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Consultation Report

Criminal Justice Data Asset

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Prepared for the Australian Bureau of Statistics

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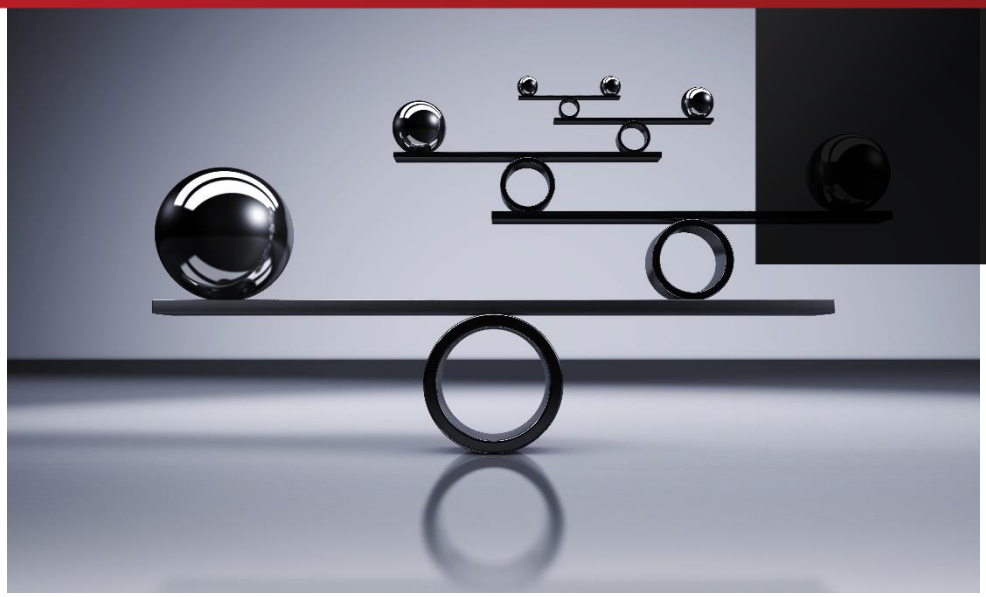

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Consultation Report

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Consultation Report

1. Introduction

(a) The Australian Bureau of Statistics (**ABS**) has engaged MinterEllison to conduct a privacy impact assessment (**PIA**) for the National Crime and Justice Data Linkage Project (**Project**). The Project aims to develop the Criminal Justice Data Asset (**CJDA**) by linking datasets provided by data custodians across police, criminal courts and corrective services. Datasets will be linked using SLK-581, which is a statistical linkage key which includes components of a person's given name and surname, date of birth and sex.[1]

(b) The Project was initiated out of the Council of Australian Governments' *Prison to Work Report* (2016), which noted that there were *'data gaps and a patchy evidence base for what works*' to improve outcomes for prisoners and ex-prisoners.[2] The objective of the Project is to create a national data asset to provide opportunities for policy-makers and researchers to better understand how individuals interact with the criminal justice system, and to develop, monitor and evaluate criminal justice policies.

(c) Undertaking consultation with stakeholders is an important part of conducting the PIA. The consultations provided an opportunity to inform stakeholders about, and to seek out stakeholder views on, the Project and the ABS' privacy management arrangements. Outcomes from the consultation will be used to inform the risk analysis and recommendations for the PIA.

(d) This report presents the feedback and concerns of targeted consultation sessions that ABS held with a range of stakeholders in November and December 2023, and February and August 2024.

2. Approach to consultations

(a) The objectives of the consultation process were to:

(i) inform stakeholders about the Project and ABS' privacy management arrangements in relation to the Project; and

(ii) listen to views and concerns that stakeholders may have about the Project and ABS' privacy management arrangements in relation to the Project.

(b) The ABS led five consultation sessions with the following stakeholder groups:

(i) police data custodians;

(ii) criminal courts and corrective services data custodians;

(iii) privacy regulators (state and national);

(iv) community legal centres (including organisations focused on youth and people with disabilities); and

(v) Aboriginal and Torres Strait Islander representatives.

