



Submission by the Government of Western Australia to the Data Sharing and Release Legislative Reforms Discussion Paper

Overview

The Western Australian (WA) Government considers that privacy of citizen's data is paramount to ensure both public good and public confidence. A breach of citizen trust in any part of the government system affects citizens' trust of government as a whole. For this reason, the WA Government welcomes any measures taken to increase the trustworthiness, transparency and accountability of government, particularly when handling sensitive citizen information.

The WA Government supports the intent of the proposed Australian Government led Data Sharing and Release reforms and the benefits it can bring for Australian citizens. We will determine our final position when the draft legislation is available.

The WA Government also supports increased protections for citizens, a clear framework for redress when data is misused and the strengthened safeguards proposed in the discussion paper.

Reciprocal data sharing between all levels of government

The WA Government believes reciprocal sharing of data between all levels of Government is fundamental to achieving optimal policy and service delivery outcomes for all Australians. Australian states and territories are at the front line of service delivery, and having appropriate access to Australian Government data is critical to the full achievement of the benefits sought by the Data Sharing and Release initiative.

The WA Government understands that achieving Accredited Integrating Authority (AIA) status is a costly and time consuming process. This may have hindered full participation in the AIA process. The WA Government also understands that not all organisations who have undertaken this process have realised the anticipated benefits of reciprocal data sharing with the Australian Government.

These barriers inhibit the development of a data sharing culture between state and Australian Government agencies, and cost Australia in terms of improved policy outcomes, service delivery, and the development of technical capability across all levels of government. To truly achieve "data sharing", data needs to be shared both ways. "Data giving" will not create the national skills and capabilities Australia needs to properly engage with the problems and opportunities the Data Sharing and Release legislation seeks to address.

In a response to an Issues Paper released by the ONDC in 2018¹, the WA Government suggested that state and territory entities be considered for inclusion as AIAs where appropriate standards are met. The discussion paper makes reference to future reforms that will facilitate reciprocal sharing of data across borders to build a national system. The WA Government strongly supports any progress towards such reforms.

¹ <https://www.pmc.gov.au/sites/default/files/public-submissions/data-sharing-2018/20696.pdf>

Future collaboration

The proposed Data Sharing and Release Framework complements the current WA Government proposed Privacy and Responsible Information Sharing reforms. The WA Government looks forward to continuing its collaboration with the Australian Government and the Office of the National Data Commissioner in this important policy area. The WA Government welcomes the opportunity to comment further on the draft legislation in 2020.

In this regard, the Privacy and Responsible Information Sharing team at the WA Department of the Premier and Cabinet is available to help build alignment between the proposed data sharing legislation and respond to any queries about WA's current proposed legislative approach to data sharing. They can be contacted at privacy@dpc.wa.gov.au.

Response to discussion paper questions

1. Do you think the distinction between data sharing and data release is clear? How could this distinction be clearer?

The WA Government supports the distinction outlined in the discussion paper in principle, subject to reviewing the draft legislation.

2. What are the challenges for open release of public sector data?

The challenges for open release of public sector data include:

- Ensuring appropriate metadata and supporting information is available to promote the interpretability of open data.
- Facilitating mechanisms such as data quality statements to provide an understanding of the limitations and issues with any data that is released.
- Improving understanding of data ownership. This includes recognising custodianship of Aboriginal personal and community information, and involving Aboriginal communities and stakeholders in decision making around the use of their data.
- Ensuring sufficient mechanisms for de-identification. Anonymised data considered appropriate for open release has been re-identified by skilled analysts. Research and experience indicate that the risks of openly releasing unit-level data may not be adequately treated by anonymisation or de-identification.²
- Enabling users to find data easily, for example through comprehensive catalogues of open and shared data.

3. Do you think the Data Sharing and Release legislative framework will achieve more streamlined and safer data sharing?

The WA Government agrees that a clear framework will help reduce the administrative burden of data sharing. The Australian Government's intention to align the framework with the *Privacy Act 1988* and Data Sharing Principles, will improve the safety with which data is shared.

The inclusion of a Purpose Test, Accredited Users and a modified Five Safes Framework are three key enablers in the legislative framework. It is important that the process of accreditation is not excessively onerous and that the Accredited User criteria do not set standards that are not reasonably achievable.

² Office of the Victorian Information Commissioner. *Protecting unit-record level personal information*. May 2018.

Further, the WA Government recognises that legislation is not a sufficient condition for the achievement of streamlined and safer data sharing. The right skills, processes and technologies need to be enabled within an organisational culture of evidence-based decision making, security and privacy to achieve these aims.

