



Privacy and Responsible Information Sharing

for the Western Australian public sector

What we heard - consultation summary report





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.

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A responsibility and an opportunity

The WA Government recognises that community concerns about privacy are increasing. As a result, the WA Government announced in August 2019 its intention to introduce new laws to better protect privacy for those whose information is held by the WA public sector.

The WA Government also understands that people want their personal information protected, but they are frustrated by the need to provide the same information to multiple government agencies. People would like their interactions with Government to be simpler and easier.

Changing technologies brings new opportunities for Government to work as one to deliver better services, and to work differently to deliver better outcomes for individuals, families and communities. Better use of the data assets held by Government will help to unlock new insights and solutions to difficult problems, like homelessness and youth suicide.

With the Government's announcement to introduce WA public sector privacy legislation, came an invitation to the public and interested organisations to comment on key elements of the proposed new laws.

The consultation period was from 5 August to 1 November 2019.

This report provides a summary of what the WA Government heard in response to this invitation through a series of public forums, stakeholder roundtables, public sector workshops, written submissions and online comments.

Thank you

The WA Government would like to thank the many people and organisations who generously gave their time to contribute their views on these important new laws. This input is vital to Government's understanding of the community's expectations, and the needs of the WA Government's many different stakeholders.

Next steps

The WA Government is committed to introducing Privacy and Responsible Information Sharing legislation. At this time, the WA Government is keenly focused on the response to the COVID-19 pandemic, and ensuring the recovery of the WA economy.

The WA Government will continue the legislative part of this initiative when appropriate. In the interim, the WA Government will continue its work to be a more effective and trusted user of information.

Please note nothing in this report represents either current or future government policy.

Who we heard from

The WA Government released a discussion paper on 5 August 2019 and held a range of both open and targeted events to let the public and stakeholders know about the proposed new legislation. The Government wanted to not only inform and consult on the proposed legislation, but also to involve and collaborate with stakeholders to identify and consider their preferred positions on the legislative model best for WA.

We heard from a wide variety of people and organisations from both regional and metropolitan areas of WA.



The Community at Large

- › General public and consumers of government services in metropolitan and regional areas



Stakeholders

Organisations representing:

- › Consumers of government services
- › Non-government service providers, including community and health services
- › Researchers
- › Medical and health professionals
- › Regulators and advocates for privacy
- › Business and industry
- › The transport sector
- › Legal professionals
- › Information and technology industry professionals and businesses
- › Information and records management professionals
- › Aboriginal people
- › Culturally and linguistically diverse people
- › Public sector employees



WA Public Sector

- › Government departments and agencies
- › Public universities
- › Local government
- › Utilities and other Government Trading Enterprises



Credit: WA Health

How stakeholders shared their views



34
events



913
people attended



87
submissions and
comments received

28 online comments

59 written submissions



2,409
unique downloads of
the discussion paper

The Government would like to acknowledge and thank the following organisations and agencies for working in partnership to host consultation events with their members and stakeholders:

- › Chamber of Commerce and Industry WA
- › Health Consumers' Council (WA)
- › Law Society of Western Australia
- › LinkWest and the Community Resource Centre Network
- › Telethon Kids Institute
- › WA Council of Social Services
- › WA Health Translation Network
- › Western Australian Aboriginal Health Ethics Committee
- › Office of Digital Government
- › Office of Multicultural Interests
- › Department of Planning, Lands and Heritage
- › Department of Transport
- › Department of Water and Environmental Regulation

What we heard – In summary

WA has a unique opportunity

Learn from others



Align with other Australian laws



Think about global best practice

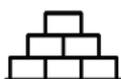
Keep what works



New laws should complement existing laws



Be clear on how the new laws will operate



Build on existing knowledge and skills

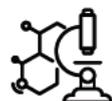
Include the right organisations



Personal information should be protected wherever it is



Some public sector entities should be excluded



Researchers should have better access to information



Protecting privacy is important

Build Trust



Agencies should be open about what they're doing with personal information



The Privacy Commissioner should be independent of Government



Give the Privacy Commissioner powers to keep agencies accountable



There should be consequences when people do the wrong thing



Listen to the community

Control and fairness matter



People should provide their consent and be able to opt out



The security of personal information is paramount



The potential for bias and discrimination in 'AI' must be addressed



Provide people with easy access to their personal information

Keeping up with community expectations

Share for the right reasons



People want easier interactions with Government



Support information sharing for the benefit of the community



Sometimes information should not be shared

Improve collaboration



Break down silos between government agencies



Leaders are needed to drive change



Build Government's capability and capacity to protect privacy and safely share information

Support self-determination of Aboriginal people



Aboriginal people should have a say



Protect Aboriginal cultural knowledge



Use information in ways that reflect Aboriginal interests



Credit: WA Health

What we heard – Explored

WA has a unique opportunity

We heard that as one of the last Australian states to introduce privacy legislation, WA can learn from those that have done this before.

