

WA MENTAL HEALTH COMMISSION FEEDBACK ON PRIVACY AND RESPONSIBLE INFORMATION SHARING DISCUSSION PAPER

In WA today, Commonwealth Government agencies, all businesses with revenue over \$3 million a year, and all private health providers, must comply with the Commonwealth Privacy Act 1988. This Act creates rules for how organisations collect, use, store and share personal information.

However, this does not apply to the WA State Government. WA is one of only two States and Territories that do not have privacy legislation, and there is currently no whole-of-government Act governing what WA State Government agencies can or cannot do with your private information.

1. Does the absence of Privacy Legislation in Western Australia concern you?

- YES
- NO
- UNDECIDED

2. Please explain your answer:

The Mental Health Commission's (MHC) role is to establish mental health, alcohol and other drug (AOD) services to meet the needs of the Western Australian population. In relation to mental health services, the MHC does this by purchasing services from a range of providers including public health service providers (HSPs), a range of non-government organisations (NGOs), and private service providers. In relation to AOD services, the MHC is responsible for a network of drug and alcohol treatment services and programs. The MHC provides these AOD services through Next Step Drug and Alcohol Services (Next Step). Next Step provides some of these services directly. Other services are provided through a partnership with an NGO, and also by purchasing services from NGOs.

The MHC is the principal agency assisting in the administration of the *Mental Health Act 2014* (the MH Act) and the *Alcohol and Other Drugs Act 1974* (the AOD Act).

The MH Act aims to provide for the treatment, care, support and protection of people who have a mental illness, to protect their rights and it also recognises the roles of families and carers.

The MH Act sets out a general obligation that information be kept confidential. The MH Act imposes a penalty if confidentiality is breached, section 576(2). However, the penalty provisions do not apply to the recording, disclosure or use of statistical or other information that is not 'personal information'.

In addition, the MH Act sets out various circumstances where recording, disclosure and use of information are permissible. This includes circumstances prescribed in the Mental Health Regulations 2015 (Regulations). For example, the Regulations prescribe a number of State authorities' with which the MHC may share information.

As a result of the above, the MHC may share information with 'prescribed State authorities' if certain criteria are met, such as that the intended information sharing is of 'relevant information' as defined in the MH Act.

The AOD Act has a range of purposes, including promoting and subsidising research. The AOD Act does not otherwise contain any express provisions relating to confidentiality.

Appropriate controls must be put in place for the collection, use, storage and sharing of personal information relating to consumers of mental health and AOD services. Without these controls there are risks that information is:

- Not managed in a way that protects an individual's rights, especially in regard to people's health related information; and
 - Over protected leading to system wide failures that may not identify individuals at risk .
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It's important for people to understand what their personal information is going to be used for when they provide it to the WA Government. Generally speaking, privacy legislation in other jurisdictions requires that organisations make available information about:

- *The purposes for which they collect personal information;*
- *Any consequences of not providing personal information to the organisation; and*
- *Whether the entity is likely to disclose personal information to authorised third party recipients.*

3. Is there anything else the WA Government should tell you when it collects your information?

Would agree with the general principles above and aligned to other jurisdictions across Australia. In addition to the list above, organisations make available information about:

- Potential risks when this data is supplied; and
- Include examples of who third party recipients may be.

Ideally, the model of "informed consent" through reasonable steps to notify or ensure awareness (aligned to APP3 for the notification of collection, and APP5 for solicited information. The MHC also considers the use of the word *consequences* as having a negative connotation which may impact on persons accessing Western Australian government services.

Victoria, New South Wales and South Australia have introduced data sharing legislation, which includes acceptable purposes and specific rules for sharing information. The Commonwealth Government is also developing data sharing legislation at present.

To provide clarity, reassurance and certainty for the community, the State Government is considering which activities it should specifically permit within its proposed legislation, and provide guidance to agencies on the approved purposes for sharing information. These could include:

- *Purposes related to the wellbeing, welfare or protection of an individual;*
- *Supporting the efficient delivery of government services or operations;*
- *Research and development with clear and direct public benefits;*
- *Supporting evidence-based decision making; and*
- *Assisting in the implementation and assessment of government policy.*

4. Are there any other acceptable purposes for sharing information?

- YES
- NO
- UNDECIDED

5. What changes, if any, do you suggest to the purposes listed above?

Additional purposes:

- To assist the community and individuals that navigate across Government services and reducing the burden of engagement;
 - The evaluation of government funded programs in relation to the impact on the Western Australian community;
 - Developing an evidence base to assist with business cases and agency priorities; and
 - Early intervention to identify where agencies can partner to deliver programs.
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The State Government has relationships with many third party organisations. For example:

- *Health researchers such as the Telethon Kids Institute or the Harry Perkins Institute who undertake important research into how our health could be improved;*
- *Non-government organisations that deliver health or community services on behalf of government; and*
- *Other Australian governments.*

6. When sharing information with third parties, what should the WA Government do to make sure confidentiality is maintained and privacy is protected?

