

South Australia

## Public Sector (Data Sharing) Regulations 2017

under the *Public Sector (Data Sharing) Act 2016*

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### Contents

- 1 Short title
- 3 Interpretation
- 4 Definition—exempt public sector data
- 5 Definition—public sector agency
- 5A Trusted access principles (safe data) (section 7(4))
- 6 Prescribed trusted access principles (section 7(7))
- 7 Prescribed data sharing purposes (section 8(1)(c))
- 8 Prescribed data sharing safeguards (section 12)
- 8A Relevant entities (section 13)
- 9 Restriction on further use and disclosure of public sector data (section 14(1)(d))

### Legislative history

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#### 1—Short title

These regulations may be cited as the *Public Sector (Data Sharing) Regulations 2017*.

#### 3—Interpretation

In these regulations—

*Act* means the *Public Sector (Data Sharing) Act 2016*.

#### 4—Definition—exempt public sector data

- (1) For the purposes of paragraph (a) of the definition of *exempt public sector data* in section 3(1) of the Act, the following public sector agencies are prescribed:
  - (a) the Auditor-General;
  - (b) the Crown Solicitor;
  - (c) the Director of Public Prosecutions;
  - (d) the Ombudsman.
- (2) For the purposes of paragraph (b) of the definition of *exempt public sector data* in section 3(1) of the Act, the following data is exempt public sector data:
  - (a) data that would be privileged from production in legal proceedings on the ground of legal professional privilege;
  - (b) data obtained in confidential circumstances for the purposes of mediation, conciliation or other dispute resolution process undertaken under an Act or law;

- (c) data created by South Australia Police containing information classified by the Commissioner of Police, in accordance with the provisions of any other Act, as criminal intelligence;
- (d) in relation to proceedings that are being heard, or are to be heard, before a court or tribunal, data—
  - (i) prepared for the purposes of the proceedings (including any transcript of the proceedings); or
  - (ii) obtained in confidential circumstances for the purposes of mediation, conciliation or some other form of dispute resolution; or
  - (iii) the disclosure of which would be inconsistent with the Crown acting as a model litigant in the proceedings; or
  - (iv) prepared by or on behalf of the court or tribunal (including any order or judgment made or given by the court or tribunal);
- (e) data the public disclosure of which would, but for any immunity of the Crown—
  - (i) constitute contempt of court; or
  - (ii) contravene any order or direction of a person or body having power to receive evidence on oath; or
  - (iii) infringe the privilege of Parliament;
- (f) data the disclosure of which could reasonably be expected to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth).

### **5—Definition—public sector agency**

For the purposes of paragraph (a) of the definition of *public sector agency* in section 3(1) of the Act, the following are prescribed:

- (a) the Independent Commissioner Against Corruption;
- (b) the Judicial Conduct Commissioner;
- (c) the Office for Public Integrity;
- (d) all Royal Commissions;
- (e) a judicial conduct panel under the *Judicial Conduct Commissioner Act 2015*;
- (f) a person appointed to conduct a review of the Independent Commissioner Against Corruption or the Office for Public Integrity under section 46 of the *Independent Commissioner Against Corruption Act 2012* (as in force immediately before the commencement of section 20 of the *Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2016*);
- (g) the reviewer within the meaning of Schedule 4 of the *Independent Commissioner Against Corruption Act 2012*.

### **5A—Trusted access principles (safe data) (section 7(4))**

For the purposes of section 7(4)(a)(vii) of the Act, the purposes specified in regulation 7(1)(c) are prescribed.

**6—Prescribed trusted access principles (section 7(7))**

- (1) For the purposes of section 7(7) of the Act—
  - (a) prescribed health information may not be shared or disclosed under section 8 of the Act without the prior approval of the Minister responsible for the administration of the *Health Care Act 2008*; and
  - (b) information disclosed to a public sector agency for the purposes of the SA NT DataLink by a person or body that is not a public sector agency may not be shared or disclosed under section 8 of the Act without the prior approval of the relevant person or body.