You told us the world is changing quickly, and new laws should not only bring us into line with other Australian states, but also get us out in front where possible.

Ensuring new WA Privacy and Responsible Information Sharing legislation is drafted in a way that aligns with similar new Commonwealth legislation being developed will help WA to deliver more effective use of all Australian administrative data resources for the benefit of the WA Community.

Telethon Kids Institute



Learn from others

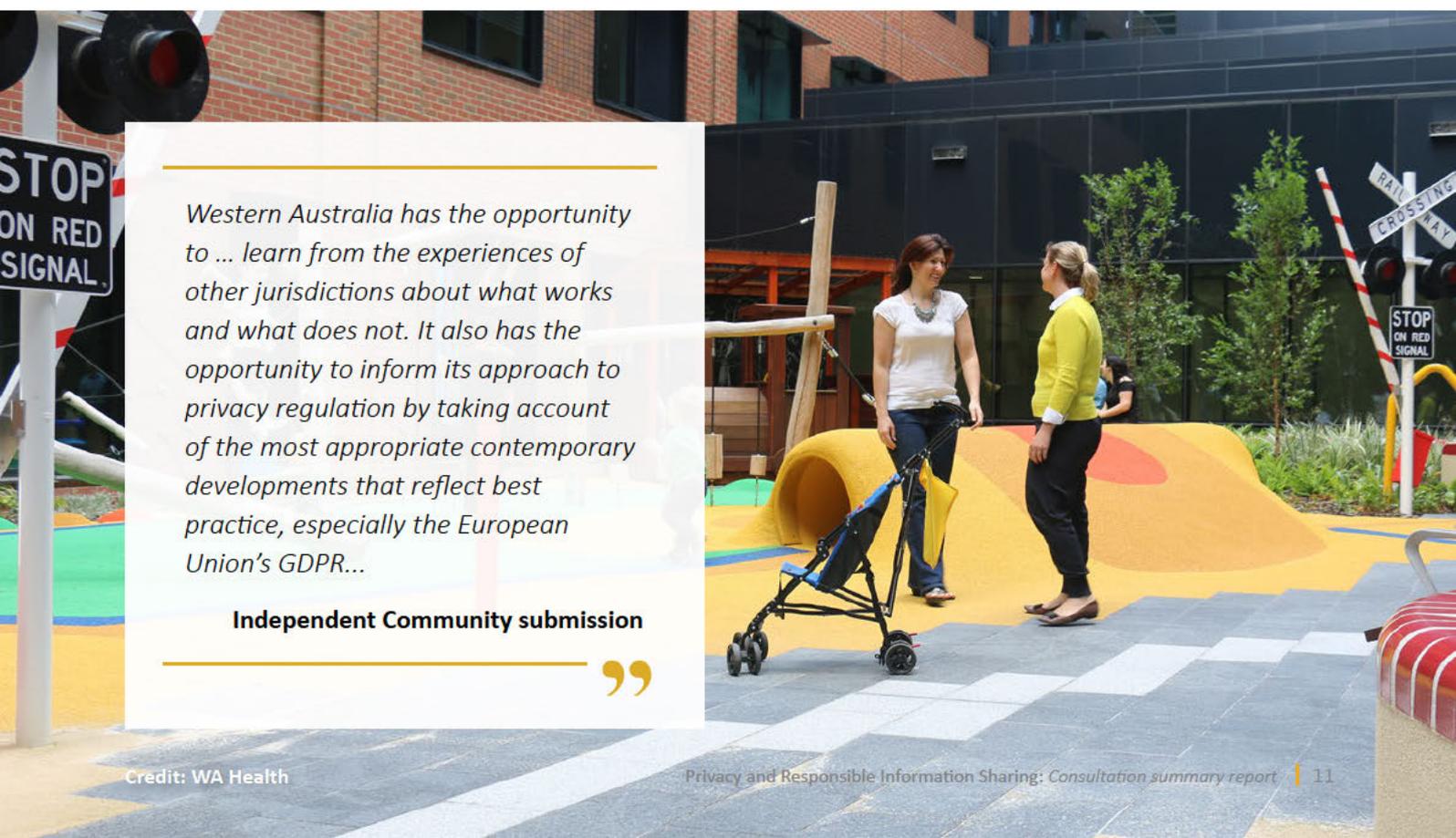
We heard WA has the opportunity to develop its own privacy and data sharing laws based on best practice in Australia and around the world.

