

26 August 2020

Mr Gary Groves  
Executive Director  
Stronger Communities Investment Unit  
Department of Communities and Justice  
Level 1, 191 Cleveland St,  
Redfern, NSW 2016

**Attention: Ms Paula Cheng,  
Director, Investment Modelling, Research and Evaluation**

Dear Mr Groves,

**Re: Submission from child and family peak bodies on the Discussion Paper –  
Privacy Codes of Practice for the TFM Human Services Dataset**

Thank you for inviting the peak bodies in NSW which represent the interests of vulnerable children, young people and their families to provide feedback on your discussion paper relating to the Privacy Codes of Practice for the Their Futures Matters (TFM) Human Services Dataset (July 2020).

We note that the intention is for the Stronger Communities Investment Unit (SCIU) to initially prepare a privacy impact assessment as a precursor to developing a Privacy Code of Practice and a Health Privacy Code of Practice (Privacy Codes) to sustain the Human Services Dataset as an enduring asset for the NSW Government. The current Public Interest Direction is due to expire on 13 July 2021.

As you would be aware, Ms Cheng, Director, Investment Modelling, Research and Evaluation, along with other SCIU staff, consulted ACWA together with the following peak body representatives during a meeting on 23 July 2020:

- Julie Hourigan-Ruse, CEO, FAMS
- Pam Young, CEO, YFoundations
- Kate Munro, CEO Youth Action

Our discussions principally focused on the potential for the very valuable insights gained from the Human Services Dataset (and future iterations) to be utilised to inform decisions which promote the safety, welfare and wellbeing of certain cohorts of children and young people, in accordance with the information sharing provisions contained in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*. It was agreed during the meeting that the peak bodies would provide the SCIU with a joint submission

regarding the above issue – along with brief additional observations regarding the future inclusion of other data sets, including from the NGO sector.

ACWA indicated that it would commission former inaugural Australian Information and Privacy Commissioner and both Commonwealth and NSW Ombudsman, Professor John McMillan, AO to review our submission. In doing so, ACWA also undertook to seek input from additional peak bodies with a relevant interest who did not participate in the July meeting – AbSec, CAPS and CREATE – all seven peak bodies are referred to as the ‘signatories’ in the remainder of this document.

### **Key observations**

By way of an opening observation, we wish to stress that the signatories strongly support the value of the NSW Government maintaining and continuing to update the Human Services Dataset (HSD) as an enduring asset, given its critical value to ongoing system transformation work across the government and non-government sectors.

In this regard, we welcome the updates which have taken place to the first iteration of the dataset via the inclusion of data for the period ending 30 June 2019, and importantly, the addition of government school attendance and suspension data, which had been absent from the initial publication of the HSD and *Forecasting Future Outcomes – 2018 Insights Report* – commissioned by TFM.<sup>1</sup>

### ***Utilising the synthesised agency line data underpinning the Human Services Dataset***

A primary concern for the signatories is that the discussion paper does not recognise that the Chapter 16A information sharing provisions sit alongside the proposed Privacy Codes, and that the existence of a Privacy Code would not inhibit the use of the very valuable insights gained from the analysis of the linked agency datasets, to inform targeted service interventions with the children and young people and their families, who make up the highly vulnerable cohort groups described in the Insights Report (these cohorts are discussed further on page 5). We note that to-date, the insights gained from the HSD have not been utilised to direct the type of frontline work described above.

As you are aware, the HSD was created in response to the 2015 Tune Review into out-of-home care which recommended a cross-agency database to inform the development of an investment approach to better enable the reprioritisation of cohorts with the greatest need and resource allocation for the greatest benefit.

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<sup>1</sup> Taylor Fry, *Forecasting Future Outcomes – Stronger Communities Investment Unit – 2018 Insights Report, 2018*.

The data collected in the HSD provides a comprehensive view of service usage pathways at the individual level for all NSW residents born on or after 1 January 1990, and individuals related to them (including family members, guardians, carers). The first iteration of the dataset included the records of almost seven million individuals held by government agencies across the human services spectrum who were aged 0 to 28 at the time.

More than a decade ago, the NSW Ombudsman's Office successfully advocated for the creation of information sharing provisions of the type that are contained in Chapter 16A. Importantly, in recommending legislative amendment to permit exchange of information between human services and justice agencies, and these agencies and the NGO sector, His Honour Justice Wood specifically stated that:

...The amendments should provide, that to the extent inconsistent, the provisions of the *Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002* should not apply. Where agencies have Codes of Practice in accordance with privacy legislation their terms should be consistent with this legislative provision and consistent with each other in relation to the discharge of the functions of those agencies in the area of child protection.' [See Recommendation 24.6].<sup>2</sup>

The NSW Ombudsman also argued that the information sharing provisions of the type outlined above were necessary to underpin an intelligence-driven (or data driven) approach to child protection, that is, the systematic identification, sharing and analysis of agency information holdings to find those children and families most at risk in individual locations, and using the resulting analysis to provide the identified cohorts with better targeted and more effective services.

