



Privacy and Responsible Information Sharing

for the Western Australian public sector

Discussion paper



Let's start the conversation

Messages from the Ministers



I believe that the organisation people should be able to trust the most is the Government that serves them.

Privacy is a universal human right. Western Australians should be able to say that their State Government values and respects their privacy as much as they do.

Introducing clear and strong privacy protections for individuals is more important today than ever. The pervasiveness of the internet means that once personal information is released into the public sphere, it can be very hard to control the use of that information.

Our Government has committed to pursuing this legislation because we recognise the community expects the law to enshrine its values and protect them.

I encourage the WA community to engage with this important and long-needed reform.

Hon. John Quigley MLA

Attorney General; Minister for Commerce



In an increasingly data-driven world, there are incredible opportunities for government to use data to deliver more effective, more efficient, and more seamless services.

Better use of data has the power to improve many things we do, whether it is something as simple as renewing a licence, as complex as improving research into children's health, or as important as reducing cases of family domestic violence.

With this opportunity comes significant responsibility, and the use of data by Government needs a solid foundation of data protection and privacy measures to ensure both public good and public confidence.


I welcome your feedback on how a responsible approach to privacy and information sharing can deliver a smarter, more efficient WA.

Hon. Dave Kelly MLA

Minister for Water; Fisheries; Forestry;
Innovation and ICT; Science

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Let's start the conversation



Invitation to comment

What is being discussed?

The WA Government is committed to introducing a whole-of-sector approach to protecting privacy and enabling safe information sharing within the public sector and with authorised third parties. This is aimed at responding to community concerns about privacy and building the trust and social licence necessary to share information responsibly for the benefit of the community.

WA has the opportunity to learn from the legislative models and experiences of other

jurisdictions that already have privacy and information sharing arrangements.

You are invited to provide comment on what you consider the most appropriate legislative and implementation arrangements for WA.

Please note, this discussion paper does not represent official government policy but instead outlines an approach for comment.

How will your feedback be used?

Your feedback will help the WA Government deliver better outcomes by making sure the legislation addresses community concerns as well as meets their expectations and aspirations.

Submissions will be treated as public documents, unless explicitly requested otherwise. A summary of feedback will be released publicly after the consultation period has closed.

If you do not consent to your submission being treated as a public document, you should mark it as confidential, or specifically identify the confidential information, and include an explanation.

Please note, even if your submission is treated as confidential by the Department of the Premier and Cabinet (DPC), it may still be disclosed in accordance with the requirements of the *Freedom of Information Act 1992* (WA), or any other applicable written law.

The DPC reserves the right to delete any content that could be regarded as racially vilifying, derogatory or defamatory to an individual or an organisation.



How can you get involved?

Submissions on the discussion paper can be provided online or in writing via:

privacy@dpc.wa.gov.au

Public Sector Reform Unit

Department of the Premier and Cabinet
Locked Bag 3001
West Perth WA 6872

All feedback must be received by 1st November 2019. Late submissions will not be considered.

If you would like to comment, but prefer not to make a formal submission, we invite you to provide your thoughts through our webpage at wa.gov.au/privacyproject. The webpage includes a portal where you can also provide brief comments.

Consultation and information sessions will also be held on the proposed legislative model and implementation arrangements. For more information, please refer to our webpage at

WA.gov.au/privacyproject

Previous consultations

There have been a number of recent Government reviews that have considered privacy protections and information sharing in Government (see page 21 *Why Government has decided to act*). We have considered submissions made to these reviews and they have helped shape the proposals outlined in this discussion paper. If you or your organisation have previously made a submission on these issues, there is no need to re-submit unless you or your organisation have additional comments on matters raised in this document.

Accessibility

The WA Government is committed to ensuring all Western Australians have the opportunity to provide feedback on the proposed legislation.

The discussion paper is available in an accessible format and hard copies can be provided on request.

Auslan interpreters are available upon request for the information sessions.

If you have any issues accessing the information required, please do not hesitate to contact us by email, phone (08 6552 5000) or mail using the details above.



Tips for your submission

Please keep in mind the following when preparing your submission:

- » Keep your submission clear and concise, using dot points wherever possible
- » You may wish to respond to the questions outlined in the discussion paper. If so, reference them accordingly so there is no confusion as to which section of the paper you are considering
- » Attach any additional information you wish to provide as an appendix and provide details of the source
- » Mark your submission as “**confidential**” if you would prefer for your response to not be made publicly available

Please include your name, organisation and contact details (telephone number and email address) with your submission.



1

In Brief

Why we need a whole-of-government approach to privacy and information

One of our most useful assets is information. If we use information wisely, it has the power to address the needs of our society now and into the future.

The WA public sector holds important information across its agencies that could be better used for the benefit of individuals, families and the community. However, members of the public rightfully expect that their privacy will be protected, and that there will be transparency in how their information might be used.

The WA Government is proposing to introduce a whole-of-government framework to govern the way the public sector manages the information it holds.

The WA Government recognises that privacy is of the utmost importance to Western Australians and acknowledges the need to consult thoroughly to ensure any legislation protects sensitive information while enabling it to be shared in an efficient and safe manner where it is deemed of benefit to individuals and the community.

This discussion paper is aimed at giving you as much background as possible as to the need for changes to the State's privacy and information sharing policies, as well as the ways we can implement these changes. We look forward to your considered feedback.

This discussion paper addresses the following issues:



Western Australia is one of only two jurisdictions in Australia without overarching privacy legislation.

While some legislation regulates the use of confidential information and offers some privacy protections to individuals in particular circumstances, these operate in an ad hoc and sometimes inconsistent manner. Introducing a comprehensive privacy framework to regulate the way the WA public sector collects, uses, discloses and handles personal information will address this.



If someone believes their information has been incorrectly handled or shared, they should have a clear pathway for complaint and resolution.

The Government is proposing the appointment of a WA Privacy Commissioner to promote privacy measures and ensure accountability, as well as receive and resolve complaints.



The absence of overarching privacy legislation has resulted in a reluctance from other jurisdictions, including the Australian Government, to share information that could be beneficial to Western Australians.

It is in the community's interests that the WA Government breaks down these barriers and encourages responsible information sharing that will result in better outcomes in key areas such as health, education, planning and research.



While members of the public are concerned about how their information is shared, they are also frustrated by having to give the same details to multiple government departments.

Sharing information such as addresses or phone numbers across agencies could help reduce bureaucracy and streamline services.



The WA Government recognises there are many different types of information, some more sensitive than others, and that public sector agencies will require training and direction to ensure acceptable reasons for sharing information they hold.

The Government is proposing the appointment of a Chief Data Officer, with responsibility for supporting the public sector in the correct use and reuse of information, as well as management of data.



Overarching framework

Proposed model:

- A strong framework to protect privacy of personal information
- Whole-of-government standards for the responsible collection, management and use of personal information
- A comprehensive and consistent framework to govern the responsible sharing of information within Government and with authorised third parties
- Provisions to enable the use of information to deliver better services and outcomes
- Mechanisms to ensure accountability and public confidence through independent oversight and clear pathways for resolving complaints

Approach:

- Privacy elements will relate to protecting personal information within the WA public sector, while other provisions will relate to sharing a range of information.
- Will apply to the WA public sector and include sharing provisions for authorised third parties such as universities, other Governments and non-government organisations that are delivering services on behalf of government.

The framework will facilitate information sharing for:

Evidence-based decision making

Inform the design, implementation and evaluation of policy, programs and services.

Service delivery

Enable a citizen-centred approach to effective service delivery and efficiency in government operations.

Research and Development

Support broader independent research insights and outcomes.

The legislation will be based on a foundation of privacy principles, transparency and independent oversight.

- Privacy principles which place obligations on the public sector, and give protections to those whose information is held by the WA public sector.
- An independent body which is able to receive and resolve privacy complaints from the public
- Transparency around the appropriate purposes and circumstances for sharing information

For more information about the Australian Privacy Principles, which are a guiding framework for WA's proposed privacy model, please see the Office of the Australian Information Commissioner's website at:

<https://www.oaic.gov.au/privacy-law/privacy-act/>

New privacy protections for the personal information held by the WA public sector, supported by clear rules for responsible information sharing, will help protect people's privacy while unlocking the value of data to deliver better services and outcomes for the community.

Western Australia remains the only Australian jurisdiction without privacy and/or data sharing legislation.

The absence of comprehensive privacy and information sharing frameworks in Western Australia means personal information is protected by a patchwork of rules, and public sector agencies must operate within a complex, inefficient system in order to lawfully and responsibly manage and share the information they hold.

This has resulted in:

- fragmented and unclear protections for those whose information is held by the WA public sector, with no specific avenue by which privacy complaints can be resolved;
- reduced public trust and confidence in how data is stored, used and shared;
- an inconsistent and generally risk adverse approach to information sharing between agencies; and
- reduced collaboration and evidence based decision making.

A range of reviews, inquiries and inquests, as well as broader stakeholder feedback, highlight the pressing need for action.

Delivering better outcomes for Western Australia

Stronger protections for privacy



- Ensures non-negotiable standards for the collection, management, use and disclosure of personal information.
- Gives clarity for the circumstances in which personal information can or can not be shared.

Improved accountability and transparency



- Provides for independent oversight and a mechanism where public complaints can be addressed.
- Ensures accountability within the WA public sector for the handling of personal information.
- New governance and reporting arrangements for data sharing to improve accountability and transparency.

Better services and outcomes for the community

Enabling the WA public sector to responsibly share information will:



- Make it easier and more convenient to interact with government. This also means that services can be better tailored or designed to meet your needs.
- Enable better decisions and planning for the future about the services that it provides, like where to prioritise transport, health and education investments.
- Enable new insights into how best to tackle complex economic, environmental and social issues creating a safer and fairer society for all.