Align with other Australian laws

- › Ensure consistency and streamline information sharing by aligning to existing Australian privacy laws
- › National consistency will better enable WA to receive and link other jurisdictions' data for research purposes
- › Minimise the burden of compliance for suppliers of services operating here and in other parts of Australia

Think about global best practice

- › WA can learn from other countries to become a privacy leader, particularly by looking at the European Union General Data Protection Regulation (GDPR)
- › Any privacy and data sharing legislation that is developed should be forward-thinking and responsive to technology advancements here and around the world
- › Many public sector agencies and private organisations are already having to comply with GDPR obligations



Western Australia has the opportunity to ... learn from the experiences of other jurisdictions about what works and what does not. It also has the opportunity to inform its approach to privacy regulation by taking account of the most appropriate contemporary developments that reflect best practice, especially the European Union's GDPR...

Independent Community submission





Keep what works

We heard WA already has some laws for managing privacy and that any new laws should not duplicate or add complexity to current arrangements where they are working well. We heard about WA's long history of using government information for health research to make people's lives better and that we should build on existing expertise where we can.

New laws should complement existing laws

- › Privacy legislation should not restrict the access, use and disclosure of information when it is required or permitted by other laws
- › Clarity is needed on which laws prevail in circumstances where more than one deals with the disclosure of personal information

Be clear on how the new laws will operate

- › New privacy laws should be simple to understand so that people can exercise their privacy rights properly
- › Clear guidance is needed for both the public sector and the general public on how any new privacy and information sharing processes will work
- › There should be consistent principles for managing privacy and sharing information across the WA public sector

Build on existing knowledge and skills

- › Some data sharing practices are working well and there are existing areas of expertise in Government, such as the WA Data Linkage System (Department of Health) and Landgate, which should be built on
- › A privacy framework will support the work of the WA research sector by creating more opportunities to participate in and compete for national and international research projects



Part 3 of the Freedom of Information Act 1992 allows members of the public to access and amend their personal information. These provisions were included because no privacy legislation was enacted at the time. ... There needs to be clarity around which legislation prevails regarding the release of information.

**Department of Local Government,
Sport and Cultural Industries**



Include the right organisations

You told us that the right type of organisations should be included within the scope of legislation to maximise privacy protections for people accessing government services.

Personal information should be protected wherever it is

- › The scope of organisations covered by the new laws should be broad and include organisations in the public sector as well as Government Trading Enterprises, WA public universities and local government
- › Sharing personal information with non-government organisations when they deliver services on behalf of Government is okay, but only if they are subject to the same laws as Government

Some public sector entities should be excluded

- › An exemption for a limited number of organisations, such as courts and tribunals, will be needed to protect their independence and ensure they can continue to fulfil their roles, similar to exemptions provided for under the *Freedom of Information Act 1992 (WA)*

Researchers should have better access to information

- › The proposed laws should allow researchers to access government data to enable public interest health and medical, social, and scientific research to be undertaken

The public has an expectation that their personal information will be handled with care and diligence when accessing government services, even when those services are provided by third parties.

Office of the Victorian Information Commissioner



As surgeons we see first-hand the benefits that can be achieved through greater access to data. As an example, the Western Australian Audit of Surgical Mortality (WAASM), which is managed by RACS and funded by the Western Australian Government, has resulted in significant improvements to surgical practice and ultimately better outcomes for patients since its inception.

Royal Australasian College of Surgeons





Protecting privacy is important

We heard that your privacy is very important to you, and the lack of privacy legislation is of concern.