The value of an intelligence-driven approach to child protection was well illustrated in data presented in the NSW Ombudsman's submission to the Special Commission of Inquiry on Early Intervention and Prevention, and while it was prepared 12 years ago, it remains highly relevant to this issue of the value of cross-agency linked datasets, having highlighted the following:<sup>3</sup>

*Over recent years, the department has been undertaking significant work in relation to analysing the frequency and nature of the reports it receives. For example, the department's data indicates that 11 percent of sibling groups generate close to 50 percent of the total reports received by the department. In*

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<sup>2</sup> **Recommendation 24.6** *The Children and Young Persons (Care and Protection) Act 1998* should be amended to permit the exchange of information between human services and justice agencies, and between such agencies and the nongovernment sector, where that exchange is for the purpose of making a decision, assessment, plan or investigation relating to the safety, welfare and well-being of a child or young person in accordance with the principles set out in Chapter 24. The amendments should provide, that to the extent inconsistent, the provisions of the *Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002* should not apply. Where agencies have Codes of Practice in accordance with privacy legislation their terms should be consistent with this legislative provision and consistent with each other in relation to the discharge of the functions of those agencies in the area of child protection.

<sup>3</sup> NSW Ombudsman, Submission on Early Intervention and Prevention, Special Commission of Inquiry into Child Protection Services in NSW, 12 May 2008, pp11-13.

*this regard, DoCS' research has shown that in 2005-06, fifty percent of the 241,003 risk of harm reports made to DoCS related to around 7,200 sibling groups.*

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*However, while we understand that local CSCs will have some idea as to the high risk families within their area, there is nothing in place to ensure that there is a systematic collection and analysis of the information obtained from child protection reports to identify these families. The department's own research demonstrates why it is essential that each CSC is fully aware of the relatively small percentage of families within their area who generate approximately half of the reports received.*

*By way of contrast, it is worthwhile considering the policing profession. Like DoCS, police receive hundreds of thousands of reports each year. Police data also demonstrates that there are a limited number of individuals and sub-groups within our community who commit most of the crimes.*

*Over the past 10 – 15 years, the policing profession has changed dramatically in terms of how it carries out its business of crime reduction and prevention. Increasingly, police have used their information holdings to drive their operational practice.*

*In particular, the police use their information systems to assist in identifying patterns of criminal activity and the high-risk offenders who are behind much of this activity. From the corporate level down to the local level, the data is analysed and then applied to inform the deployment of police resources.*

*If we take domestic violence matters as an example, police use their data holdings to develop profiles of both high-risk offenders and high-risk victims. Informed by these profiles, police can then make 'evidence based' decisions about which matters should be prioritised, and what kinds of crime prevention strategies should be employed.*

*This shift by police towards a much more sophisticated intelligence-based practice provides a blue-print for DoCS. Some of the excellent data analysis which DoCS has already carried out supports this proposition.*

*Such practice would allow the department to better utilise the vast amount of information it receives to make more informed decisions about those who are most in need of support. Intelligence driven child protection practice would also allow better identification of many of those families who require a coordinated interagency response.*

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*However, in discussing intelligence-based practice, it is important to also recognise that possessing the necessary IT capacity represents only one component of this type of practice. The other elements concern the need for ongoing sophisticated analysis of information holdings, and the ability to translate this analysis into well informed decisions about which families are most in need of a response and the nature of the response which should be provided. For these essential elements to be embedded in practice requires:*

- 1. a sound intelligence policy framework;*
- 2. structural and governance arrangements capable of driving the department's intelligence practices, particularly at the corporate and local CSC levels; and*
- 3. skilled staff at the corporate and local level dedicated to use and develop the department's intelligence practices.*

While the above submission focused on 'frequently encountered families' data held by 'DoCS', in subsequent investigations and reviews carried out by the NSW Ombudsman, the need for a mechanism to pull together critical risk-related data held by other human service and justice agencies to form a more complete picture of risk was highlighted in successive Ombudsman public reports.<sup>4</sup>

Therefore, the announcement that the SCIU (formerly TFM) would be compiling a linked agency dataset to inform much awaited system transformation work was welcomed by the community services sector. However, the enthusiasm for this work was also predicated on an assumption that in addition to the published investment modelling contained in the 2018 Insights Report and Data Visualisation Tools, that lead human services agencies would also utilise the insights gained from the analysis of the linked agency data contained in the HSD, to undertake better targeted child protection work and related place-based service delivery reform. However, at the time that the Publication Interest Direction was sought to enable the creation of the HSD, there was no reference to the Chapter 16A information sharing provisions sitting alongside the Direction to promote the use of the resulting 'data insights' to inform operational child protection work.