2

What are the issues being considered?

The WA Government provides a range of services and programs aimed at improving the quality of life for Western Australians. To deliver these services, the Government collects and holds a lot of information.

Some is not sensitive, such as information about the physical environment. Other information is highly sensitive, including details about people's health and financial circumstances.

People rightfully expect that this information will be treated confidentially and held securely. The WA Government recognises that community concerns about privacy are increasing and proposes to address this with overarching privacy protections for those whose information is held by the WA public sector.

The WA Government also understands that while people want their personal details protected, they are often frustrated by the need to provide the same information to multiple government agencies. In a time of changing technologies and expectations that services should be more accessible, the WA Government also looks to modernise to better meet people's needs.

The WA public sector and WA researchers have long demonstrated the value of sharing and linking data. History shows that when information the WA public sector holds is shared between agencies, and with authorised researchers, it can deliver new and important insights in areas such as population health and child development.

It can also support a more effective public service by identifying those who would benefit most from services and support.



However, the WA Government recognises it needs to address how it can provide improved, whole-of-government standards for privacy, while still enabling the use of information to support better decision making and outcomes for individuals and the community, including businesses.

Changing attitudes to privacy

A 2017 survey conducted by the Office of the Australian Information Commissioner found that the majority of Australians are more concerned about the privacy of their personal information when using the internet than five years ago.¹

¹ Office of the Australian Information Commissioner. 2017. Australian Community Attitudes to Privacy Survey, p.i

The need for whole-of-government privacy protections in WA

At an agency level, the WA public sector has systems and processes to protect personal and sensitive information. There are also avenues to penalise public servants found to have misused information. However, whole-of-government arrangements to protect privacy will improve the system. These should include independent oversight, and increased accountability and transparency in the protection and use of information – particularly where it is personal or sensitive.

A whole-of-government legislative framework to protect privacy and responsibly share information is important to demonstrate accountability and transparency in how the WA Government uses information.

The personal information that the WA public sector holds

In conducting a 2011 report on the management of personal information, the Ombudsman found that three WA public sector agencies held the names and addresses of 1.38 million people, photographs of 123,440 people, the banking details of 311,000 people, and information about the next of kin of about 40,000 people.³

The lack of privacy specific legislation in WA

Privacy legislation was introduced into most Australian states and territories following enactment of the *Privacy Act 1988* (Cth), which does not generally apply to the handling of personal information by individuals or state governments. Only the WA and SA Governments do not have specific privacy legislation (although the SA Government has privacy-specific administrative instructions).²

In 2007, the then WA Government recognised the need for privacy legislation with its Information Privacy Bill. This Bill passed through the Lower House, but lapsed as a result of a State election being called.

The 2007 Bill sought to:



Regulate the handling of personal information by the WA public sector



Establish an accessible framework for the resolution of complaints about the handling of personal information



Facilitate the exchange of personal information held by the WA public sector when it is in the public interest to do so

² Government of South Australia. *Department of the Premier and Cabinet Circular PC012 – Information Privacy Principles Instruction*. 6 February 2017.

³ Ombudsman Western Australia. 2011. *The Management of Personal Information – Good Practices and Opportunities for Improvement*, p13.



Privacy in the WA public sector today

The regulation of privacy and disclosure of personal information in the WA public sector is governed by a combination of common law, entity-specific legislation and regulation.

Where information is obtained for a specific purpose under legislation, the common law imposes limitations on the subsequent uses to which that information can be put. Generally, information obtained under these arrangements may only be used for the purpose for which it was obtained unless there is some other overriding legal reason to use the information in a broader manner.⁴ In the absence of a legislative framework overriding or displacing the common law, this principle applies generally in WA.

As an example of entity specific legislation, the *Health Services Act 2016* (WA) includes a privacy provision that prohibits a person from collecting, using or disclosing any personal information obtained in the course of their employment except in certain circumstances, for example, in the performance of their duties or with consent.

If an individual believes their privacy has been breached by the WA public sector, there is currently no specific body they can bring a privacy complaint to. There is also no body with responsibility for the education and promotion of privacy within the public sector.

Privacy protections elsewhere in Australia

Generally speaking, privacy is protected in other jurisdictions by legislation that provides:



A **set of principles** to be followed in the collection, management and use of personal information



A **privacy oversight function** with a range of powers relating to receiving and determining complaints from individuals about alleged violations of privacy



The **ability for an individual to access** or correct their personal information⁵

Perhaps most importantly, these privacy statutes make organisations accountable to the public in matters relating to privacy. They provide an independent body to which members of the community can bring complaints about potential breaches of privacy and have those complaints resolved.

This also provides clarity as to what is and isn't an acceptable use of personal information.

⁴ *Johns v Australian Securities Commission* (1993) 178 CLR 408.

⁵ In WA this right of access is provided for by and subject to the *Freedom of Information Act 1992* (WA).



We consider that State privacy legislation is essential to support and enable current and future health and social research in WA, and to improve outcomes for Western Australian citizens.

Malcolm McCusker AO QC

*Chair of the Governing Board,
Western Australian Health Translation Network*



Legislation to support better services

Members of the public often experience frustration at having to provide the same information to multiple government agencies.

The WA Government's ServiceWA initiative is a pilot of a new 'one-stop shop' trialling a new way of delivering government services to the community.

ServiceWA is shifting the focus from traditional siloed government structures to put the community at the centre of service delivery, and enable access to services in a simplified way.

By enabling the sharing of personal information specifically for the purposes of providing services to an individual, legislation will enhance initiatives such as ServiceWA by helping to break down organisational and legislative barriers that can preclude the sharing of information.

Sharing information within Government and with those that are providing services on behalf of Government will also support improved services, particularly for those people and families that have a need for services across several agencies. This is particularly important in times of stress, such as supporting a loved one with a mental illness or seeking help for a young person at risk of harm. By sharing information about a person across agencies it is possible to see and understand the person's whole circumstances and needs. This would allow

services to be better tailored and designed so that the person's interactions with government are more seamless.

Sharing information across Government will also provide better insight into how effective programs and services are in tackling the complex problems faced by many people and communities today. Gaining new insights would lead to better decisions including identifying different solutions and ways of working and redirecting resources from less effective services to the services that will deliver improved outcomes.





The need for information sharing legislation

The lack of whole-of-government privacy legislation has led to WA public agencies and other Governments, particularly the Australian Government, being generally reluctant to share data in an effort to manage risk in an uncertain legal environment.

The absence of a clear, whole-of-government privacy framework has resulted in considerable complexity, inconsistency and inefficiency in how public sector agencies approach the management and use of information.

Restrictive policies and practices designed to keep sensitive information confidential are sometimes extended to information that could be safely shared. What begins as a sensible approach to manage privacy and confidentiality in one situation permeates other practices, inhibiting cross-government service provision and evidence-based decisions to keep people safe and benefit the community. This situation is sometimes compounded by the heavy penalties for the breach of statutory secrecy provisions, and in others it is compounded by uncertainty in the specific legal framework.

In some cases, this results in public sector agencies duplicating the collection of information from individuals, communities or businesses. This is not only inefficient but often contrary to the expectations of the public, many of whom assume that agencies will safely share information they provide.

More recently, the Governments of NSW, Victoria and South Australia have all introduced legislation in response to changes in technology, community expectations of government services, and attitudes to data. This legislation supports information sharing and data analytics within the public sector and, in some cases, the sharing of data with authorised third parties where there is a public benefit.

Supporting tenants with a history of disruptive behaviour

The Western Australian Auditor General commented in the report *Managing Disruptive Behaviour in Public Housing* that “the Department (of Communities) relies heavily on support from a variety of agencies and service providers to effectively manage tenants, but staff are not routinely informed of critical information...”

The report noted that the Department has challenges in sharing information due to privacy concerns. It was also identified that there were “missed opportunities for the Department, Police and support service providers to work together to support tenants with a history of disruptive behaviour.”

The report’s key findings included that “Information sharing within and between agencies is also inadequate. Staff are not routinely informed of the outcomes of referrals to mental health and child protection service providers for tenant support. This limits the Department’s understanding and ability to effectively identify and help vulnerable tenants to succeed in public housing.”⁶

⁶ Office of the Auditor General. 2018. *Managing Disruptive Behaviour in Public Housing*, p. 21.



I welcome the development of WA data sharing legislation to provide a strong framework to ensure that data is used for public good whilst protecting individual privacy.

As a child health researcher, the use of data to answer important questions about issues that affect children and their families is integral for the prevention and treatment of illness and adverse outcomes. Data collected by government agencies is an important resource which needs to be used by government and researchers to ensure policy, programs and interventions are achieving the best outcomes for Western Australians.

Professor Fiona Stanley AC
Patron, Telethon Kids Institute



The benefits of privacy and responsible information sharing legislation

Stronger protections for privacy

Privacy legislation would protect the personal information of individuals that is held by public sector agencies by regulating the way in which such information is collected, stored, used and disclosed.

Complementary information sharing legislation can provide clarity for the circumstances in which information should or should not be shared and could also set expectations for security and safety of that information.



Improved accountability and transparency

By creating independent oversight and a mechanism for public complaints to be addressed, the proposed legislation would introduce improved accountability within the public sector for the handling of personal information.

A privacy framework would also provide appropriate safeguards, through independent oversight of systems and decisions, with clearer pathways for the resolution of privacy complaints.

Governance and reporting for certain data sharing arrangements could also help create accountability and transparency.