(c) The **Appendix** contains a full list of stakeholders who participated in the consultation sessions. Stakeholders were invited to participate in consultations on the basis of their:

(i) criminal justice data expertise;

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1 The SLK-581 is a string of 14 letters and numbers, comprising, in order, from left to right: (a) the second, third and fifth letters of a person's surname (three letters); (b) the second and third letters of the person's given name (two letters); (c) all eight digits in the person's date of birth (DDMMYYYY) (eight digits); and (d) code for sex (1 for male, and 2 for female) (one digit). For example, Jane Smith, born on 01/01/1990, would be represented with an SLK of 'MIHAN010119902'.

2 Council of Australian Governments, *Prison to Work Report* (2016), p 7.

(ii) special interest or expertise in subject matter relevant to the Project, including special interest or expertise in the criminal justice system, or privacy and data; and

(iii) role in representing, and advocating on behalf of, key sectors of the community whose data are likely to be included within the CJDA and its outputs, including Aboriginal and Torres Strait Islander Australians.

(d) The consultation sessions were conducted virtually in five 90-minute sessions. Background materials about the Project were provided by the ABS to stakeholders in advance of each consultation session. During the consultation sessions, the ABS explained how the Project would operate and the ABS' privacy management and governance arrangements in relation to the Project. The background materials and the consultation sessions covered a range of topics, including potential uses and benefits of the CJDA, the legislative framework governing the CJDA, privacy, data governance, and data security. Stakeholders were invited to provide feedback on the Project during the sessions. There was also opportunity for stakeholders to provide feedback following the consultation sessions. For stakeholders that were invited but did not attend, they had the opportunity to also provide written feedback.

3. Summary of stakeholder feedback

(a) In this section, we provide thematic summaries of feedback expressed by stakeholders throughout the stakeholder consultation process. We have prepared the summaries:

(i) without attributing feedback to specific stakeholders. However, we have noted in parts where a concern was expressed by a particular type of stakeholder (e.g. police data custodian); and

(ii) to indicate the ABS' response to the feedback. Some of these responses were provided by the ABS during the consultation sessions. Other responses have been included in this report, following consultation with the ABS.

Data quality

(b) Stakeholders expressed concern about data quality, and in particular, the linking of individuals across datasets using SLK-581. As noted above, SLK-581 is a statistical linkage key which includes components of a person's given name and surname, date of birth and sex.

(c) Specifically, stakeholders noted that individuals' names can change or an alias may be used. Further, in some cases, data custodians may incorrectly record a person's name or date of birth. Where a person's name and/or date of birth are recorded incorrectly (or have changed), there may be two or more SLK-581s for one person, and the data relating to that person may not be correctly linked.

(d) Stakeholders expressed the view that, if a person's full name and address were used for data linkage, that would improve the quality of the data linkage.

ABS response

(e) ABS noted that it considered SLK-581 to be fit for purpose. A Proof of Concept was completed for the CJDA, and linkage rates in the Proof of Concept varied by jurisdiction and sector (due to each agency providing data for different reference periods and number of years of data). Moreover, there are issues that are known to specifically affect linkage rates for criminal justice data.[3] However, the ABS found that linkage rates substantially improved when datasets were scoped to maximise comparability (e.g. by ensuring consistent reference periods across jurisdictions and removing records that are not able to be conceptually linked with other datasets). On this basis, the ABS has found that the SLK-581 is suitable for use in this Project.

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[3] For example, there may not be any links across datasets for individuals who have been imprisoned for the entire reference period or persons who have only received a caution or warning from police (i.e. individuals who have not had interactions with different parts of the criminal justice system in the reference period).

(f) ABS also notes that criminal justice data is sensitive in nature, and using SLK-581 as a statistical linkage key is less identifying than using a person's full name and address. Further, anecdotal evidence suggests that the recording of address is poor within the criminal justice system due to the transitory nature of the offending population, meaning that the utility of that information for the purpose of linkage may be limited.

(g) As the CJDA is developed, ABS will consider the possibility of using improved linking techniques. For example, more advanced linkage methods can be used to identify matches even when there are errors in the linkage key.

Consistency of data collection

(h) Stakeholders asked whether there were any issues with the consistency of data collected across jurisdictions, and whether the Project had generated any consideration about the consistency of data collection.

ABS response

(i) ABS noted that the datasets used for the Project are primarily provided to the ABS for existing established administrative collections and have been subject to decades of work to improve comparability across jurisdictions. ABS uses various national reporting standards and frameworks (such as the Australian and New Zealand Offence Classification, for classifying types of offences) to help to align reporting across jurisdictions. The ABS acknowledged that there remain known gaps and issues, and confirmed the need to continue working to improve the consistency of data collection.

