



# Privacy and Responsible Information Sharing discussion paper

## University of Western Australia response

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### Introduction

The University of Western Australia (UWA) welcomes the WA Government's proposal to introduce legislation to support consistent and transparent protections for 1) personal information and 2) responsible information sharing by the WA public sector.

The University is a diverse entity with complex requirements to collect, use and share both personal information and other information in order to carry out operations, education, research, health and international engagements.

The scope of this response is limited to the operation of the University as a business and a provider of educational services.

*Why include public Universities and to what extent?*

The University seeks full inclusion in upcoming State legislation as a leader in the responsible use of information and data and to support the University's 2030 Vision where information is central to our strategic goals.

The University has considered -

- proposals<sup>1</sup> by the Australian Government to introduce legislation for data sharing and release, requiring entities to be regulated under comparable privacy legislation to Federal agencies and accredited to receive Federal data;
- opportunities<sup>2</sup> within Europe, based on adequate or inadequate assessment under GDPR; and
- how the lack of regulations creates a competitive impediment which the University is required to fill contractually or otherwise when privacy and information is central to its services and engagements.

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<sup>1</sup> Australian Government, *New Australian Government Data Sharing and Release Legislation Issues Paper for Consultation*, 2018

<sup>2</sup> WAHTN Letter, 15 April 2019 "*Privacy legislation in Western Australia*", Mr Malcolm McCusker QC

## Consultation Questions

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

- Clarity for sharing of personal data within an organisation, where diversity of function creates multiple purposes for collecting, using and sharing of personal data.
- Compatibility with other jurisdictions both nationally and internationally to create a favourable platform to compete and engage from.
- Consistency between proposed and existing State legislation (State Records Act 2000, Freedom of Information Act 1992 and the Health Services Act 2016) to avoid inconsistent principles for managing information, multiple tiers and/or differing standards for access and correction rights.
- Observance with Federal legislation specific to the Education sector such as Higher Education Support Act 2003, Higher Education Funding Act 1988 or Education Services for Overseas Student Act 2000.
- The inclusion of modern practices such as machine learning, automated decisions making, computing/machine specialisation, data science, business intelligence, business analytics, depersonalisation and re-identification of data.

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 (APP) or other principles in other Australian jurisdictions unsuitable for WA?*

The University supports the creation of principles for WA which are comparable and align with the APPs.

- *Anonymity and pseudonymity*<sup>3</sup> for public authorities. Few occurrences exist where identity is not an important component of dealings with individuals. Any WA principle needs clarity in its applicability.
- Rationalise Principles with aligned purposes such as APP 1, *Open and transparent management of personal information*, and APP 5, *Notification of the collection of personal information*. A Principle requiring a particular set of standard controls (e.g. policy, strategy, management plan, collection notices etc.).
- Introduce additional rights (e.g. erasure and portability) aligning WA with Europe, and other jurisdictions.

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

A Privacy Commissioner should be an independent authority to:

- accept and investigate complaints, receive notifications of breaches, monitor and report annually;
- provide direction and/or rulings relating to the legislation, best practice and breach notifications if requested; and
- be proactive, practical and central to protecting personal information and the mechanisms involved.

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<sup>3</sup> APP 2, but also found IPP 8 - Privacy and Data Protection Act 2014 (Vic)

4). *How should breaches of privacy be managed and what actions should be taken in response to a breach?*

The Mandatory Data Breach Notification Scheme<sup>4</sup>, similar regimes in NSW, Victoria and the GDPR provide a necessary component in achieving and maintaining expectations of transparency and trustworthiness. This should be replicated and extended to -

- allow the Commissioner to instruct notification to individuals, or take direct action in the public interest; and
- require instances of responsible sharing of information to be reported to the Commissioner where challenged by individuals.

5). *When should government agencies be allowed to share personal information and are there any circumstances in which it would not be appropriate to do so?*

The sharing of personal information should be governed using a proposed risk framework, e.g. “Five Safes”. Consistent with the APPs, disclosure of, and the outcomes must meet the purpose the personal information was provided for, and sharing should be transparent. Explicit consent should not be used to circumvent these principles.

Sharing should be formalised under Information/Data Sharing Agreements with such agreements held on an openly available register.

Personal information should not be shared for monetary gain or direct marketing. Health information should continue to be protected further either through current legislation or the incorporation within this proposed legislation.

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

The role should assist in the development of best practice standards and policies, facilitate collaboration between agencies and sectors to establish infrastructure and provide a non-regulatory channel of engagement for the public.

7). *Should WA Government facilitate sharing of information outside of WA public sector and what should be considered when making a decision to share outside of WA public sector?*

The private sector plays a role in supporting a healthy community. Those organisations should be included in the risk management framework through a WA Government process. Accreditations could be provided for components of “Five Safe’ model or similar (*people, settings, projects*). The University could utilise this when setting up sharing agreement, or contracting services.

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

The following criteria would assist the University to assess sharing:

- visibility of existing sharing agreements between parties;

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<sup>4</sup> Privacy Amendment (Notifiable Data Breaches) Act 2017

- organisations accredited or approved for any component of the “Five Safe” framework (*if accreditation is implemented*);
- the history of privacy or information breaches for any organisation; and
- a matrix/model of permitted (legally allowed), permissive (allowed following assessment) and prohibited (never allowed, or specific to a type of organisation).

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

The sharing of confidential information must be considered acceptable under a number of circumstances, particularly where information being shared is being used to promote, inform, build and protect the health of WA communities. Sharing in these instances could be assisted by providing infrastructure such as the necessary platforms for this information, or by mediating the creation of necessary information sharing agreements, and assessing and accrediting the parties involved.

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

- Enable WA institutions and agencies to engage via a State platform into the Federal Accredited Data Service Providers and Accredited Users Scheme<sup>5</sup> when enacted.
- Allow an implementation period for organisations to plan for staff training, change processes and technology uptake.
- Streamline the roles and functions of the existing Information Commissioner<sup>6</sup>, the Privacy Commissioner, any potential Data Commissioner and relevant functions from the State Records Commission.

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<sup>5</sup> Australian Government, *New Australian Government Data Sharing and Release Legislation Issues Paper for Consultation*, 2018

<sup>6</sup> *Freedom of Information Act 1992 (WA)*



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