Better outcomes for the community

Many problems facing the community are complex and do not have a simple solution – for example, improving the health and wellbeing of children, or reducing illicit drug use.

By sharing information and integrating data sets, researchers and policy makers can gain new insights and develop solutions that are tailored and forward-looking. The WA Government has launched a set of whole-of-government targets - ‘Our Priorities: Sharing Prosperity’ - to mobilise the public sector around these issues.

Information sharing supports a holistic approach to case management, particularly for our most vulnerable, and could improve the overall experience for individuals and families. Collecting and analysing data from multiple agencies helps establish a clearer picture of circumstances unique to that person or household and enables case workers to make more informed decisions.

Information sharing could also support easier, more convenient interactions with government for individuals, communities and businesses.

Improving outcomes for young people leaving care

The Western Australian Auditor General commented in the report Young People Leaving Care that “a lack of information exchange between district offices and service providers can affect whether a young person accesses support” and found that “service expectations were not always clear nor was information effectively shared to improve the outcomes for young people. For example, referrals often missed key information such as the young person’s history, living arrangements at the time and support needs.”

In one region, the leaving care provider and district office have established a memorandum of understanding to “to improve and support liaison and communication between the two parties to improve outcomes for young people. The chief executive of the not for profit advised that this had greatly improved the working relationship and made it easy to escalate issues if required.”⁷

⁷ Office of the Auditor General. 2018. Young People Leaving Care, p. 21.

Efforts already unlocking the public value of information

Recognising the value of data sharing, the WA public sector has a longstanding successful record of capitalising on the public value of safely linking data sets across Government.

The sector has contributed to world-leading population health research through its WA [Data Linkage System](#) and developed innovative, publicly available, location-based information services through the [Shared Location Information Platform](#).

In an effort to increase and capitalise on the value of sharing information within Government and, where appropriate, with the public and authorised third parties, the WA Government introduced a [Policy Framework and Standards for Information Sharing between Government](#)

[Agencies](#) (introduced 2003 and updated 2017) and a [Whole of Government Open Data Policy](#) in 2015.

However, these policy documents do not overcome the legislative barriers or deficiencies impacting on data sharing between agencies.



Data is a rapidly emerging resource that has been described as the new gold. Western Australia's capacity to harness its data and information assets is key to the State's capacity to prosper in the digital era and solve complex societal challenges. This includes building on Western Australia's exceptional data linkage capabilities which have been utilised for decades to solve numerous health challenges. I am pleased to support the development of Western Australian legislation that will facilitate sharing of data whilst protecting privacy.

Professor Peter Klinken AC
Chief Scientist of Western Australia





Photo courtesy of Department of Fire and Emergency Services

Western Australian Data Linkage System (WADLS)

The WADLS achieves secure linkage while protecting individuals' privacy. This enables the creation of integrated data sets spanning multiple sources, which can be used for activities such as policy development, service planning and evaluation, health surveillance, innovation and research. From its modest beginnings in 1995, the WADLS is now among the most comprehensive, high quality and enduring linkage systems worldwide. The WADLS spans about 50 data collections, representing more than 115 million linked records, some dating back to 1945. Additionally, about 350 data collections have been linked on a one-off basis for specific research projects.

More than 800 projects have used WA linked data since 1995. These projects have come from university, government and hospital-based settings and have often involved collaboration between diverse research groups.

Despite the volume of information held by the WADLS, which is managed and largely funded by the Department of Health, no breaches of private information have occurred since its inception. The WADLS has also pioneered significant initiatives, including proof-of-concept linkages such as the creation of cross-jurisdictional links between Commonwealth and WA datasets, and technical innovations such as the Family Connections system of genealogical links.

Real-time information for emergency management

The WADLS framework has helped to ensure that WA Government agencies involved in emergency management have access to foundation data from relevant agencies and data custodians. SLIP provides a means to access that data. The establishment of web mapping services across Australia and internationally is assisting better sharing and real time access to information. For example, the Department of Fire and Emergency Services uses these web services to access real time weather information from the Bureau of Meteorology and real time satellite monitoring services from external organisations, and to share operational information between agencies (some of this through SLIP).⁸

⁸ Data Linkage Expert Advisory Group, A review of Western Australia's data linkage capabilities, 2016



Shared Land Information Platform (SLIP)

The SLIP was established by Landgate in collaboration with the then Department of Planning, Fire and Emergency Services WA and the Department of Food and Agriculture WA.

It shares government land and geographic information to improve access and use of spatial data within Government, business and the community. The project has expanded beyond the original four focus areas of emergency management, natural resource management, register of interests, and electronic land development process to collaborate in areas of social inclusion, marine area management and health surveillance.

Open Data in WA

The WA Open Data Policy leverages the State's long history of data sharing. Putting this policy into practice has also drawn on the experience of other Australian and overseas jurisdictions.

The WA experience encompasses a broader definition of data sharing. Discoverability is the primary aim of this approach. Simply being able to discover a data set exists, through a single service in data.wa.gov.au, avoids the need to search various web pages or catalogues.

As of April 2019, a total of 2,266 data sets from 66 organisations are shared through data.wa.gov.au. About 500 of these data sets are shared securely within the same platform for use within Government, avoiding unnecessary duplication.

The WA approach also caters for a range of licensing arrangements and chargeable access to data where required under legislation. These data sets are being re-used across public, private and research sectors to improve service delivery, create new data-driven businesses, such as those recognised through the WA Innovator of the Year program, and to support research and development.



Sharing insights into WA's unique flora and fauna

About \$32 million is spent each year collecting biodiversity data to support environmental assessments under the Environmental Protection Act 1986. Yet before the development of the Index of Biodiversity Surveys for Assessments (IBSA) in May 2018, this information was not centralised or easily discoverable.

Once data has been used for assessment purposes, the Department of Water and Environmental Regulation makes basic metadata for each survey publicly available online via the IBSA web portal. The consolidation of biodiversity data contributes toward an expanded knowledge base for WA's unique flora and fauna.

This provides for:

- Improved availability of information for government, stakeholders and the community
- More efficient assessments for stakeholders, due to reduced costs and delays associated with poor availability of biodiversity data
- Improved strategic planning, decision making and management by environmental regulators.

Information provided by the Department of Water and Environmental Regulation

Why Government has decided to act

Responding to reports and recommendations

Recent reports focusing on the need for reform in the WA public sector have identified the need for legislation to provide privacy protection and facilitate information sharing. Such legislation is recognised as an important enabler for a modern and responsive government.

In 2016, the **Data Linkage Expert Advisory Panel** reported on a review of WA's data linkage capabilities, including a whole-of-government approach on how to better connect data. The panel's recommendations included the introduction of privacy legislation and the investigation of policy or legislative mechanisms to better enable the sharing and linking of government data⁹.

In 2017, the **Service Priority Review** reported on its examination of the WA public sector with the aim of driving lasting reform, promoting person-centred service design and delivery, and greater collaboration across government. The review supported improvements to sharing and using information to leverage the value of data for community and financial benefits. The report recommended a specific action to 'develop legislation and processes to facilitate

information sharing while protecting sensitive personal and other information'¹⁰.

The **Sustainable Health Review Panel** published its final report to government in 2019. The review was held to recommend measures to prioritise the delivery of patient-centred, high quality and financially sustainable healthcare across WA. The panel recommended that Government invest in digital health care, use data wisely and prioritise the introduction of data sharing and privacy legislation for WA.

Other considerations in implementing these recommendations included:

'Development of key policy frameworks in health for informed consent for the use, sharing and release of data'; and

'Introducing modern governance for more timely and comprehensive whole-of-government and research access to data linkage services for more effective research, service planning and investment to meet community needs'.¹¹

In response to the Service Priority Review, the Sustainable Health Review and other recent reviews, the WA Government has developed a [Roadmap for Reform](#). Introducing legislation to protect and use information responsibly to deliver more effective policies and services is one of 20 early initiatives prioritised under the WA Government's Public Sector Reform Program.

⁹ Data Linkage Expert Advisory Group, [A review of Western Australia's data linkage capabilities](#), 2016, pp.53-58.

¹⁰ Department of the Premier and Cabinet, 2017, [Service Priority Review](#), 60- 67

¹¹ Department of Health, 2019, [Sustainable Health Review](#), p.97.



In my role as a community health nurse, information sharing is essential to ensure the safety and wellbeing of children together with my own safety in the workplace. More timely and joined up information sharing would assist me to better assess and manage a family's risk with the aim of keeping children, families and community nursing teams safe and well.

As a community nurse this should include information about the child, situations involving family violence, substance misuse or any circumstance which pose a risk to families and/or staff. Whilst we have clear policy which support the safety of nursing teams, children and their families, improved information sharing will be of great benefit in ensuring we all work together to support families and their care providers.

Barbara Colborne

*Clinical Nurse, Child and Adolescent
Community Health*



What we have heard so far

In developing this discussion paper, submissions made to the following have been reviewed:

- 2016 Data Linkage Review
- 2017 Service Priority Review; and
- Australian Government consultation on a proposed Data Sharing and Release Bill.

The key themes and insights from these submissions have helped shape the proposed legislative model outlined in this discussion paper.

There is broad consensus that responsibly unlocking the value of information held by Government will improve decision making and

the way Government operates, ultimately resulting in better services and outcomes for individuals, the community and businesses.