(j) Due to the existing administrative collection work program, the ABS has long-standing relationships with the data custodians in this Project, and has developed several mechanisms to receive feedback and improve the consistency of data collection. For example, Advisory Groups have been set up for each justice sector, allowing agencies to discuss data matters with the ABS and each other.

Limits on ability to disclose data to ABS

(k) Some state and territory data custodians expressed a concern about the ability to legally disclose certain data to ABS, such as spent convictions data, youth data, and Aboriginal and Torres Strait Islander data.

ABS response

(l) ABS noted that the Project will only involve the use of data items from established administrative collections (except SLK-581) and will therefore involve a secondary use of data that is already collected from data custodians.

(m) ABS noted that most jurisdictions have provisions in their privacy laws for data to be disclosed for research or statistical purposes. Other jurisdictions have laws or policies that permit disclosure where legally required or authorised by law. The *Census and Statistics Act 1905* (Cth) provides the ABS with the authority to collect and disseminate statistical information.

Re-identification risks

(n) Stakeholders queried whether there may be risks of re-identification that could arise from the data that will be provided to researchers in the ABS DataLab (such as in the case of high-profile criminal defendants or small cohorts of individuals).

ABS response

(o) ABS noted that, as part of the Five Safes Framework (and specifically, Safe Outputs), the ABS has a vetting team that checks all data for re-identification risks before the data is cleared for release from the ABS DataLab. This includes ensuring the data meets certain confidentiality requirements, such as having a minimum number for contributors required for each cell or statistic.

(p) Further, ABS noted that it seeks to balance data access with privacy and data security, and that:

(i) only de-identified data are provided to researchers, and personal identifiers are kept separately to other analytical information at all times during the linkage process (the Separation Principle);

(ii) the ABS limits researchers' access to data based on the research question they are seeking to answer (i.e. not all data will be released to researchers);

(iii) researchers are required to undertake training and sign an undertaking that they will not use the data to try and identify particular individuals from the data;

(iv) the ABS will not approve research projects if data for small cohorts of individuals is requested; and

(v) in accordance with the ABS Data Integration Principles, data is not permitted to be used for compliance purposes.

Data security

(q) Stakeholders expressed an interest in data security for the Project, including:

(i) what security controls were in place to protect the security of the data in the ABS DataLab;

(ii) how long researchers would have access to linked data in the ABS DataLab; and

(iii) what specific measures and protections were in place for managing a data breach.

(r) Some stakeholders indicated that they did not have concerns about data security in the context of the Project. They expressed the view that ABS' data management practices were stringent.

ABS response

(s) ABS noted that the following measures are in place to protect the security of data in the ABS DataLab:

(i) data encryption at rest, to mitigate against unauthorised access to microdata;

(ii) Azure Storage Accounts to securely hold individual research products and allow querying from authorised users;

(iii) cloud servers (including back-up servers) hosted exclusively in Australia, with access only authorised for use in Australia, unless approved by ABS;

(iv) closed network virtual machines to provide secure, isolated research spaces for the analysis of microdata;

(v) secure access through multi-factor authentication and workspace segmentation, which prevents data from being shared between research projects;

(vi) a DataLab Product Storage Account protected with Microsoft Defender, providing threat detection against malicious or unusual behaviour.

(t) ABS also noted that:

(i) all researchers are required to complete training before accessing the ABS DataLab;

(ii) researchers are also required to sign an undertaking that they will not share their login details for the ABS DataLab; and

(iii) researchers will have access to linked data in the ABS DataLab only for the duration of their project. Project proposals have a maximum two-year limit, following which researchers may apply for an extension.

(u) Lastly, ABS noted that, in the unlikely event of a data breach, ABS will respond in accordance with the requirements of the Notifiable Data Breaches Scheme. ABS regularly reviews data integration systems and practices. ABS' current focus is on uplifting systems, improving data handling processes, and using cloud services to reduce the likelihood of a data breach.

Data governance

(v) State and territory data custodians expressed the view that it was important that data custodian representatives are included within the governance framework for the CJDA, so that they know how their data will be used and have a say in the types of projects that the data is used for.

