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To whom it may concern

**RE: Privacy and Responsible Information Sharing in Western Australia – Discussion Paper**

Thank you for providing Curtin University with the opportunity to outline its preliminary views on the proposed *Privacy and Responsible Information Sharing for the Western Australian Public Sector* legislation.

At Curtin University, the privacy of students, staff and other people who the University deals with is taken very seriously. Although Curtin University is not bound by the *Privacy Act 1988* (Cth) it has voluntarily committed to comply with the Australian Privacy Principles and as such it has a well-established privacy framework which governs the management of personal information at its campuses.

Curtin University understands that the privacy elements of the proposed legislation will primarily relate to protecting personal information within the Western Australian (WA) public sector while other provisions will relate to sharing a range of information. It supports any proposal to strengthen privacy protections, improve accountability and transparency of information management and providing better services and outcomes for the community and provides the following responses:

**1) What issues should be considered when developing privacy and information sharing legislation for Western Australia?**

- Community knowledge and expectations should be considered. Information should already have been provided so that the community has time to understand and express any concerns or issues related to this proposed legislation. Without specific details, at this time it will be difficult to determine how it will affect the community individually.
- The level of current knowledge, skills and practices with regard to privacy and data sharing within the public sector and associated third parties.
- Advances in technology that may affect future data sharing processes.
- Multitude of current privacy and data sharing practices within public sector agencies or third parties.
- Recognition of the value of sharing WA data.
- Any proposed WA law should be aligned with Commonwealth and other states laws.

- Ensuring that WA government can facilitate sharing in an appropriate way – that is, it has the resources to ensure its capability to meet the demand and expectations.
  - What privacy and data sharing legislation is currently in force in Commonwealth and State jurisdictions and whether these legislative instruments are useful and appropriate and if they are not then the reasons for this. A good opportunity to learn from other jurisdictions.
- 2) What privacy principles should WA adopt for regulating the handling of personal information by the public sector? Are any of the existing Australian Privacy Principles, or principles in other Australian jurisdictions, unsuitable for WA?**
- As a University that has voluntarily opted to abide by the APPs, and found all of the principles to be a clear and effective way to manage personal information, it is our view that all 13 privacy principles should be adopted into the new legislation and none of the APPs should be excluded for unsuitability.
  - This is especially so for APP 11 – Security of personal information, as it is our view that this principle should be mirrored from the Commonwealth Government APPs.
- 3) What should the role of a Privacy Commissioner be, and how can this role best protect privacy and ensure public trust?**
- Curtin University supports the role of a Privacy Commissioner as we believe this will bring oversight to the process and activities and will encourage transparency of and compliance with the legislation.
  - It should mirror that of the Commonwealth and other States' Privacy Commissioners. It should be one of independent oversight and a specific pathway for public complaints to be addressed. It should also be one which is readily available to the public and to agencies for advice and education.
  - Providing a framework for the resolution of complaints about the handling of personal information.
  - Combining the role of a Privacy Commissioner with that of a Freedom of Information Commissioner has merit and appears to be working at a Commonwealth level. There are synergies in both these areas and it appears to be a good fit.  
However, the Office of the Information Commissioner WA (OIC) appears to be under resourced at this time and so adding this role to the Information Commissioner WA and by default the staff of the OIC would require adequate resourcing.
- 4) How should breaches of privacy be managed, and what action should be taken in response to a breach?**
- Ensuring minimal level requirements for security for holding personal information (WA government agencies, organisations and institutions). This should include ISO27001 alignment (self-certified) and appropriate audit coverage and testing as the minimum baseline from a security perspective.
  - The introduction of Commonwealth Data Breach Notification Scheme appears to be effective since its introduction. A similar data breach notification scheme could be introduced into WA.
- 5) When should government agencies be allowed to share personal information? Are there any circumstance in which it would not be appropriate to do so?**
- There will be circumstances where the information requested to be shared is considered to be too sensitive. This will be on a case by case basis and it is for the releasing agency to determine the sensitivity of the information requested and whether the requesting agency