Questions for consideration

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



Previous consultation on data sharing

General support for:



Information being shared between government agencies to support service delivery



Sharing of data for research when in the public's interest



A principles approach to sharing data such as the 'Five-Safes' model



Transparency around how data is collected, used, stored and managed by government

Highlighted the need to have:



Rigorous privacy protections



Clear guidelines to inform how information is shared



Mechanisms to share information with authorised third parties



Appropriate repercussions/redress for data misuse



Appropriate systems and capabilities across the Government to unlock the true benefits of data sharing

Concerned about:



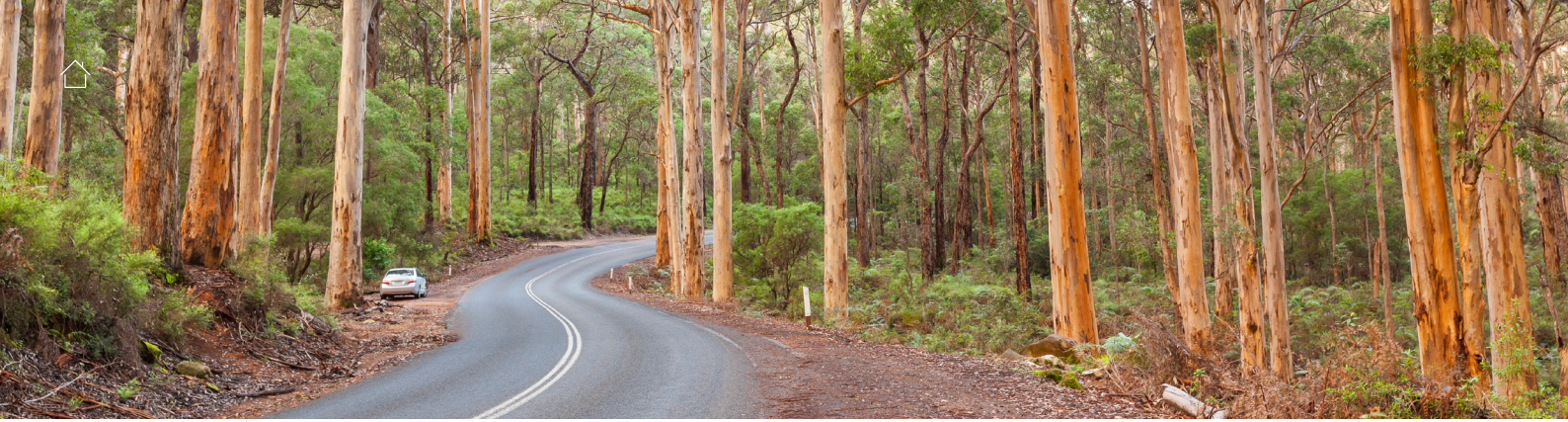
Enabling third parties to use information which is not in the public's interest



Sharing information to enforce compliance



Undermining existing provisions, such as national security



4

Key principles guiding the proposed approach

Privacy and information sharing is a complex and dynamic area, with a wide range of possible implementation models. The WA Government provides the following principles for you to consider when making a submission to this discussion paper.

These principles aim to broadly illustrate the desired outcomes and constraints. You are encouraged to think about how these principles may apply to Government acting on any recommendations you make in your submission.



Protecting privacy while considering what is in the best interest of the public

The WA Government wants to provide clear, strong protections for personal information held by the public sector, but also needs to share information within the public sector where it would benefit individuals or the community, and where it is safe to do so. In certain circumstances, the interests of privacy will need to be weighed against other public interests, such as health and safety concerns.

Alignment with other jurisdictions

The WA Government sees benefits in aligning proposed new privacy and data sharing legislation with models already in use within Australia and internationally, where practical. The benefits include:



Consistent and efficient processes between jurisdictions, and in dealings with organisations that must comply with Australian Government privacy legislation



Access to skills and technologies from other jurisdictions



Simplified roll-out due to better understanding of implementation issues



Simplification for citizens with privacy issues crossing jurisdictional boundaries

The Australian Government is also in the process of drafting its own data sharing and release legislation.¹² Should this legislation be enacted, some public sector agencies, universities and government service partners may seek to align their policies and practices to enable sharing with Australian Government agencies.

Missed opportunities for national initiatives

In September 2016, states and territories were invited to take part in a pilot project linking national vocational education and training contract data with Australian Taxation Office data to explore whether salaries increased after completing training. Since data linkage and data sharing were not explicitly listed as a purpose for which the information might be used under the WA apprentice and trainee (A&T) training contract, student consent could not be assumed. On this basis, WA decided that it could not take part in the project. This represented a missed opportunity to fill the gap in detailed information on employment and salary outcomes post-training, including why these differ for some groups.

Due to the restrictive information sharing regime applied under WA mine safety legislation, WA was unable to contribute data to the now decommissioned National Mine Safety Database. The database intended to facilitate sophisticated analysis of mine safety and health data from across Australia. The database did not proceed due in part to the inability of key jurisdictions to contribute data, resulting in the database not being 'technically and legislatively feasible'.

Information provided by Department of Mines, Industry Regulation and Safety

¹² Department of the Prime Minister and Cabinet, 2018, New Australian Government Data Sharing and Release Legislation: Issues paper for consultation. Retrieved 20 April 2019 from <https://pmc.gov.au/resource-centre/public-data/issues-paper-data-sharing-release-legislation>



Building on our successes while managing implementation costs and risk

It makes sense to build on WA's strong track record of using information to drive better outcomes for the community.

The WA Government aims to leverage existing investments, capabilities, and frameworks for protecting privacy and managing information across the State.

Any proposed model must be balanced against practical considerations of the public sector's ability to adopt changes without unnecessary costs or risks.

Including the right organisations

The proposed approach aims to make sure the right organisations are included within the scope of the legislation to achieve the desired benefits. This would be broader than the definition of the public sector as used in the *Public Sector Management Act 1994 (PSM Act)*, and could include those entities detailed within Schedules 1 and 2 of this Act.

This would give the opportunity to include not just WA Government departments, but also public organisations such as statutory entities, local governments, public universities, and Government trading enterprises.

However, Government recognises that it may be appropriate to exclude, wholly or partially, some public sector entities, and seeks to get the balance right.

Right sized bureaucracy

At its heart, this project seeks to ensure the WA public sector can deliver information where it needs to go efficiently and safely, and that information doesn't go where it shouldn't.

Any new changes should support an efficient and modern public sector. Rules, governance and processes should be 'right sized' and should cut, rather than create, red tape.

The proposed legislation would specifically override legal obstacles to sharing information within the public sector. In other words, information sharing could be allowed even if there is an existing law preventing it, unless that information is specifically excluded from the new legislation.

There is no intention to detract from arrangements that are effective and have agency and community support. The proposed legislation should only override existing provisions if there is benefit in accessing more efficient procedures, and it is appropriate and safe to do so.

The WA Government proposes for this to be a permissive framework that agencies can use to meet community needs, rather than a mandatory one compelling the sharing of information.



Responsive and future-proof

Privacy and information sharing is a dynamic area. Developments in technology have had significant impact on public opinions of privacy and the consequences for breaches for individuals.

It is reasonable to assume that the speed of changes will continue, so new legislation needs to be able to respond to future developments. Any legislative model should enable a pragmatic, risk-based approach to privacy and information sharing that can accommodate future change.

As an example, privacy legislation in other Australian jurisdictions is primarily principle based. This allows for flexibility and interpretation within a range of contexts and changing circumstances.

Similarly, any information sharing framework will need to be applicable to a broad range of purposes, information types and organisational contexts. This is why the WA Government is proposing to use the Five Safes (see page 38 *A best practice framework for safely sharing information*) as the basis of its data sharing framework. This risk-based decision-making process will assist agencies by applying a consistent framework to determine whether or not to share information in a wide range of applications.

Legislative impediment to seamless licensing interactions

More than 39 000 licensees hold more than one type of licence administered by the Department of Mines, Industry Regulation and Safety (as at September 2018, excluding dangerous goods licences). Under the *Fair Trading Act 2010* (WA), the sharing of a person's licence information is limited to the purposes of determining whether another type of licence should be granted. This means that information provided and updated by licensees cannot be extrapolated to all their records without their express consent. For example, a change of address provided for a consumer protection licence cannot be updated for the same person's electrical worker's licence, meaning the person would have to notify the department of the change separately. This works against the concept of joined-up service delivery and implementation of a 'tell government once' strategy for affected licensees.

In contrast, the NSW Government has launched an online initiative that helps people get their businesses off the ground. It has condensed 48 forms and 75 regulations into one single digital form and allows access to 13 government agencies through a single digital solution.¹³

¹³ NSW Government. Improving government services. 2018. Available from: <https://www.nsw.gov.au/improving-nsw/premiers-priorities-2015-2019/improving-government-services/>



5

Proposed approach to privacy and responsible information sharing

The WA Government recognises that it needs to get the right balance of restrictive and permissive provisions to protect people’s privacy, while still enabling information to be appropriately used.

This means the Government will need to provide clear rules for what information can – or can’t – be used, by who, and for what purposes. There will also need to be independent oversight and a place to bring complaints if you believe your privacy has been breached.

This section sets the framework within which the WA Government proposes to manage these considerations.

Protecting the privacy of Western Australians

The WA Government proposes to provide for the privacy of those whose personal information is held by public sector agencies by establishing standards for the collection, use, storage, disclosure and correction of personal information held by government.

It is proposed this will be supported by an independent privacy oversight body, led by a WA Privacy Commissioner, to ensure accountability and transparency.

Principle-based protections for privacy

The WA Government proposes to use the *Australian Privacy Principles*, as detailed within the *Privacy Act 1988* (Cth), as the basis for establishing regulation for the collection and use of personal information.

In its 2008 review of the *Privacy Act 1988* (Cth), the Australian Law Reform Commission expressed its preference for principles-based regulation, and used them “*as its guide in developing the tools for regulating privacy.*”¹⁴ In addition to the benefits of aligning WA’s legislation with national legislation, adopting a principles-based approach allows for flexibility in a wide range of scenarios within the public sector’s diverse organisations.

