

Public Sector Commission: Submission on Privacy and Responsible Information Sharing

The Commission is supportive of the proposed privacy and responsible information sharing legislation and its aims of protecting privacy and supporting the sharing of information within the public sector to improve outcomes for Western Australians. The Commission is available to provide ongoing advice and support during the development of the legislation, for example, in relation to any matters regarding governance, employment and the appointment of statutory officers.

While we acknowledge the importance of protecting the privacy of Western Australians, the Commission suggests the information sharing aspects of the proposed legislation should be sufficiently highlighted, given the potential opportunities to improve sector efficiency and effectiveness.

Comments relating to the Commission's work

Personal information collected, stored and used by the Commission:

The Commission collects, receives and utilises a range of information, such as:

- employment arrangements of public sector staff and executive officers
- applicants for all public sector appointments advertised through the WA jobs board
- minor misconduct allegations against public officers
- disclosures under the *Public Interest Disclosure Act 2003*
- alleged breaches of *Public Sector Standards in Human Resource Management*
- lobbyists and their staff for the purposes of the Lobbyist Register
- opinions and ideas of public sector staff collected through iThink and surveys.

We use information to fulfil our functions under the *Public Sector Management Act 1994*, *Corruption Crime and Misconduct Act 2003*, *Equal Opportunity Act 1984*, *Public Interest Disclosure Act 2003* and *Integrity (Lobbyists) Act 2016*.

We also plan to potentially collect and share more information with agencies in the future, for example, in relation to talent management, to harness opportunities for improvement across the sector. We may also explore opportunities to link standalone datasets so they become more useful.

Public Interest Disclosures

The Commission is also responsible for the administration of the *Public Interest Disclosure Act 2003*. This Act enables people to make disclosures about alleged wrongdoing in the State public sector, local government and public universities without fear of reprisal by ensuring their identity is protected.

The confidentiality provisions in this Act must be preserved given their importance in protecting people that make disclosures.

Exemption from the purposes of the *Freedom of Information Act 1992* (FOI Act)

We understand that consideration is being given to exempting agencies that are currently exempt from the application of the FOI Act. The Commission is exempt from the application of FOI Act in relation to documents originating with or received by the Public Sector Commissioner in relation to her functions under the *Corruption, Crime and Misconduct Act*

2003. We are supportive of the Commission being excluded to enable the provisions of the *Corruption, Crime and Misconduct Act 2003* to operate unencumbered.

Public Sector Management Act 1994 & Administrative Instruction 711: Official Information
Section 9(b) of the *Public Sector Management Act 1994* requires public sector bodies and employees to be 'scrupulous in the use of official information'. This requirement is considered to be consistent with the proposed legislation.

The Commission is also responsible for *Administrative Instruction 711: Official Information*, which restricts a public service officer from disclosing information obtained in the course of his or her official duty, except in the course of official duties and with the express permission of the chief executive officer. This Instruction is being reviewed with a view to updating the content and incorporating the rule within another instrument, at least until this proposed legislation has been enacted. We will ensure that our treatment of this matter is consistent with the proposed legislation. The appropriate use of information is also often referenced in individual agency codes of conduct which would need to be amended following passage of the proposed legislation.

Ability to share information

Workforce and employment information

The Commission collects a significant amount of workforce data relating to individual public sector staff that may fall within the proposed definition of 'personal information'. We share this information across government, largely with central agencies, in de-identified form for policy development purposes. This data is vital for economic forecasting and workforce planning, enabling centralised coordination with and across agencies. However, in some instances it may be possible to identify specific individuals, for example, in small agencies or by position title.

We are aware of issues in other States regarding the use of personal information relating to the employment details of public sector officers. The Commission would welcome the opportunity to work with the Department of the Premier and Cabinet to ensure that information sharing and centralised monitoring and coordination of sector-wide workforce matters is enabled and enhanced.

Diversity information

It is understood that the legislation is likely to include information privacy principles modelled on other jurisdictions. It is noted that the current Victorian *Privacy and Data Protection Act 2014* and its Privacy Principle Number 10 place special restriction on the collection of sensitive information, including information relating to racial or ethnic origin. Organisations can only collect sensitive information under certain circumstances for example, where the individual consents or collection is required by law.

It is vital that agencies and the Commission are able to collect and share diversity-related information about their staff to ensure diversity employment targets can be monitored.

Candidate information & pre-employment screening

We request that the proposed legislation enables the sharing of personal information relating to candidates for public sector jobs who apply via www.jobs.wa.gov.au to be shared across the sector to improve sector recruitment outcomes and reduce application burden for candidates. A number of agencies have expressed support for this idea and consideration is being given to whether this would be via an 'opt in' or 'opt out' mechanism.

The Commission is considering exploring systems to support pre-employment screening to improve integrity. This may, in the future, involve the sharing of employment-related details with prospective public sector employers.

Sector-wide issues

The discussion paper highlights that the reforms are intended to avoid an overly prescriptive approach, and therefore the onus is on public servants to consider the potential benefits or risks that could result from decisions to share information or not, and to be accountable for the decisions made. It is likely that some of these will be complex in nature. Although the design approach is supported, the implementation challenge in relation to agency capacity is significant.

De-identifying information

De-identifying information may assist in the sharing of information between agencies. However, care must be taken to ensure that it cannot be re-assembled to allow identification of the individual. Practices in this area must be sufficiently robust to protect information.

Oversight model

The rationale for the two separate oversight mechanisms is understood. Further information would be beneficial to understand the practicality of the governance model and how it will operate, to ensure this doesn't create unnecessary complexity or compliance, and inconsistency in expectations.