Across Government there should be a consistent mechanism to manage third party requests to reduce the risk of legislation being interpreted differently by different departments. If third parties are requesting access to data, permission to access the data should take into consideration the purpose and how the data will be used. See *Central Model concept under Q12*.

The Commonwealth's notifiable data breach scheme covers organisations regulated under the Commonwealth Privacy Act 1988. A data breach occurs when personal information held by an organisation is lost or subjected to unauthorised access or disclosure.

Under this scheme, if an organisation that holds your personal information suffers a data breach likely to result in serious harm to you, the organisation is required to notify you and the Office of the Australian Information Commissioner.

Currently, there is no legal requirement for WA Government agencies to notify people when their privacy has been breached.

7. How should breaches of privacy be managed in WA and what action should be taken in response to a breach? Please explain your answer:

Across Government there should be a consistent mechanism to manage privacy breaches and determine if they are serious. The determination of whether they are considered serious should not be the responsibility of the organisation that suffered the breach. Individual Departments may have more stringent penalties that can be managed individually; however the investigation, judgement, and notification of a breach could be centrally managed.

See Central Model concept under Q12.

Generally, various laws require that personal information collected by government agencies may only be used for the purpose for which it was obtained.

This means, for example, that if you change your address or phone number, you need to contact each state government agency individually to have this change made. Examples might include; schools and TAFEs, hospitals and child health nurses, local councils, Births, Deaths and Marriages, driver's licenses and vehicle registrations.

The proposed legislation would facilitate person-centred services and more convenient interactions with government.

8. Could the WA Government be doing a better job of sharing information between agencies to make your life easier?

- YES
- NO
- UNDECIDED

9. What type of streamlined benefits would you like to see from improved information sharing by public sector agencies?

Across Government there should be a consistent mechanism to manage personal information. Individual departments may have additional requirements but a core set of data may be able to be stored centrally to ensure changes are reflected across government agencies.

See Central Model concept under Q12.

The WA Government is proposing the creation of a Privacy Commissioner to promote privacy measures and ensure accountability.

Privacy oversight roles in other jurisdictions fulfil responsibilities such as:

- *Receiving, investigating and resolving complaints about privacy related matters;*
- *Identifying and reporting on breaches of the privacy requirements;*
- *Undertaking research, issuing reports, guidelines and other materials regarding information privacy; and*
- *Issuing data security standards and promoting their uptake.*

10. What powers or responsibilities do you think a WA Privacy Commissioner should have?

In addition to the roles identified in the question:

- Managing the data sharing agreements between Government agencies and ensuring compliance.

See Central Model concept under Q12.

The WA Government is also proposing the creation of a Chief Data Officer to support the capabilities of the WA public sector in using, sharing, linking and analysing information.

The Chief Data Officer will establish standards for information sharing and advocate best practice in the use and management of data.

In other jurisdictions, data leaders perform responsibilities such as:

- *Resolving disputes between agencies regarding information sharing and, if necessary, compelling agencies to provide data;*
- *Setting common standards and definitions for public sector data sharing;*
- *Championing data sharing across the public sector and promoting best practice; and*
- *Oversight and accreditation of authorised organisations.*

11. What should the role of a WA Chief Data Officer be in ensuring the proper sharing of information for public's benefit?

In addition to the roles identified in the question:

- Ensuring that individuals who have access to shared information are appropriately (authorised) to use that information;
- Ensuring authorised users are appropriately trained; and
- Maintaining the metadata.

See Central Model concept under Q12.

12. Do you have any general comments on the proposal for privacy and responsible information sharing legislation in WA?

Consideration needs to be given to ensuring that the requirements in existing pieces of legislation are easily understandable alongside any new privacy and responsible information sharing legislation.

The ability to share information while maintaining privacy is dependent upon the implementation model. If individual departments are expected to manage this process (the De-Centralised Model) then it becomes much more complex and open to interpretation.