Given the dynamic nature of the issues that privacy regulation seeks to address, a principles-based approach also allows for a regime that addresses issues as they arise, without the need for new rules. However, if it is deemed appropriate or beneficial, specific rules could also be included.

Other Australian states with privacy legislation have similar principles to that of the Australian Government but have adapted them to their own needs.

The WA Government is not proposing to use the Australian Privacy Principles verbatim as the basis of its own legislation. Primarily, this is because these principles are designed to apply to a broader range of contexts and organisations than the WA public sector.

¹⁴ *For Your Information: Australian Privacy Law and Practice (Volume 1)*. Australian Law Reform Commission. 2008, p. 240.

Australian Privacy Principles

- 1 **Open and transparent management of personal information**
Ensures that APP entities manage personal information in an open and transparent way. This includes having a clearly expressed and up-to-date APP privacy policy.
- 2 **Anonymity and pseudonymity**
Requires APP entities to give individuals the option of not identifying themselves, or of using a pseudonym. Limited exceptions apply.
- 3 **Collection of solicited personal information**
Outlines when an APP entity can collect personal information that is solicited. It applies higher standards to the collection of 'sensitive' information.
- 4 **Dealing with unsolicited personal information**
Outlines how APP entities must deal with unsolicited personal information.
- 5 **Notification of the collection of personal information**
Outlines when and in what circumstances an APP entity which collects personal information must notify an individual of certain matters.
- 6 **Use or disclosure of personal information**
Outlines the circumstances in which an APP entity may use or disclose personal information that it holds.
- 7 **Direct marketing**
An organisation may only use or disclose personal information for direct marketing purposes if certain conditions are met.
- 8 **Cross-border disclosure of personal information**
Outlines the steps an APP entity must take to protect personal information before it is disclosed overseas.

- 9 **Adoption, use or disclosure of government related identifiers**
Outlines the limited circumstances when an organisation may adopt a government-related identifier of an individual as its own identifier, or use or disclose a government-related identifier of an individual.
- 10 **Quality of personal information**
An APP entity must take reasonable steps to ensure the personal information it collects is accurate, up-to-date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up-to-date, complete and relevant, having regard to the purpose of the use or disclosure.
- 11 **Security of personal information**
An APP entity must take reasonable steps to protect personal information it holds from misuse, interference and loss, and from unauthorised access, modification or disclosure. An entity has obligations to destroy or de-identify personal information in certain circumstances.
- 12 **Access to personal information**
Outlines an APP entity's obligations when an individual requests access to personal information held about them by the entity. This includes a requirement to provide access unless a specific exception applies.
- 13 **Correction of personal information**
Outlines an APP entity's obligations in relation to correcting the personal information it holds about individuals.

Questions for consideration

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?

More information about the Australian Privacy Principles can be found at the website of the Office of the Australian Information Commissioner at: <https://www.oaic.gov.au/privacy-law/privacy-act/australian-privacy-principles>



A WA Privacy Commissioner to ensure accountability and transparency

The Government proposes the appointment of a WA Privacy Commissioner to support accountability for public sector agencies in meeting privacy obligations.

A Privacy Commissioner could facilitate transparency, be responsible for promoting privacy within the public sector and ensure privacy principles are abided by.

A Privacy Commissioner could also receive relevant complaints from members of the community who believe their privacy has been breached, and be charged with resolving those complaints.

In other jurisdictions, privacy oversight is performed by an agency that carries out other similar independent functions. Often privacy oversight is performed through an agency that also has oversight of a freedom of information regime. A similar structure could be adopted in WA.



Privacy oversight roles in other jurisdictions fulfil responsibilities such as:

- Administering regulation
- 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
- Issuing protective data security standards and promoting their uptake
- Monitoring and assurance activities to assess compliance with standards
- Providing advice and proposals to Government or Ministers for legislative or administrative change
- Providing submissions to enquiries and reviews on privacy-related matters
- Providing oversight for the exemption of an agency from privacy principles in limited circumstances

The WA Privacy Commissioner could also have a role in overseeing parts of any proposed data sharing framework.

Questions for consideration



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



Providing a pathway in response to privacy complaints

Under some existing WA legislation, it can be a criminal offence for a public servant to make an unauthorised disclosure of information they have obtained because of their position.¹⁵

Further, the *Public Sector Management Act 1994* requires public sector bodies and employees to act with integrity and be scrupulous in the use of official information, and requires adherence to administrative instructions and public sector standards and codes of ethics. These provisions, while responding to breaches of privacy, do not allow an individual whose privacy has been breached to take specific action in response to the breach.

Consistent with other Australian jurisdictions, the proposed legislation could enable the public to make privacy-related complaints directly to a Privacy Commissioner or other similar officer charged with the responsibility for managing and resolving privacy complaints.

In NSW and Victoria, public sector agencies are supported in notifying those whose privacy has been impacted. In 2017-18, the Office of the Victorian Information Commissioner provided 65 privacy breach notifications.¹⁶ This assists in demonstrating commitment to accountability and privacy practices, and helps support agencies in quickly notifying those impacted by events such as criminal data theft. There is currently no whole-of-government support for the WA Public Sector to notify those whose privacy has been breached.

In other jurisdictions, in response to privacy breaches or other issues relating to personal information, the privacy oversight role may:



Take steps to address the matter, for example providing access to personal information, or amending records



Seek provision of an apology



Require a change to an organisation's practices or procedures



Direct staff training



Direct compensation for financial or non-financial loss



Impose fines

Questions for consideration



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

¹⁵ s81 of the *Criminal Code* 1913 (WA)

¹⁶ Office of the Victorian Information Commissioner. *Annual Report 2017-18*. 2018, p22.



What else will the WA Government do to protect information?

The proposed legislation will require public sector agencies to consider privacy in everything they do when collecting or using personal information. Agencies will be legally obliged to ensure that the privacy of citizens is a primary consideration.

However, the Government recognises that rules and regulations are not a solution in themselves. Public sector organisations must have the capability and maturity to ensure the confidentiality and integrity of all information. In an increasingly digital world, this is vital to maintaining the operations of Government and ensuring community trust (see *Section 4 Implementation considerations*).

The WA Government has made a significant investment in improving public sector cyber security. This includes establishing the State's first centralised cyber security team within the Office of Digital Government, participation in the national Cyber Security Cooperative

Research Centre, and establishment of a Memorandum of Understanding between the WA Government and world-leading cyber security experts at Edith Cowan University. The further design and implementation of this policy will be conducted in consultation with the Office of Digital Government's cyber security team.

The WA Government is also developing an Information Classification system that will help agencies better understand information they hold, and make more informed decisions about sharing and security. Privacy will also be supported by introducing a comprehensive whole-of-government framework for safely and responsibly sharing information.

Further, when sharing with authorised third parties outside the Government, agencies will be required to make an assessment of the recipient's ability to ensure the security of any personal information provided.

South Australia's Vulnerable Children Project

The Vulnerable Children Project (VCP) is South Australia's first multi-agency integrated data project. The project facilitates information sharing between agencies to provide frontline workers and strategic decision makers with a fuller picture of South Australia's vulnerable children and their families. It pioneers a multi-agency approach to sharing data under the *Public Sector (Data Sharing) Act 2016*.

The project provides a near real-time dashboard to the Department for Child Protection's Child Abuse Report Line to inform decision making at strategic and operational levels. The dashboard features integrated, securely shared data from across government. The project also provides analytic and research support to the Early Intervention Research Directorate (EIRD). The VCP builds capacity to collaborate on complex issues and demonstrates how data can be used as a resource to improve child protection services, programs and policies.¹⁷

¹⁷ Government of South Australia. Vulnerable Children Project. Available from: <https://www.dpc.sa.gov.au/responsibilities/data-sharing/current-projects/vulnerable-children-project>



Responsible information sharing within government and with authorised third parties

Responsible information sharing refers to the intent to provide information within and between public sector agencies, or with authorised third parties. These could include other Australian jurisdictions or non-government organisations. There already exists some scope within the existing legislative frameworks for sharing information. The proposed legislation will supplement the scope of these provisions, rather than remove it.

Data sharing for the provision of government services introduces special considerations to allow the sharing of personal information

between public sector agencies to benefit an individual. This will assist with the delivery of 'joined up' government services. This may also affect businesses using government services, such as licencing or permits.

In making a decision whether to share personal or sensitive information, government organisations need to be supported to understand potential risks. The proposed legislation would create a framework to support agencies to assess the risks and make informed decisions about whether or not to share information and help ensure continued privacy and confidentiality.

Australia's first Suicide Prevention Intelligence System

Suicide is the leading cause of death in Australians aged 15-44 years. Suicide services need timely data to inform prevention activities. However, data is locked up in different registries and collections, making it difficult to know where and how to access it. Over the past two years, Black Dog Institute, in partnership with SAS Global Analytics and the Australian National University, has led the creation of Australia's first data platform to link data to identify suicide clusters, trends and rates, down to the postcode level.

Through data-driven decision-making, Black Dog Institute is looking towards improving service provision and policy to reduce suicide and self-harm rates across Australia.¹⁸

¹⁸ Black Dog Institute. 2019. Federal Budget: What does it mean for suicide prevention and workplace mental health? Available from: <https://blackdoginstitute.org.au/news/news-detail/2019/04/03/federal-budget-2019---what-does-it-mean-for-suicide-prevention-and-workplace-mental-health>



Acceptable reasons for sharing information

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

The following are examples of activities other jurisdictions included as approved purposes for sharing information:



Purposes related to the wellbeing, welfare, or protection of an individual, or to prevent or reduce a threat to life, health or safety.



