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## Privacy and Responsible Information Sharing for the Western Australian Public Sector – Discussion Paper

Unless otherwise stated, the following responses are either in reference to or from the perspective of Aboriginal and/or Torres Strait Islander (Indigenous) people and Indigenous data sovereignty.

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

- Ability to provide informed consent and an ability to influence how data is collected and stored. Clear principles need to be developed so that Indigenous Australians have both a collective and individual right to informed consent in the collection and use of data. The Guidelines for Ethical Research in Australian Indigenous Studies (GERAIS) developed by Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) sets a number of principles and highlights the importance of self-determination and prior and informed consent.
- Recognition of Indigenous Data Sovereignty and the implications of collective ownership of data and cultural authority to make decisions in regards to collective assets. These considerations will influence collection methods, data storage and approaches for dealing with orphaned data and how to retire datasets/infrastructure.
- With developments in technology and the growth of data being collected, key considerations need to take into account future impacts and any policy or legislation needs to be responsive and 'future proof'. While improvements in data availability and use bring with them the potential of significant benefits for Indigenous Australians, Indigenous data in particular carries with it a number of sensitivities along with its considerable growth in regards to the amount and breadth of data being collected. As Maggie Walters has identified in her work, Indigenous Datasets are often based around a data deficit model. The design and delivery of frameworks around the use and integration of Indigenous Data needs to take this into account including potential future applications. An example of where the design and delivery of systems based on deficit data has had an impact was COMPAS in America. COMPAS was a risk assessment tool for criminal sentencing and bail setting designed through AI – Machine learning. As the original data used in training the AI included bias and over representation of African Americans and First People, COMPAS disproportionately recommended harsher sentencing for those cohorts. Where cultural and ethical considerations are not part of the development process, there is a risk that new technology and methods such as unsupervised machine learning may further disadvantage Indigenous communities.

Other future considerations will also need to take into account future changes usage/integration architecture. Technological innovations such as bespoke or proprietary Analytic Systems, AI/Machine learning and block-chain could potentially further negatively affect the power imbalance between the Indigenous community and non-Indigenous organisations due to cost, access and ability to interpret. It is recognised the important role Indigenous data plays, we must ensure that it is not divorced from its cultural surrounds.

- Clear understanding and scoping in regards to what is considered Indigenous data (including the meta-data used to define) and the oversight that should be considered in the collection, handling and dissemination of this data. This should also include stewardship of historical/legacy and orphaned (currently or in the future) datasets relating to

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Indigenous data. Maïam Nayri Wingara (Aboriginal and Torres Strait Islander Data Sovereignty Collective) considers Indigenous Data to be; “information or knowledge, in any format, inclusive of statistics, that is about Indigenous people and that impacts Indigenous live at the collective and/or individual level.” From NIAA perspective, Indigenous Data can refer to a diverse range of information that directly and indirectly includes detail regarding Indigenous Australians or items of cultural/historical importance.

- Key issues from an Indigenous perspective are Awareness of available data; Availability of data; Access to the data; Ability to Interpret and Acquiring benefit. Considerations will need to be made in regards to what role the WA Government will play in this space and how these issues will be addressed.
- Final issue to be considered is the complex data ecosystem and the challenges this will have. Western Australia has a number of stakeholders that are custodians of Indigenous Data. The stakeholders have significant interest as subjects of or as end users of this data. Each of these stakeholders have their own rules (legislative or cultural), governance (legislative or cultural) and requirements. This data ecosystem will raise significant ethical and technical challenges in regards to discoverability, interoperability, comparability and complexity (ontology and how derived) from both sides of supply and demand.

## 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?

- In at least principle, all of the Australian Privacy Principles should be adopted as a means to address issues in regards to privacy and data sharing.
- In addition, consideration should be given to APP12 and APP13 where data has been integrated between agencies and creating a third dataset with unique identifiers. Indigenous individuals and Indigenous community should have the ability to access and request correction of information.

## 3. What should the role of a Privacy Commissioner be, and how can this role best protect privacy and ensure public trust?

- Consideration should be given to the establishment of an Indigenous specific Privacy Commissioner or advisory mechanism (e.g. Indigenous Advisor or Advisory Group) to ensure advocacy of Indigenous interests.
- The Privacy Commissioner should ensure that all agencies are aware of and review their handling strategies in regards to notifiable data breaches. Clear guidelines should be in place in regards to Indigenous Data breaches and data sharing agreements between agencies.

## 4. How should breaches of privacy be managed, and what action should be taken in response to a breach?

- It should be the responsibility of all agencies to inform those affected (both the individual and the community) where a breach of privacy has been identified.
- Where possible, public disclosure (assuming consent of affected individuals and or community) of the breach, actions taken following breach, actions to prevent future breaches and if possible response from affected parties.