High profile data breaches have caused people to become wary of trusting Government and other organisations with their personal information because breaches of privacy can have a serious and significant impact on people's lives. You told us that Government needs to be upfront about how we use your personal information.

Build trust

You told us that Government needs to be transparent and accountable when they are dealing with personal information and that having an independent Privacy Commissioner with powers to enforce privacy laws is central to that.

Agencies should be open about what they're doing with personal information

- › Government and its contractors should be open about how they handle and use personal information, including who it is shared with
 - › Sensitive personal information should have greater protections and should only be used for the reason it was collected in the first place
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The Privacy Commissioner should be independent of Government

- › For the Privacy Commissioner to be effective, the position should be independent of Government
 - › While remaining independent of Government, the Privacy Commissioner should still be able to work with government agencies to promote and encourage the protection of privacy
 - › The Privacy Commissioner should report to the Parliament each year about complaints they receive and any investigations they undertake
-

Give the Privacy Commissioner powers to keep agencies accountable

- › The Privacy Commissioner should be able to monitor and audit those agencies covered by the legislation for compliance with the laws as well as conduct investigations
- › The Privacy Commissioner should oversee how information is being shared by Government to protect privacy
- › The Privacy Commissioner should be given the power to override privacy laws in special situations, such as in an emergency or where public interests outweigh personal interests

There should be consequences when people do the wrong thing

- › There should be strong deterrents for misusing personal information
- › There should be a clearly defined process to deal with breaches of privacy and breaches should be reported publicly
- › Government staff should be trained to prevent, report and respond to a data breach
- › Data breach laws should also cover organisations that handle personal information on behalf of the Government
- › Compensation should be provided to people impacted by a breach of their privacy

Listen to the community

- › It is important to listen to the views of the public and consumers of Government services in order to build confidence in how Government uses their personal information

To ensure public trust, the Privacy Commissioner should be easily accessible and quick to respond to complaints, allegations or lack of compliance, and reported data breaches.

Australian Lawyers for Human Rights



Consideration should be given to establishing a community engagement program ... a Consumer and Community panel could be a means of providing transparency and accountability for this trust building (social licence) activity.

Australian Computer Society





Control and fairness matter

We heard that having access to the information held about them is important to many people. We also heard that you want to be in control of how your personal information is used, who it is shared with, and why.

People should provide their consent and also be able to opt out

- › Obtaining genuine consent for collecting, using and sharing personal information is important
- › Appropriate steps should be taken to ensure individuals understand the consequences of providing, or refusing to provide, consent – particularly those who may face language or other cultural barriers
- › If someone cannot give consent, they should be able to rely on a person they authorise to give consent on their behalf
- › Personal information should only be shared without consent if there is a threat to life or it is de-identified
- › People want to be able to opt out of arrangements involving the use and sharing of their information

The security of personal information is paramount

- › Community members have concerns about the use of big data and linking data about people because of the risks to their privacy from poor security or misuse of the information

The potential for bias and discrimination in 'AI' must be addressed

- › People are concerned about the use of AI and the potential for discrimination and bias

Provide people with easy access to their personal information

- › Accessing personal information should be simpler than current Freedom of Information laws in WA
- › People should be able to easily request access to the information Government has about them
- › Granting Aboriginal people and organisations access to information to help trace family roots is important for cultural healing

It is vital that all individuals who have their information collected, used or disclosed by any organisation understand the consequences of providing or refusing to provide their consent. Some individuals, including clients of the ALSWA, experience cultural and/or language barriers, which makes it more difficult to obtain their consent and for them to understand the consequences of providing their consent.

Aboriginal Legal Service of Western Australia





Just make sure that the data is used for good, always filter out the identifiable information so that individuals cannot be identified in cases that it get hacked [sic].

Community member



Credit: WA Health



Keeping up with community expectations

We heard that the expectations of the community are changing.

People were surprised to learn that there are no overarching laws that govern how privacy is protected in the WA public sector. They had expected that these laws were already in place.

People generally supported sharing information across Government if it meant agencies worked together to make it easier for them to access services. People did not support private businesses accessing Government-held personal information to make a profit.

Share for the right reasons

We heard that people were generally supportive of sharing information across Government, as long as there was a benefit to the individual or the community. People were concerned about information being shared in ways that would work against them, or where a private business could access Government-held personal information to make a profit.