Research and development with clear and direct public benefits — for example, medical or population health research.



Support evidence-based policy making — for example, in WA this could help understand differing socio-economic outcomes in different parts of the State, and how policy should be applied to place and people rather than 'one size fits all'.



Support the efficient delivery of government services or operations — for example, enabling more online transactions, and reducing requests for the same information.



Assist in the implementation and assessment of government policy — for example, analysing and determining which services work well and which require improvement.

There will be scope to create special considerations or exclusions for particularly sensitive kinds of information from coverage by the proposed information sharing legislation.

This might include, for example, information that is:

- Related to criminal investigation or proceedings, or for the imposition of a fine
- About legally assumed identities
- Subject to legal professional privilege
- About active police operations
- Obtained in confidential circumstances for the purposes of mediation, conciliation or other dispute resolution processes
- Related to proceedings that are being heard, or are to be heard, before a court or tribunal
- Related to national security

Further, there may also be specific purposes for sharing of information that could be specifically prohibited. These could include:

- Direct marketing by third parties
- Profiling individuals for commercial or insurance purposes

Questions for consideration



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?

Providing care for homeless patients

Emergency department presentations and hospital admissions represent an opportunity to engage and support people experiencing homelessness, and link them with appropriate support.

In 2016, Homeless Healthcare commenced an in-reach program at Royal Perth Hospital for those patients who present at the Emergency Department and are identified as homeless or at risk of homelessness. Homeless Healthcare doctors and nurses then attend to these patients, provide care and help to link them with other support services.

Since implementation, there has been a dramatic decrease in the number of patients presenting to the ED, and 54% of Homeless Team patients have had fewer ED presentations in the year following first contact with the team. There has also been a significant decrease in the number of inpatient admissions and average number of days spent as an inpatient. In 2019, it was reported that these changes are equivalent to an aggregate cost saving of \$4.6 million and a cost saving of \$7302 per person.¹⁹



Through better access to data and the capacity to engage in data linkage, the State Government can open up the possibility for services to better measure outcomes and demonstrate return on investment, and to better understand risk factors and target at risk cohorts to enable earlier intervention strategies.²⁰



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¹⁹ Homeless Healthcare. Royal Perth Hospital In-reach. Available from: <https://homelesshealthcare.org.au/clinics-timetables/rph-in-reach/> Royal Perth Hospital Homeless Team. 2019. Evaluation report summary February 2019, pp. 1 – 4

²⁰ Submission to: Data Linkage Expert Advisory Group, A review of Western Australia's data linkage capabilities, 2016



Data leadership

It is proposed that a Chief Data Officer be appointed 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.

A governance model would detail the Chief Data Officer's roles, responsibilities and provide for any decision-making powers. The Chief Data Officer could be responsible to a Minister, and/or have reporting obligations to the WA Privacy Commissioner. In line with the key principles guiding the proposed approach, it is envisaged the role could be supported by the Office of Digital Government.

Helping those who need it most

Over 90% of respondents to a 2018 survey conducted by Australian National University researchers were supportive of the Australian Government using data within Government to target resources to those who need it most. ²¹

In other jurisdictions, data leaders perform responsibilities such as:

- **Setting common standards** and definitions for public sector data sharing
- **Providing tools, guidance and expertise** for best practice and compliance in the use of data
- **Resolving disputes** between agencies regarding information sharing
- **Championing data sharing** across the public sector and promoting best practice
- **Facilitating information sharing** between public sector agencies or other entities
- **Performing data analytics** work for public sector agencies under data sharing agreements
- **Compelling agencies** to provide data;
- **Advising** Ministers, executives and relevant entities on challenges and potential solutions using data analytics
- **Advising on best practice** for data analytics, cyber security and privacy protection
- **Building** government data analytics capacity
- **Advocacy for the proper management**, greater use and reuse, and release of public sector data
- **Regulation of a data sharing** system and legislation
- **Oversight and accreditation** of organisations as part of an accreditation model

Questions for consideration

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?



²¹ N Biddle, B Edwards, M Gray and S McEachern, Public Attitudes Towards Data Governance in Australia. 2018, p. 5.



Photo courtesy of Department of Communities

Ensuring transparency and accountability for information sharing

Other jurisdictions provide for transparency of information sharing through a variety of privacy and data sharing reporting arrangements, including:

- Requiring agencies to keep written records of the reasons why information was shared, and the decision-making process to support the release of information
- Public reporting on information sharing arrangements between government agencies, and with authorised third parties
- Providing relevant reports on privacy or data sharing to an authorised third party (for example, a privacy commissioner) and/or to Parliament

A best practice framework for safely sharing information

A structured, risk-based, decision-making process will be provided to enable agencies to assess whether information should be shared, in light of considerations such as:



The purpose for sharing the information



The people and organisations gaining access to the information



The quality and source of the information



The environment in which the information will be used



How results of the data sharing will be used or shared

The proposed legislation will help to clarify when information that is not sensitive for privacy or confidentiality reasons can be shared openly within or outside government, enhancing the operation of the existing whole of government [Open Data Policy](#).

It is proposed that the data sharing decision making process be built upon the Five Safes model that underpins the Australian Government's proposed Data Sharing and Release legislation. This is an internationally recognised framework used in [New Zealand](#), the [United Kingdom](#), [South Australia](#), [Victoria](#) and by the [Australian Bureau of Statistics](#).

Greater availability and use of public sector data has the potential to bring significant benefits to the community, such as improved government policy and service delivery, more transparency, and improved accountability.²²



Figure 1 - The Five Safes²³

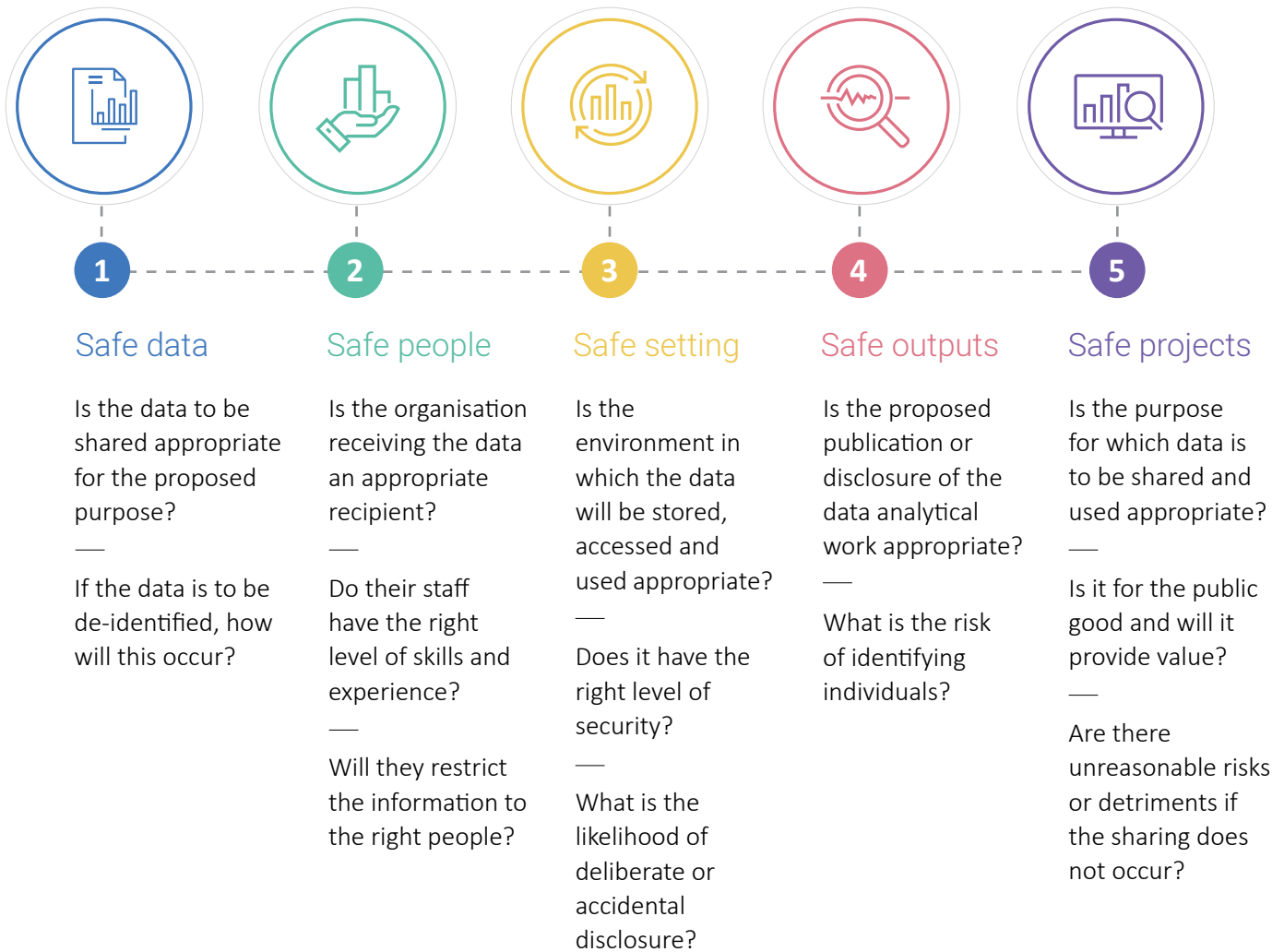


Figure 1 - The Five Safes details a set of five principle-driven criteria that must be applied and satisfied before an agency can share information with another party.