- has the appropriate information security precautions and management practices in place to protect the information.
- The possibility of release of highly sensitive information in these circumstances may be assisted by a public interest test.
  - It is Curtin University's view that all public sector agencies and associated third parties should have consistent or similar data sharing management practices. This may mean a multi-level accreditation system overseen by the Privacy Commissioner which results in data not being shared with an agency which is not accredited to the specific and relevant level that is required.
  - A register of agency accreditation details should be readily available from the Office of the Privacy Commissioner.
  - Data should be requested and shared when there is a genuine reason to do so. This may include amongst other reasons when there is a favorable / cost benefit.
  - A list of approved purposes may be provided in the legislation. Likewise there may be a list of agencies that will not share data due to the sensitivity of the information held.

**6) What should the role of a Chief Data Officer be? How can this role best support the aims of Government and the interests of the public?**

- Strong leadership role and the relevant skills and knowledge.
- A leader who sets standards and provides advice to the community and public sector agencies.
- A leader who provides oversight over data sharing whilst supporting the public sector in the correct management of information.
- A thorough understanding of and experience in the public sector.

**7) Should the WA Government facilitate sharing of information outside the WA public sector?**

- Universities are an integral part of the data sharing landscape, being creators, custodians, users and linkers of data across a range of disciplines. On-going access to high quality data is of fundamental importance in the creation of knowledge and the translation of research activities into public benefit<sup>1</sup>.
- Much of Curtin's research in public health, epidemiology, education, crime and justice, public policy and applied economics would simply not be possible without access to data made available by State governments, the Federal government and other partners<sup>2</sup>.

**What should be considered when making a decision to share outside the WA public sector?**

- That the poor use of shared data by government agencies can have a negative effect on the entire community of users (including research bodies and State-based authorities)<sup>3</sup>.
- Consistency in approaches to data sharing at State and Commonwealth levels would contribute to efficiency in the longer term, especially in relation to the sharing of health data, which is collected and maintained at both levels. Consistency would also contribute to a greater understanding by the Australian public and increased trust in government activity<sup>4</sup>.
- In terms of transparency, Curtin University suggests that the processes relating to data sharing and release approvals be clearly articulated (and followed) by agencies involved in the process. This would include, inter alia, specification of the steps involved in gaining approvals, the group

<sup>1</sup> Curtin University submission to Department of Prime Minister and Cabinet, *New Australian Government Data Sharing and Release Legislation Discussion Paper*, October 2019, 1.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid 3.

<sup>4</sup> Ibid 4.

or section involved in each stage of sign-off, the likely time taken for each step, the frequency of approval meeting and the contact details of liaison staff<sup>5</sup>.

- Curtin University supports the use of a purpose test or public interest test to determine whether data should be shared or released. Determining whether the sharing and release of data is such that the public benefit outweighs privacy risks assuming the latter is effectively managed is an important factor<sup>6</sup>.

**8) What criteria should be included as part of a risk management framework such as the Five Safes?**

- Curtin University supports the use of the Five Safes framework as part of the new legislation. However, we are also conscious that other frameworks may emerge over time which may be better suited to addressing current and further issues relating to data sharing. As such, caution should be applied before deeply embedding the Five Safes framework into legislation, rather than subsidiary legislation<sup>7</sup>.

**9) Under what circumstances would it be considered acceptable to share confidential information within the public sector?**

- See question 5.

**10) What should the WA Government be doing to support successful implementation of privacy and information sharing?**

- Education of public sector staff about privacy and data sharing. Addressing concerns about how an individual's privacy will be protected.
- Multi-faceted approach to education of the WA community about the proposed introduction this new legislation. This should have commenced. Of course once the details of the legislation is definitive then further education will be necessary.
- Provide a relevant and comprehensive set of privacy principles for all public sector agencies to use.

Yours sincerely



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<sup>5</sup> Ibid 4.

<sup>6</sup> Ibid 5.

<sup>7</sup> Ibid 4.