## 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?

- It is recognised that the sharing of Indigenous data has the potential to improve policy and service delivery, particularly for Indigenous Communities. Where possible Indigenous data should be openly shared where there is informed consent and adequate risk mitigation strategies are in place in regards to privacy and data quality management. Integration of Indigenous data would allow greater dis-aggregation of existing data and improve data quality as per the work done as part of the 'Getting Our Story Right' (GOSR) project. This method of deriving Indigenous status has assisted in the better identification of Indigenous status with in incomplete datasets.
- Indigenous Data should not be shared where the outcome (intended or risk of) will have a detrimental impact on the individual or the Indigenous community outside of current legislative frameworks. Example would be the use of data for prosecution or compliance.

## 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?

- As per response to question 3, consideration should be given to the creation of an Indigenous Specific Chief Data Officer role or the establishment of an Indigenous Specific Advisory Council/Board. Both of these should be developed in consultation with the Indigenous Community. Australia is moving into an environment where exceptionally large amounts of information relating to Indigenous Australians is being digitised and discoverable. Clear oversight is required that keeps Indigenous interests central to decisions regarding Indigenous Data (collections and use). An Advisory mechanism will also assist as a mechanism to address issues in regards to accessibility and awareness due to a number of factors that disproportionately affect Indigenous Australians (remoteness, literacy and cultural appropriate language for collection and dissemination).
- The Chief Data Officer should take a key central role in regards to the negotiation process in regards to access to Indigenous Data and resolving disputes.
- Promote transparency in regards to what data has been collected, how and where it has been integrated and the outcomes as a result.
- Where possible, the Chief Data Officer (or their office) should also take the lead in regards to promoting awareness of existing Indigenous datasets to the wider community and assisting in the development of data literacy with in the Indigenous community and Indigenous Service providers.

## 7. Should the WA Government facilitate sharing of information outside the WA public sector? What should be considered when making a decision to share outside the WA public sector?

- As per response to question 5, where possible, Indigenous data should be openly shared where there is informed consent and adequate risk mitigation strategies are in place in regards to privacy and data quality management.
- Key consideration in regards to cross-jurisdictional and cross-sector data sharing outside of risk to privacy should be the accuracy of data. Clear understanding of scope and data quality will be required to ensure concatenation and

concordance of data (e.g. Geography, ontology and interdependence of metadata) to maximise benefit and decrease risk.

- Further principles and considerations are discussed in the response to question 8 as per the five safes and cultural lens for data sharing.

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

- In addition to the 5 safes, a cultural lens needs to be taken in regards to handling Indigenous Data. The 5 safes along with the best practice of F.A.I.R. (findable, accessible, interoperable, reusable) principles in data custodianship focussed on the 'can we', but fails from a Cultural perspective to address the 'should we'. Proposed additional principles to address this are the C.A.R.E Principles. C.A.R.E Principles were drafted in November 2018 at the Indigenous Data Sovereignty Principles for Governance of Indigenous Data Workshop held in Gaborone Botswana by a number of International advocates of Indigenous Data Sovereignty including Ray Lovett and Jan Chapman from Australia. C.A.R.E Principles are designed under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP reaffirms Indigenous rights to self-governance and authority to control their Indigenous cultural heritage embedded in their languages, knowledge, practices, technologies, natural resources, and territories (i.e., Indigenous data).
  - Collective Benefit (Inclusive; improved governance and citizen engagement; equitable outcomes)
  - Authority to control (Recognition of rights; Self Determination; Active stewardship)
  - Responsibility (Positive development; Commitment to enhanced data literacy; Grounded in cultural values)
  - Ethics (Minimise Harm; Addresses power imbalance; for future use).
- Recognition of cultural, strategic and economic asset Indigenous data has on Indigenous people and Indigenous Communities. Principles need to be co-designed with the Indigenous community to ensure they have input in the decision process for information sharing. These principles should also ensure they are designed so as to empower Indigenous communities to address their identified issues and improve informed decision making.

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

- In the first instance, confidential data should only be shared outside of the collecting agency where informed consent has been given. Informed consent should also be as be on an 'opt-in' basis rather than 'opt-out' where data is not already being collected under current legislative requirements.
- Where data is to be shared, all care should be taken to ensure data is not only de-identified but should be de-identifiable (where by data integration and probabilistic match of combined datasets would not allow identification of Individual).

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



- Any implementation of privacy and information sharing involving that of Indigenous data should have the Indigenous Community involved in co-designing the framework and the implementation of policies and legislation. The importance of culturally appropriate co-design with the Indigenous community cannot be stressed more.
- Providing and promoting data literacy with in the Indigenous community. This should also include where possible a centralised portal (data lake) and centralised open sourced analytical tools for the use of Indigenous community and Indigenous Service providers. Where possible, assistance should be provided to Indigenous community members and Indigenous service providers to ensure Indigenous data is utilised effectively and ensuring informed decision making through the use of the latest data of highest quality possible.