Figure 2 - Proposed Australian Government Data Sharing and Release Framework sets out the process proposed by the Australian Government for sharing and releasing data. It allows public sector agencies to continue to use existing frameworks and authorities for the sharing and release of data and information where these

arrangements are effective and efficient. The proposed Data Sharing and Release legislation will provide a pathway for sharing and releasing data by Australian Government agencies when existing avenues are not available or are complex and ineffective.²⁴

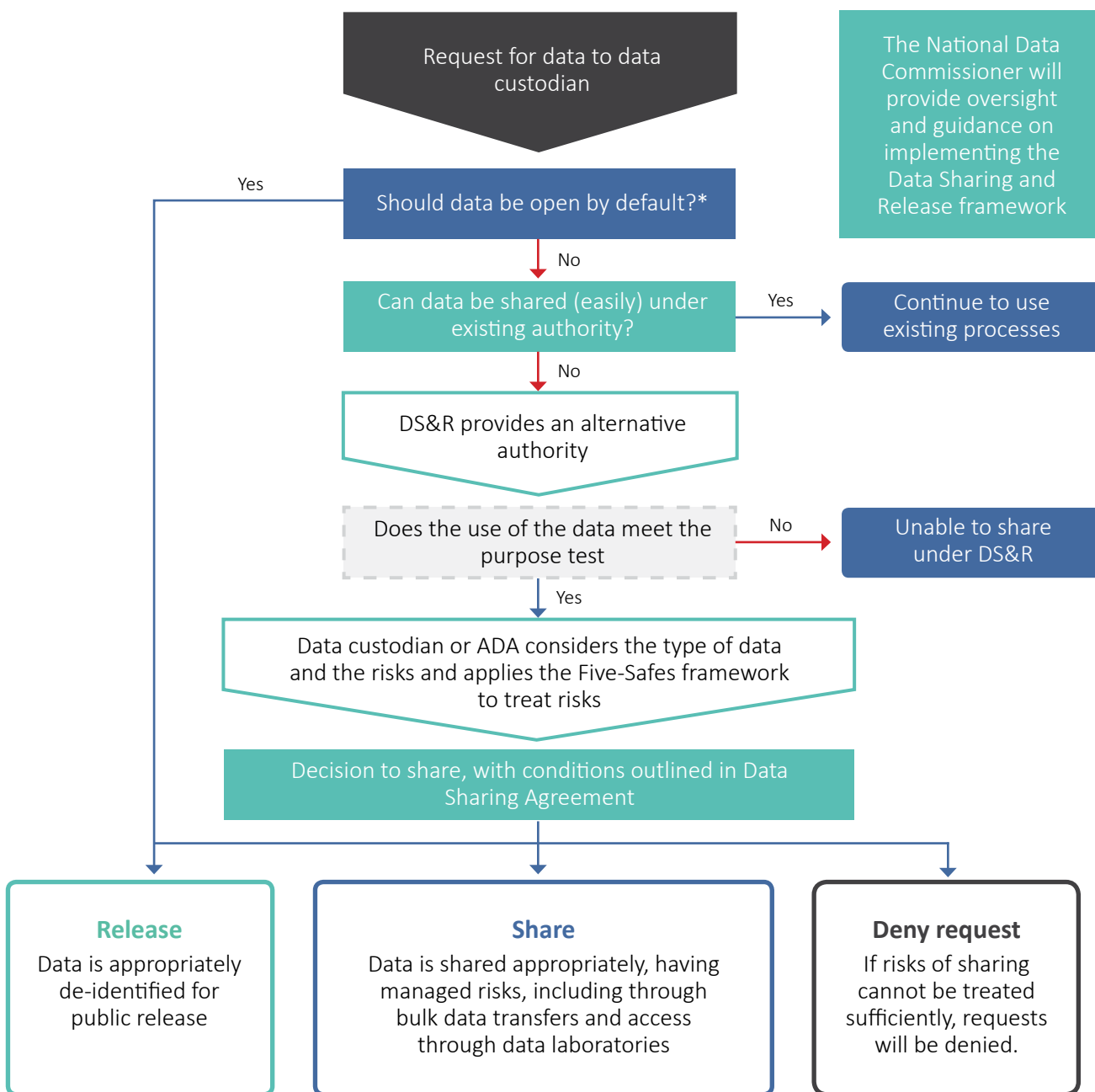
This example is provided to show how a data sharing framework could operate.

The WA Privacy Commissioner could also have a role in overseeing any proposed data sharing framework.

²³ Adapted from: <https://dpc.sa.gov.au/responsibilities/data-sharing/information-sharing-in-south-australia/sharing-public-sector-data#trusted-access-principles>

²⁴ Australian Government, *New Australian Government Data Sharing and Release Legislation Issues Paper for Consultation*, 2018, p.12.

Figure 2 - Proposed Australian Government Data Sharing and release Framework ²⁵



* As per the Public Data Policy Statement

Five Safes framework

- **Safe data:** can the data disclose identity?
- **Safe people:** can the user be trusted?
- **Safe setting:** does the access environment prevent unauthorised use?
- **Safe outputs:** are the project results likely to disclose identity?
- **Safe project:** is the purpose of use appropriate?

Purpose test

- Inform Government policy making
- Support efficient Government services delivery or operations
- Assist in implementation and assessment of Government policy
- Research and development with clear and direct public benefits

²⁵ Issues Paper: New Australian Government Data Sharing and Release Legislation p.13



The Western Australia Aboriginal Health Ethics Committee (AHEC) supports the government’s intention to introduce privacy and responsible information sharing legislation and engage with Aboriginal people to look at opportunities to address related issues of concern to them. The Committee encourages Aboriginal people and organisations to engage with this decision making process to ensure the collection, use, disclosure and sharing of data within Government, with authorised third parties and with Aboriginal people themselves, benefits Aboriginal people and their communities.

The Committee was established in 1996 and ensures research decision making processes respect Aboriginal and Torres Strait Islander Peoples and communities, to recognise and understand their rights and responsibilities in being involved in all aspects of research and better understanding the steps involved in making research ethical.



Involving Aboriginal people and organisations in decisions affecting their communities

The rights of Aboriginal people as custodians of their cultural information are vital in considering a model for information sharing.

Information is a cultural, strategic and economic asset for Aboriginal people and communities. It can be used to empower Aboriginal communities to address social and economic disadvantage; protect, maintain and revitalise Aboriginal cultural knowledge; and maximise the use of information for community benefit.

The proposed framework provides an opportunity to recognise and reflect the importance of involving individuals or communities in the way information is collected, managed, used and shared.

Sharing outside the WA Government

The WA Government has important relationships with many external stakeholders, such as research groups, non-government organisations delivering services on behalf of government, and other government jurisdictions. Sharing data may help inform research, improve accountability for contracted service outcomes, or assist in

coordination of policy initiatives between jurisdictions.

The Five Safes includes assessments of whether a data recipient is able to manage the risks associated with a data set and ensure its confidentiality, and whether the recipient can deliver on the purposes for which the data is being shared.

Sharing with an authorised third party introduces a range of considerations, including the need to ensure appropriate oversight so the third party is compliant with WA’s required standards of data sharing. Inter-jurisdictional privacy regimes may also have differing requirements and consequences, and apportioning of liability in the event of a privacy breach.

Questions for consideration



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?

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



Photo courtesy of the Child and Adolescent Health Service

Improving Aboriginal children's ear health

Otitis media (OM) is a treatable infection in the middle ear that is very common in children. Frequent or severe episodes can lead to permanent hearing loss. The high rate of OM in Aboriginal children in WA is a complex problem with serious health, social and economic consequences.

The Western Australian Auditor General commented in the report *Improving Aboriginal Children's Ear Health* that "the many entities, organisations and medical practices involved in identifying, diagnosing and treating OM in Aboriginal children across WA collect their own specific data. However due to privacy concerns, they do not share patient information, even at a de-identified and aggregated level. There isn't one entity responsible for collecting, evaluating and reporting the data. Because the data is not shared, no one knows how bad the situation is for Aboriginal children at a whole of state level at any specific point in time, and there is no baseline to measure performance."

"While WA Country Health Service and Child and Adolescent Health Service collect some data, they do not use data or information to track children's journeys through the system or their ear health outcomes. For example, they record instances of health checks through the Universal checks and the Enhanced Aboriginal Child Health Schedule program but do not link this data with hospital or ear, nose and throat specialist records. They cannot use the data to identify patterns in OM or test the success of regional programs. Whether a child with suspected OM actually gets that problem resolved or treated is not known or routinely analysed."²⁶

²⁶ Office of the Auditor General. 2019. *Improving Aboriginal Children's Ear Health*.



Protecting confidential information

It is envisaged that confidential information will only be shared under the proposed legislation if the receiving party can ensure a similar level of protection to the providing organisation. Further, sharing will still need to be assessed in accordance with the Five Safes. This would provide a maintenance of the level of protection for confidential information, and allow for a decision not to share information if the assessment finds it is inappropriate to do so.

At a minimum, it is proposed that confidential information would only be shared if the recipient complies with all the confidentiality obligations of the public sector agency sharing the information.

Information defined as confidential could be commercial-in-confidence, provided to Government under conditions of confidentiality (including contractual or equitable obligations), or covered by professional privilege. There may be other categories of confidential information.

Questions for consideration



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

6

Implementation considerations

The implementation of any new regulatory regimes or governance models will require consideration of the practical implications for the WA public sector and other affected parties.