People want easier interactions with Government

- › People should not have to ‘tell their story’ many times to multiple agencies in order to receive services
 - › Government should provide a “one-stop shop” for services, where members of the community could have all their needs met
-

Support sharing where it benefits people and the community

- › The impacts of sharing personal information on individuals should be carefully considered and information should not be used to the detriment of a person
 - › Sharing should be for the benefit of individuals and the community, and should be done using thorough and trustworthy assessments, with strong controls and safeguards
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Sometimes information should not be shared

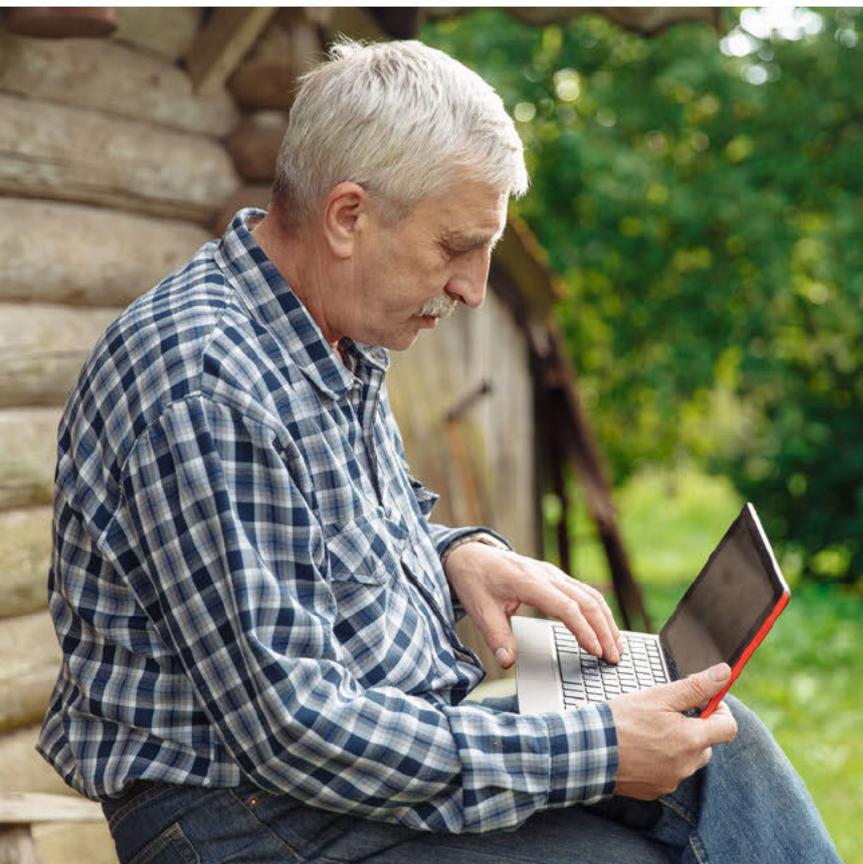
- › There are certain categories of information that should only be shared in very limited circumstances, or not shared at all such as commercial-in-confidence information and sensitive personal information
- › Personal information should not be used for profiling, or sold or shared where it could be used for marketing, selling, assessing insurance, or profit
- › If information was to be shared with organisations external to Government, there should be appropriate safeguards in place



Credit: WA Health

There is significant research that demonstrates the negative impact of having to continually recite traumatic information on victims of crime. Effective information sharing between agencies will enable the development and delivery of better services by ensuring that victims of crime are not required to consistently provide information to different agencies about a crime or its impact.

Department of Justice



The establishment of the one-stop shop for all government business appeals to me. Being able to visit or contact one agency to renew licenses, get birth, death, marriage certificates, transact other business would be both less time consuming and more efficient especially for those of us in the country.

Community member





Improve collaboration

We heard that introducing privacy and responsible information sharing legislation is an important step towards improving collaboration across government agencies to deliver better outcomes to the community. We also heard that other measures besides legislation were needed to improve privacy and responsibly share information.