4. What do you think about the name, Data Sharing and Release Act?

The WA Government has no comment on the proposed name.

5. Do the purposes for sharing data meet your expectations? What about precluded purposes?

The WA Government notes the purposes for data sharing and the precluded purposes outlined in the discussion paper are broadly consistent with the position communicated throughout the consultation process, and understands they are reflective of stakeholder feedback.

6. What are your expectations for commercial uses? Do we need to preclude a purpose, or do the Data Sharing Principles and existing legislative protections work?

Should the Australian Government seek to commercialise data provided by Western Australia, the WA Government expects to be consulted on the appropriateness. Careful design of the purpose test and a structured framework for determining public interest will be important for maintaining public trust, and must be considered in conjunction with any commercial interests.

7. Do you think the Data Sharing Principles acknowledge and treat risks appropriately? When could they fall short?

The WA Government supports the proposed Data Sharing Principles in principle, subject to reviewing the draft legislation.

8. Is the Best Practice Guide to Applying Data Sharing Principles helpful? Are there areas where the guidance could be improved?

WA public sector agencies have found *Best Practice Guide to Applying Data Sharing Principles* helpful.

9. Do the safeguards address key privacy risks?

The WA Government supports the position outlined in the discussion paper in principle, subject to reviewing the draft legislation. The WA Government requires more information on the circumstances when personal identifiable data may be shared without explicit consent.

10. Are the core principles guiding the development of accreditation criteria comprehensive? How else could we improve and make them fit for the future?

Sharing with other jurisdictions

The WA Government supports the three core principles outlined in the discussion paper, and the Australian Government's commitment to translate these into accreditation criteria. It is critical that accreditation criteria are not excessively burdensome or costly, as this could reduce rather than promote information sharing.

The WA Government supports the proposed principle-based approach. Where possible and appropriate, it is important to ensure a holistic, risk-based approach is supported by principles and standards, rather than rigid rules that do not allow for the proper consideration of risks and their possible treatments.

The WA Government strongly supports the Australian Government's aims to protect the confidentiality and integrity of sensitive information. However, the WA Government suggests a more nuanced definition of 'high risk' with respect to data integration projects. Under current Commonwealth data legislation and policy, the linkage of any identifiable Commonwealth data is classified as a 'high risk' project.

The current Australian Government policy requirements have led to highly experienced jurisdictional data linkage agencies being unable to receive Commonwealth datasets. This is despite the fact that these organisations routinely handle a wide range of highly sensitive information, with appropriate security controls in place, and a demonstrable track record of safety.

The new legislation should strive to avoid the perpetuation of this situation, and enable sharing of identifiable Australian Government data with jurisdictions for the purposes of linkage and integration while improving policy outcomes at all levels of government.

Reuse or adaptation of the accreditation criteria by states and territories

A number of WA government and non-government organisations are already looking to how they can work within the framework established by the Data Sharing and Release legislation, and are optimistic about the future it represents. Concurrently, the WA Government is working on its own similar legislation.

To support the aims of a national system, the WA Government would like to be able to harmonise its future data sharing frameworks as much as is possible with those of the Australian Government. This is a key principle guiding the development of the WA Government's approach. In addition to the immediate efficiency benefits of having aligned arrangements, there is also additional benefits in the reuse of supporting materials such as training, templates, and the like.

As an example, elements of the Australian Government's Protective Security Policy Framework has been influential in formed the basis of similar arrangements in states and territories. The WA Government encourages the Australian Government and the ONDC to strongly consider how its accreditation framework can be designed for reuse and adaptation.

11. Are there adequate transparency and accountability mechanisms built into the framework, including Data Sharing Agreements, public registers and National Data Commissioner review and reporting requirements?

The WA Government supports the position outlined in the discussion paper in principle, subject to reviewing the draft legislation.

12. Have we achieved the right balance between complaints, redress options and review rights?

The WA Government supports the position outlined in the discussion paper in principle, subject to reviewing the draft legislation.

13. Have we got our approach to enforcement and penalties right for when things go wrong? Will it deter non-compliance while encouraging greater data sharing?

The WA Government supports the position outlined in the discussion paper in principle, subject to reviewing the draft legislation.

14. What types of guidance and ongoing support from the National Data Commissioner will provide assurance and enable safe sharing of data?

The WA Government supports the inter-jurisdictional consultation undertaken by the Office of the National Data Commissioner, and looks forward to ongoing discussions as the Australian Government and the WA Government each progress the development of data sharing legislation.