For example, within the public sector, any privacy protections and obligations introduced by the proposed legislation will require:



The development of **new internal policies and processes** to support the integration of the legislative requirements into agency practice;



Training to ensure public servants have the skills to interpret and implement new rules; and



Modification of technology systems, or development of new ones, to support agencies in changes to ways they collect, handle and store personal information.

Establishing new roles

The proposed legislative model includes new roles for privacy oversight and information sharing leadership. Careful consideration will need to be given as to where these roles would reside within the public sector, and how they could be resourced and supported to meet their obligations.

These roles will also require strong leadership, support and commitment from agencies to ensure the adoption of a sector-wide approach.



Building sector skills and capabilities

It is important to note that introducing privacy and responsible data sharing legislation would only be the start of changing public sector culture and practices.

Successful implementation will require effort towards embedding new practices and building capabilities within the public sector, while ensuring there are appropriate support systems and structures.

Ensuring that any new protections and obligations become a part of public sector culture and practice will take time.

Data managers in agencies may take on new roles to implement and monitor the safe handling of data using the Five Safes model. The need to know who has accessed sensitive or personal information may require building audit capabilities into existing information systems.

Areas to develop and support might include:



Information management



Cyber security



Risk assessment (and assessment of third parties)



General data literacy



Specific technical data collection, management, linkage and analytic skills



The safe handling and sharing of data via the Five Safes model



Enabling data infrastructure

Some jurisdictions have opted for a central whole-of-government data analytics centre.

This model works with government agencies generally using data linkage and data science techniques to deliver insights into complex and whole-of-government issues.

The WA Government has a number of centres of strong data analytics capability, including the WADLS, WA Police, Landgate and Treasury. In increasing the relevant capabilities of the public sector, any new approach would need to consider existing systems and structures. In line with Section 4 *Key principles guiding the proposed approach*, the WA Government aims to build on its successes and investments.

Recognising and unlocking the value of information

The WA Government recognises the true value of information can only be achieved by setting it free of organisational silos and allowing it to be used as a whole-of-government asset.

In many cases, public sector agencies collect and maintain information on the basis of their immediate needs. Without considering the broader value of their data, agencies may be unaware of its potential use for other organisations or the requirements of those who may be able to use it for the public good.

It is natural that data quality will vary greatly across different data sets, depending on the original intent and historical investment. The WA public sector will need to be supported to understand how information they collect and manage can be approached from a whole-of-government perspective.

Questions for consideration



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



Economic impacts of barriers to sharing water information

The Department of Water and Environmental Regulation (DWER) provides digital water data from over 132,000 sites free of charge to interested parties through the Department's Water Information Reporting portal. DWER's scientific databases includes over 100 years of rich information about water quantity and quality, and helps to support the effective management of our precious water resources.

However, this database does not include information from the many privately-developed expert reports provided by licensees and license applicants. This is because under current legislation, these reports can only be made accessible through the relatively complex Freedom of Information processes.

These reports, particularly in areas where there is only sparse DWER data, are very valuable to water resource professionals like those in the groundwater industry. These professionals, and the industries they support, would prefer to gain access to these valuable reports by more convenient and efficient means, such as an online information portal.

The International Association of Hydrogeologists (IAH) estimate that over \$40 million worth of groundwater data are not currently available publicly through DWER's portal. The IAH claim that not having this data freely available adds substantial cost of regional and municipal development and puts WA behind every other state and territory in the management of groundwater data.

Information provided by Department of Water and Environmental Regulation



7

Where to from here?

The WA Government is committed to ensuring all stakeholders have the opportunity to provide feedback on the proposed legislation to deliver better outcomes for WA.

The information gathered from written submissions, as well as consultation and information sessions, will be reviewed and used to inform the development of the final legislative model.

A short report summarising the outcomes of consultations will be released following the end of the consultation period.

The WA Government recognises that consultation will require specific and targeted engagement with groups and organisations which may be particularly invested in, or affected by, this proposed approach. Government also seeks to engage with the broader community.

For more information on opportunities to have your say, please refer to the webpage:

[WA.gov.au/privacyproject](https://www.wa.gov.au/privacyproject)



Summary of questions for consideration

The below questions describe the primary areas the WA Government is seeking to better understand through this consultation process. They are provided as suggestions only, and the Government welcomes other feedback and ideas.



- 1) *What issues should be considered when developing privacy and information sharing legislation for Western Australia?*
- 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?*
- 3) *What should the role of a Privacy Commissioner be, and how can this role best protect privacy and ensure public trust?*
- 4) *How should breaches of privacy be managed, and what action should be taken in response to a breach?*
- 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?*
- 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?*
- 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?*
- 8) *What criteria should be included as part of a risk management framework such as the Five Safes?*
- 9) *Under what circumstances would it be considered acceptable to share confidential information within the public sector?*
- 10) *What should the WA Government be doing to support successful implementation of privacy and information sharing?*



Glossary

Data – The representation of facts, concepts or instructions in a formalised (consistent and agreed) manner suitable for communication, interpretation or processing by human or automatic means. Typically comprised of numbers, words or images, the format and presentation of data may vary with the context in which it is used. Data is not ‘information’ until it is used in a particular context for a particular purpose.²⁷

Data Analytics – Can include quantitative and qualitative analysis techniques applied to data to derive information to support decisions. May include visualising data in charts and maps to better understand patterns. May also include using advanced techniques to help predict future patterns.

Data Custodian – The person within an organisation or agency formally assigned to collect, manage, secure and disclose a data set on a day-to-day basis.

Data Linkage – A technique for connecting data records within and between data sets using demographic data (for example, name, date of birth, address, sex, medical record number). Also known as ‘record linkage’ or ‘linkage’. The generally accepted definition of data linkage is linking records on unique individuals. However, it can also include linking on unique places and events.

Data Set – A collection of records containing similar items of information (data) about a number of record subjects. For example, a WA Births data set might contain many thousands of records, each containing the same pieces of information, such as name, place, and date of birth for infants born in WA over a particular period of time.

Five Safes – also known as the **Trusted Access Principles**, this is a structured, risk-based framework to guide decisions about the overall appropriateness of a proposal to share data. Decisions are guided by five principles: Safe Projects, Safe People, Safe Data, Safe Settings and Safe Outputs.

Information – Any collection of data that is processed, analysed, interpreted, classified or communicated in order to serve a useful purpose, present fact(s) or represent knowledge in any medium or form. This includes presentation in electronic (digital), print, audio, video, image, graphical, cartographic, physical sample, textual or numerical form.²⁸

Landgate – The Western Australian Land Information Authority is a statutory authority which operates under the business name of Landgate.

²⁷ Office of the Australian Information Commissioner, 2012, Open public sector information: from principles to practice, 59. Retrieved 29 April 2019 from <https://www.oaic.gov.au/resources/information-policy/information-policy-resources/open-public-sector-information-from-principles-to-practice.pdf>

²⁸ Office of the Australian Information Commissioner, 2012, Open public sector information: from principles to practice, 60. Retrieved 29 April 2019 from <https://www.oaic.gov.au/resources/information-policy/information-policy-resources/open-public-sector-information-from-principles-to-practice.pdf>

Open data – Data that is released and available for the general public, easily discoverable, in accessible formats, and licensed to enable reuse and redistribution, at no cost to users.

Open Data Policy – The Whole-of-Government Open Data Policy, managed and implemented by Landgate and available at: https://data.wa.gov.au/_data/assets/pdf_file/0009/9549/Open-Data-Policy-Final-v5.9-with-Cover-updated-21.07.15.pdf

Public Sector - Includes all agencies (that is, departments, organisations, and other entities including government trading enterprises, statutory authorities, and all entities of that kind within the public education, health, justice and police systems). This definition is broader than the definition used in the *Public Sector Management Act 1994*.

Personal Information refers to information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead whose identity is apparent or can reasonably be ascertained from the information or opinion; or who can be identified by reference to an identification number or other identifying particular. This definition is based on the *Freedom of Information Act 1992 (WA)*.

WADLS – Western Australian Data Linkage System. Used to connect health and other related information for the WA population. Incorporates database tables holding demographic data and linkage keys, and the bespoke tools used to process, create, store and retrieve them.





Attachment A:

Overview of privacy and data/information sharing legislation in Australian jurisdictions

	Privacy legislation	Data/Information sharing legislation
CTH	<i>Privacy Act 1988</i>	Developing legislation (Information Sharing and Release)
ACT	<i>Information Privacy Act 2014</i> <i>Health Records (Privacy and Access) Act 1997</i>	Nil
NSW	<i>Privacy and Personal Information Protection Act 1998</i> <i>Health Records and Information Privacy Act 2002</i>	<i>Data Sharing (Government Sector) Act 2015</i>
NT	<i>Information Act 2002</i>	Nil
QLD	<i>Information Privacy Act 2009</i>	Developing legislation
SA	Nil	<i>Public Sector (Data Sharing) Act 2016 (PSDSA)</i>
TAS	<i>Personal Information Protection Act 2004</i>	Nil
VIC	<i>Privacy and Data Protection Act 2014</i> <i>Health Records Act 2001</i>	<i>Victorian Data Sharing Act 2017</i>
WA	Nil	Nil

A photograph of a person's hands typing on a silver laptop. The laptop screen displays a 'MARKETING STRATEGY' document with various charts and graphs. The person is wearing a black smartwatch. The background is a bright, blurred office environment.

Let's start the conversation

For further information, please visit our website at wa.gov.au/privacyproject, send your query to privacy@dpc.wa.gov.au, contact us directly at (08) 6552 5000, or mail your query to Public Sector Reform Unit, Department of the Premier and Cabinet, Locked Bag 3001, West Perth WA 6872



Acknowledgement of Country

The Government of Western Australia acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures; and to Elders both past and present.