Break down silos between government agencies

- › By shifting the culture from risk aversion to risk management, Government can start to break down the information silos between agencies
- › There is a need for consistency and improvement to strategy, processes and data integrity across agencies to enable timely sharing of information

Leaders are needed to drive change

- › Committed, collaborative and coordinated leadership from the Privacy Commissioner, Chief Data Officer and heads of agencies is needed to drive cultural change and build best practice use and management of information

Build Government’s capability and capacity to protect privacy and safely share information

- › Agencies will need practical support in the form of policy, standards, guidance and training to build capability across Government and promote best practice
- › Government will need a plan to help lift capability, align practices and standards and build momentum for change
- › It’s important people working in Government are aware of cultural considerations when handling personal information

While legislation may exist that permits information sharing to occur, if there is no culture across the public sector that encourages appropriate information sharing, then that legislation will not achieve its desired purposes.

Office of the Victorian Information Commissioner



The potential of service pathways that are shared by multiple agencies are now well-known In order to allow CPSU/CSA members to better cooperate with one another in planning and delivering services, data should be developed to best assist multi-agency collaboration and assistance.

Community and Public Sector Union, Civil Service Association (CPSU/CSA)



Support self-determination of Aboriginal people

We heard that Government has an opportunity to consider how the proposed legislation could support greater self-determination and the empowerment of Aboriginal people and communities. We also heard how the proposed legislation could support a range of other priorities for Aboriginal people and governments, such as the Closing the Gap initiative.

Aboriginal people should have a say

- › Aboriginal stakeholders want a greater say in how data about them is collected, stored, interpreted and used
 - › There was strong support for Aboriginal Community Controlled Organisations having access to information held by Government to assist them to deliver better services to their clients
 - › Stricter controls around use of sensitive information are needed and consent should be obtained by the relevant community if sensitive information is being used or shared
-

Protect Aboriginal cultural knowledge

- › Some Aboriginal stakeholders told us that culturally sensitive information should be protected and not shared at all
-

Use information in ways that reflect Aboriginal interests

- › An Aboriginal Governance structure is needed to provide advice to the Chief Data Officer on information sharing arrangements that are likely to impact on Aboriginal people or communities
- › Aboriginal stakeholders want people working with Aboriginal information to have training or accreditation to ensure they understand the context and related issues from an Aboriginal perspective. This is particularly relevant in the analysis and interpretation of information about Aboriginal people.



While there are protections for tangible objects of cultural significance there are few protections for intangible things such as cultural secrets, knowledge or rites.

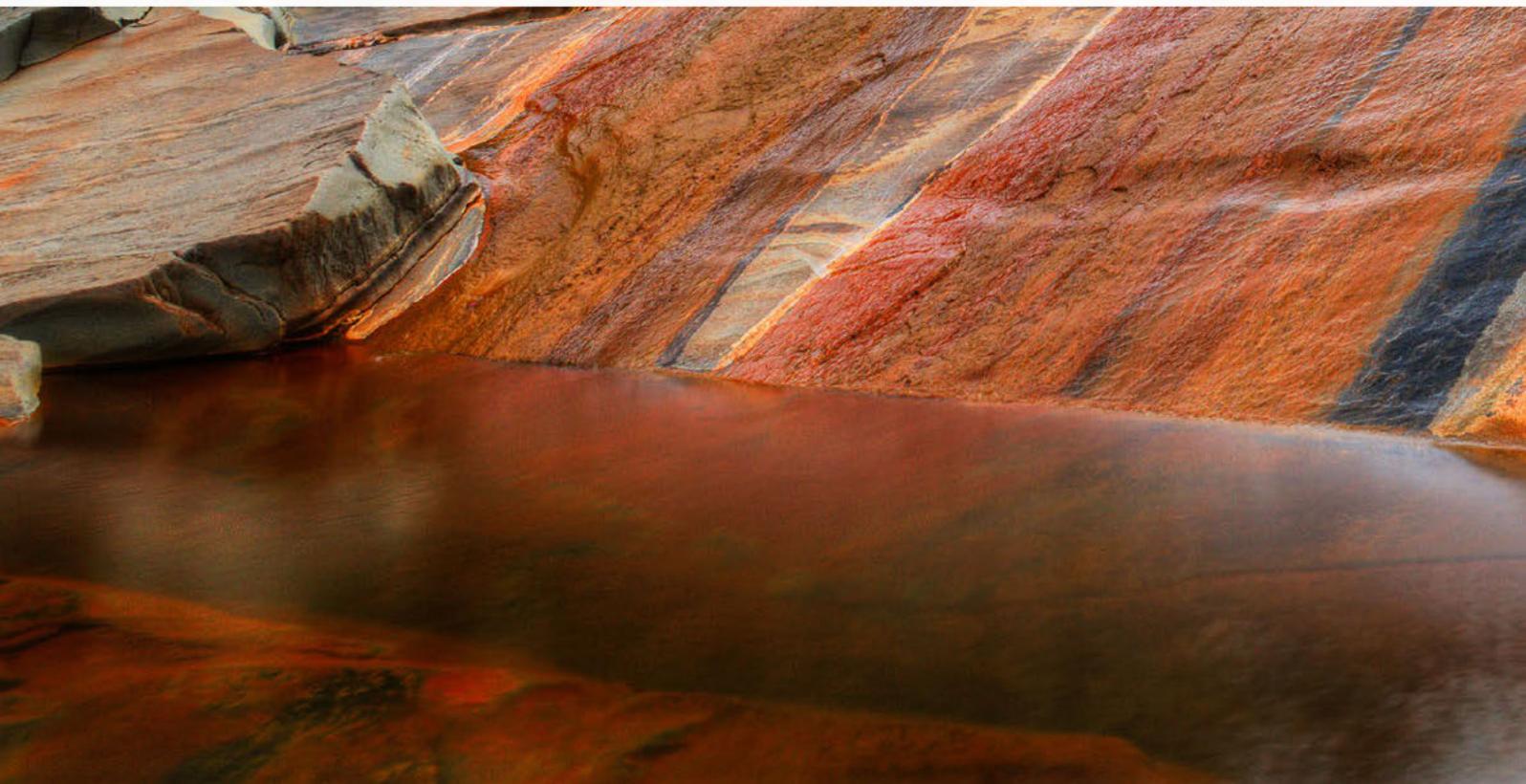
Aboriginal Legal Service of Western Australia





