborating with international standards bodies to formalise relevant standards that can be applied to sharing data and information on a range of citizen centric services. While this work progresses, the legislation can be considered that can possibly point to relevant regulations that can be adopted as these emerging data sharing and technology enabled standards evolve.

Ultimately, development of standards-based frameworks for application of these data sharing and analytical technologies, and tests for the presence of personal information will bring the clarity needed to support the creation of smart services and help ensure data is shared in trusted ways. This clarification may also help reduce the ambiguity in legal frameworks in many circumstances and provide confidence to data custodians asked to share data for modern data analytics, sensitive health and genomic data sharing or AI activities.