(w) Community legal centres noted that the governance body overseeing the CJDA was comprised of data custodians. Given the impact of the Project on individuals who were not data custodians, stakeholders asked ABS whether it had considered including other representatives in the governance body – specifically, individuals who were directly affected by the Project or who might otherwise bring different perspectives to issues such as the protection of privacy or governance for Aboriginal and Torres Strait Islander data.

(x) Aboriginal and Torres Strait Islander representatives recommended ethics and cultural safety frameworks be implemented in CJDA projects, such as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Code of Ethics for Aboriginal and Torres Strait Islander Research.

ABS response

(y) ABS noted that data custodian representatives are included within the governance framework for the CJDA and therefore would approve projects seeking access to the CJDA.

(z) ABS noted that as part of the governance framework for the CJDA, individual research projects, depending on their nature and risk rating, may be required to conduct a separate PIA. Where a separate PIA is conducted, consultations with stakeholders will be undertaken as part of the process, to ensure that community expectations inform the risk analysis and recommendations for the PIA.

(aa) ABS also noted that the Centre of Aboriginal and Torres Strait Islander Statistics (**CoATSIS**), which sits within ABS, has a leadership and coordination role for national statistical activity about Aboriginal and Torres Strait Islander peoples. CoATSIS provides cultural review advice and guidance for integrated and other microdata projects involving data relating to Aboriginal and Torres Strait Islander individuals. Further, ABS will work with Aboriginal and Torres Strait Islander representatives to embed best practice for the governance of Aboriginal and Torres Strait Islander data into the Project.

Data about Aboriginal and Torres Strait Islander people

(bb) Aboriginal and Torres Strait Islander representatives:

(i) expressed support for the Project, and indicated that the data could be used to inform outcomes for Aboriginal and Torres Strait Islander people;

(ii) expressed interest in using the CJDA to link to other datasets, such as Services Australia data, to help evaluate the impact of government programs;

(iii) indicated that there was a need for more granular location data. This is because understanding an individual's connection to country and family are critical to providing support;

(iv) noted that there were challenges to ensuring data consistency across different jurisdictions;

(v) highlighted the importance of presenting the data in a culturally appropriate manner and the importance of moving away from 'deficit' narratives; and

(vi) highlighted the importance of making the data accessible, with a view to helping Aboriginal and Torres Strait Islander communities.

ABS response

(cc) ABS noted that:

(i) the linking of CJDA with other datasets would be possible in the future, with a project proposal and approvals from the respective data custodians. ABS noted

that other datasets may have differing quality standards and therefore caution would be required in linking datasets;

(ii) the ABS intends to release official statistics from the CJDA, which could support the needs of Aboriginal and Torres Strait Islander people;

(iii) ABS is aware of the potential risk of CJDA research projects entrenching harmful 'deficit' narratives;

(iv) ABS will work with Aboriginal and Torres Strait Islander representatives to understand how best to formalise the governance of Indigenous data and data sovereignty into data integration products and projects, with a view to informing the development of the Project; and

(v) ABS' Data Liaison Officers will work with Aboriginal and Torres Strait Islander communities to support the use of Aboriginal and Torres Strait Islander data within communities.

Appendix: Stakeholders consulted

- Aboriginal Family Legal Service Queensland
- ACT Corrective Services
- ACT Courts and Tribunal
- ACT Policing
- BUSY Ability (Qld)
- Central Australian Women's Legal Service
- Corrective Services NSW
- Courts Administration Authority SA
- Court Services Victoria
- Federation of Community Legal Centres (Victoria)
- Intellectual Disability Rights Service
- Maranguka Community Hub (NSW)
- National Legal Aid
- Northern Territory Police
- NSW Bureau of Crime Statistics and Research
- NSW Department of Communities and Justice
- NSW Information and Privacy Commission
- NSW Police Force
- NT Office of the Information Commissioner
- Office of the Australian Information Commissioner
- Office of the Victorian Information Commissioner
- Privacy Committee of South Australia
- Queensland Indigenous Family Violence Legal Service
- Queensland Office of the Information Commissioner
- Queensland Police
- Ruah Legal Services
- South Australia Police
- Tasmania Department of Justice
- Tasmania Police
- Victorian Aboriginal Legal Service
- Victoria Police
- WA Department of Justice
- WA Police
- Western NSW Community Legal Centre
- Women's Legal Service
- Youth Advocacy Centre
- Youth Law Australia
- Youth Legal Service