Indigenous data governance matters because the interests of Indigenous peoples are not always identical to the interests of the general population. Indigenous data governance refers to the right of Indigenous peoples to autonomously decide what, how and why Indigenous data are collected, accessed and used. It aims to ensure that data on or about Indigenous peoples is collected and used in ways that reflect their priorities, values, cultures, worldviews and diversity.

Centre for Aboriginal Economic Policy Research, Australian National University





Public written submissions

- › Aboriginal Legal Service of Western Australia
- › Andrew Lee Consulting
- › Australian Computer Society
- › Australian Information Industry Association (WA)
- › Australian Lawyers for Human Rights
- › Australian National University Centre for Aboriginal Economic Policy Research
- › Australian Society of Archivists
- › Chamber of Commerce & Industry WA
- › City of Bayswater
- › City of Busselton
- › City of Stirling
- › City of Subiaco
- › City of Wanneroo
- › Commissioner for Children and Young People
- › Community and Public Sector Union, Civil Service Association (CPSU/CSA)
- › Corruption and Crime Commission
- › Curtin University
- › Deloitte
- › Department of Health
- › Department of Jobs, Tourism, Science and Innovation
- › Department of Justice
- › Department of Local Government, Sports and Cultural Industries and the Culture and Arts portfolio agencies
- › Department of Training and Workforce Development
- › Edith Cowan University
- › Empowered Communities – East Kimberley
- › Independent Community Submission
- › Independent submission – A. Schofield
- › Independent submission – G. McPherson
- › Independent submission – C. Weeden
- › Landgate
- › Legal Aid WA
- › Mental Health Commission
- › National Disability Services
- › National Indigenous Australians Agency-Greater WA Region
- › Office of the Auditor General
- › Office of the National Data Commissioner
- › Office of the Australian Information Commissioner
- › Office of the Information Commissioner Queensland
- › Office of the Victorian Information Commissioner
- › Office of the Information Commissioner Western Australia
- › Population Health Research Network
- › Public Sector Commission
- › Royal Australasian College of Surgeons
- › School Curriculum and Standards Authority
- › Shire of Manjimup
- › Small Business Development Corporation
- › Squire Patton Boggs
- › Telethon Kids Institute
- › University of Western Australia
- › Western Australia Police Force
- › Water Corporation
- › Western Australian Network of Alcohol and Other Drug Agencies
- › Women's Council for Family and Domestic Violence Services
- › Yokai