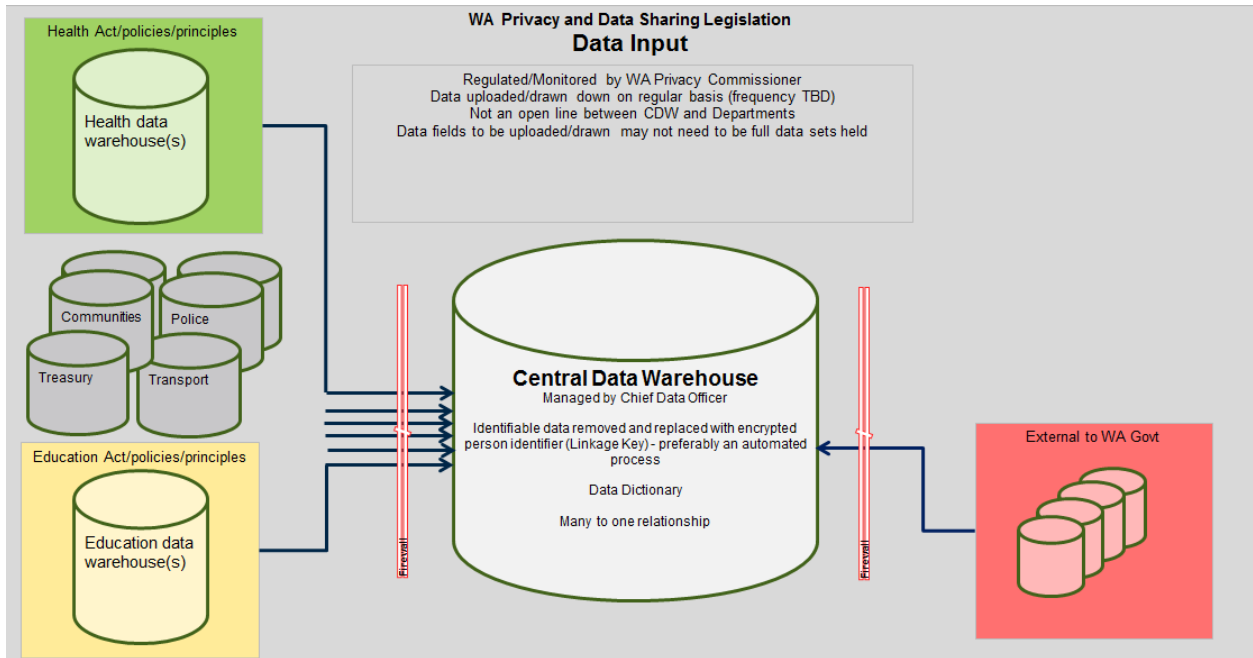
What is the intent of the data sharing? If it is to provide 'live' linkage to enable departments to determine individuals who may be at risk then a central data warehouse would need to be much more complex. If it is aimed at providing regular updates then the central data warehouse could be more easily managed. The De-Centralised Model will not enable consistent routine whole of government reporting.

The Central Model would be less of a resource burden as it centralises all the processes. If departments were to share between themselves then the expertise for this would need to be at each department - with the risk associated with staff movement. Once the initial process is developed for data to be provided, the Central Model only requires minimal management, while the De-Centralised Model may be more onerous (as one department may have numerous data sets being shared with different departments).

The Central Model also enables Whole of Government dashboards to be created - rather than relying on individual departments to try and coordinate. It should not prohibit individual agencies from conducting their own analyses as required.

In future, ethics may sit solely within the Central Model making the process much more efficient and consistent.

The MHC would propose the concept of a Central Model which will reduce confusion and red tape. The following data input diagram is a concept only, with the specifics to be worked through, for example, how often the linkages would be updated. The centralised model will benefit smaller agencies (such as the MHC), however further investigation would be required to understand the complexity of systems maintained by larger agencies and the potential cost and investment required to duplicate those assets.



Additional issues that would need to be considered including whether:

- external agencies would have the ability to reuse data previously extracted for new projects (subject to ethics approval);
- each agency would be required to provide sign off every time their data was requested;
- government agencies would require ethics approval and how this would work where results are intended for publication (as opposed to evaluation for funding purposes); and
- agencies would be able to publish findings that included other agencies data and what approval processes would be required for this (e.g. MHC and Justice data).