- (2) In this regulation—

**prescribed health information** means information the disclosure of which is prohibited—

- (a) under a prescribed provision; or
- (b) under the *National Health Funding Pool Administration (South Australia) Act 2012*,

(whether or not the prohibition is subject to specified qualifications or exceptions);

**prescribed provision**—each of the following is a prescribed provision:

- (a) section 18 of the *Assisted Reproductive Treatment Act 1988*;
- (b) sections 66 and 73 of the *Health Care Act 2008*;
- (c) regulation 26 of the *Health Care Regulations 2008*;
- (d) section 216 of the *Health Practitioner Regulation National Law*;
- (e) sections 99 and 100 of the *South Australian Public Health Act 2011*;
- (f) section 39 of the *Transplantation and Anatomy Act 1983*;

**SA NT DataLink** means the SA NT DataLink established and in existence in accordance with the *SA NT DATA LINKAGE CONSORTIUM AGREEMENT* (commenced on 1 January 2009 and as varied from time to time).

**7—Prescribed data sharing purposes (section 8(1)(c))**

- (1) For the purposes of section 8(1)(c) of the Act, the following purposes are prescribed:
  - (a) to assist in law enforcement;
  - (b) to assist in emergency planning and response;
  - (c) to include a photograph of a person (being a photograph taken or supplied and held under the *Motor Vehicles Act 1959*) in a licence, authorisation, accreditation, identity card or other similar document (however described) granted to or issued in respect of the person under, or for the purposes of the administration of, any of the following laws of the State:
    - (i) the *Firearms Act 2015*;
    - (ii) the *Harbors and Navigation Act 1993*;
    - (iii) the *Passenger Transport Act 1994*.

(2) In this regulation—

*emergency planning and response* includes—

- (a) the prevention or reduction of a threat to the life, health or safety of a person; and
- (b) the investigation of a missing person; and
- (c) the identification of a disaster victim or deceased person; and
- (d) the prevention or reduction of a disruption to essential services or to services usually enjoyed by the community; and
- (e) the prevention or reduction of the destruction of, or damage to, any property;

*law enforcement* includes—

- (a) the preservation of the peace; and
- (b) the prevention and detection of crime; and
- (c) criminal investigations, criminal proceedings or proceedings for the imposition of a penalty.

## **8—Prescribed data sharing safeguards (section 12)**

For the purposes of section 12 of the Act, if data is provided to a data recipient under the Act, the data recipient must ensure that it is clearly indicated on the data that the data was provided under the Act.

## **8A—Relevant entities (section 13)**

(1) For the purposes of paragraph (c) of the definition of *relevant entity* in section 13(8) of the Act, the following are prescribed as relevant entities:

- (a) Flinders University;
- (b) The University of Adelaide;
- (c) the University of South Australia;
- (d) a person or body (other than a public sector agency) that provides or has provided an essential service in this State;
- (e) a person or body (other than a public sector agency) that is or has been engaged by the government to provide services or carry out a function on behalf of the government.

(2) In this regulation—

*essential service* has the same meaning as in the *Essential Services Act 1981*.

## **9—Restriction on further use and disclosure of public sector data (section 14(1)(d))**

For the purposes of section 14(1)(d) of the Act, ODA may use public sector data received pursuant to an authorisation under section 8 or 9 of the Act other than for a purpose for which it was provided if—

- (a) the proposed use is consistent with the objects of the Act; and

- (b) ODA is satisfied that the circumstances in which the proposed use will occur are consistent with the circumstances that the data provider was (at the time of providing the data) informed would be the circumstances in which any proposed use of the data would occur.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2017	75	<i>Gazette 30.5.2017 p1997</i>	30.5.2017: r 2
2017	316	<i>Gazette 28.11.2017 p4765</i>	28.11.2017: r 2
<b>2020</b>	<b>271</b>	<b><i>Gazette 24.9.2020 p4659</i></b>	<b>24.9.2020: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>28.11.2017</i>
<b>r 5A</b>	<b>inserted by 271/2020 r 4</b>	<b>24.9.2020</b>
<b>r 7(1)</b>	<b>varied by 271/2020 r 5</b>	<b>24.9.2020</b>
r 8A	inserted by 316/2017 r 4	28.11.2017

### Historical versions

28.11.2017