The objects and principles underpinning Chapter 16A make clear that the needs and interests of children and young persons, and of their families, in receiving services, take precedence over the protection of confidentiality or of an individual's privacy.<sup>5</sup> It is also important to note that s.245H of the Care Act makes clear that 'a provision of any other Act or law (whether enacted or made before or after the commencement of this section) that prohibits or restricts the disclosure of information does not operate to prevent the provision of information (or affect a duty to provide information) under this Chapter.'

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<sup>4</sup> See for example, *Addressing Aboriginal Disadvantage: The Need to do things differently*, August 2011; *Keep Them Safe?*, August 2011; *Responding to Child Sexual Abuse in Aboriginal Communities*, January 2013; *Review of the NSW child protection system – Are things Improving?* April 2014.

<sup>5</sup> See section 245A91)(d)

In highlighting the above provision, we are not seeking to suggest that the full linked dataset underpinning the HSD should be utilised by human services agencies or other prescribed bodies 'at large'; however, we believe there would be considerable merit in the proposed Privacy Code specifically recognising the related information sharing legislation, by making clear that the Code does not inhibit the use of the insights gained from the linked dataset to promote the safety, welfare and wellbeing of particular children and young people identified in the high risk cohort groups. Nor would the Privacy Code preclude any agency that contributed information to the linked dataset from separately using that information in the normal course of agency business.

In this regard, it is clear from the 2018 Insights report commissioned by TFM – *Forecasting Future Outcomes* – that particular children and young people comprising certain (not all) cohorts, have had repeated contact with the child protection and/or criminal justice systems. This fact is best illustrated by the cohorts contained in section 6 of the report, which include:<sup>6</sup>

- **Vulnerable young children aged 0-5** – children aged 5 or younger as at 30 June 2017 with any of the following risk factors: one or more parental risk factors; two or more peri-natal risk factors; assessment at ROSH+.
- **Vulnerable young adolescents** – Anyone born in NSW who was aged between 10 and 14 at 30 June 2017 with any of the following risk factors in the five years prior: justice system interactions; assessment at ROSH+ or parental risk factors of interacting with the justice system, mental illness, AOD or domestic violence.
- **Vulnerable young people transitioning to adulthood** – Anyone born in NSW who was aged between 16 and 18 as at 30 June 2017 with any of the following risk factors in the five years prior: justice system interactions; or assessment at ROSH+.

It is noteworthy that a precondition for each cohort group is that the child/young person was assessed at risk of significant harm plus (ROSH+), whereas this is not necessarily the case for other vulnerable cohorts discussed in sections 7, 8 and 9 of the report, including: 'children of young mothers and 'young adolescents with mental health risk factors.' Therefore, the data relating to children and young people contained in the section 6 cohorts, would appear to be particularly relevant to our central submission.

Finally, we would submit that in undertaking the privacy impact assessment and related submission to the NSW Privacy Commissioner, the SCIU should consider recommending that the 'Statement of Objectives' (of the kind currently in clause 6 of the Privacy Commissioner's Direction) includes a statement reflecting that the existence of the Code does not inhibit the insights gained from the analysis of the linked agency dataset from being utilised for the purposes of targeted child protection work consistent with the objects of Chapter 16A. Given that the purpose of the creation and ongoing maintenance

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<sup>6</sup> Taylor Fry, *Forecasting Future Outcomes – Stronger Communities Investment Unit – 2018 Insights Report, 2018.*

of the HSD is to improve the long-term outcomes for vulnerable children and young people and their families, specifically recognising that both legislative instruments – the Code and the Chapter 16A – sit alongside each other and have similar objectives, is in our submission, highly beneficial to promoting effective service delivery to those most vulnerable in this state.

### ***The potential for linkage to non-government datasets***

As noted previously, we welcome the more recent inclusion of public school data relating to attendance and suspension in the HSD. However, as you are aware, given the substantial proportion of students in the non-government schools' sector, we would support the inclusion of data from the independent schools sector in future iterations, and would encourage consultation taking place with the relevant peak bodies representing the independent schools' sector to pursue this issue further.

In relation to the merits of including a broader range of non-government data in future iterations of the HSD, at this stage, we would simply note that it is difficult for the signatories to reach an informed position on this issue, given that there are a range of factors that would need to be discussed and worked through, in order to ensure that any future data provided is both reliable and consistent across the NGO sector, and in a streamlined manner given current administrative data entry and reporting burdens being experienced.

We trust this submission will be valuable in informing your privacy impact assessment and related privacy code development work. Thank you again for inviting our agencies to provide feedback and we look forward to future discussions on this important child safety issue.

### **Signatories:**

Julie Hourigan-Ruse, **CEO FAMS**

Pam Young, **CEO, YFoundations**

Kate Munro, **CEO Youth Action**

Bill Pritchard, **A/Executive Leader, AbSec**

Reegan Barber, **CEO, CAPS**

Steve Kinmond, **CEO, ACWA**

Mohita Kapoor, **NSW State Coordinator,  
CREATE**