

First Nations Data Strategy

2023

Background

In July 2020, the Victorian Equal Opportunity and Human Rights Commission (**Commission**) launched the [Aboriginal Community Engagement Strategy 2020–22 \(ACES\)](#).

In developing the ACES, the Commission consulted with other organisations working in the First Nations rights sector, as well as First Nations community members across Victoria, in early 2020. The Commission also undertook an audit of the previous Aboriginal Engagement Strategy 2016 – 20 to determine what had worked well and what could be improved.

In response to the feedback of consultation participants and the audit, the Commission developed the ACES to enhance the way in which we:

- provide services to First Nations peoples in Victoria
- engage with First Nations communities in Victoria.

As part of the ACES, the Commission committed to a number of [actions](#)¹ concerning the data of First Nations clients to enhance how we identify trends, improve self-determination and data sovereignty.

These actions include:

- allowing clients to voluntarily identify as Aboriginal and/or Torres Strait Islander when engaging with our services²
- considering First Nations client data to inform our legal and policy functions.³

¹ Victorian Equal Opportunity and Human Rights Commission, Action Table – Aboriginal Community Engagement Strategy 2020–22 (Strategy, 2020)

<https://www.humanrights.vic.gov.au/static/87ba330f5298418eef93899b8acc219b/Action_plan-Aboriginal_community_engagement_strategy-Action_table.pdf>.

² Ibid Objective 1 – 2(b).

³ Ibid Objective 1 – 2(c).

Strategic purpose and what we want to achieve

The First Nations Data Strategy seeks to supplement the ACES by providing a high-level framework to guide how the Commission collects, uses and shares the data of First Nations clients.

In doing so, the First Nations Data Strategy progresses the following strategic priority for the Commission:

- **Embedding cultural rights** – work with key stakeholders and public authorities to embed an understanding of First Nations cultural rights in policy and practice (by providing data to key First Nations stakeholders to facilitate a greater understanding of issues impacting First Nations peoples in Victoria).

The First Nations Data Strategy responds to the feedback we received from consultation participants and embeds best practice into how we collect, use and disclose the data of First Nations clients.

The development of the First Nations Data Strategy achieves the Commission's commitment under the ACES to:

- 'develop a data strategy for managing and disclosing data in relation to First Nations clients, consistent with data sovereignty principles and protocols'; by
- 'establishing a process to share de-identified enquiry and complaints data with First Nations stakeholders and detailing how we have used this data to improve our services for the benefit of the First Nations community'.⁴

By doing this, the Commission is positioning itself as a leader in best practice while also practically embedding First Nations rights into its data processes.

Practically, the First Nations Data Strategy supplements the ACES by providing the following:

- **First Nations Data Principles** – a flexible set of principles to guide how we collect, store, use and disclose data regarding our work with First Nations clients; and
- **Process for how we will disclose data** – a specific process to guide how we share relevant data with key First Nations stakeholders as committed to under the ACES (see 'How we will share data').

⁴ Victorian Equal Opportunity and Human Rights Commission, Action Table – Aboriginal Community Engagement Strategy 2020–22 (Strategy, 2020) Objective 1 – 2(a)(i).

Consultation feedback

During the consultations, participants emphasised the importance of data concerning First Nations clients. The First Nations Data Strategy will assist the Commission to respond to the following points that were raised by consultation participants:

Collecting data

Consultation participants recognised the value in identifying and collecting data on First Nations clients and highlighted that this was considered best practice for organisations working in the First Nations rights sector.

‘From [our] perspective, we identify and ask that because the identification enables other rights and determines service pathway, so we have to have those mechanisms. With non-Aboriginal people, they might not know why it’s being asked and see it as special treatment. We have to have those mechanisms. For the service pathways, we need to know.’⁵

Capturing data concerning First Nations clients creates two key benefits. First, it enables us to tailor our services by providing culturally appropriate services, in recognition of the clients’ Aboriginality, and reduce barriers to access. Second, it allows us to analyse the accumulated data to identify any trends that are occurring and respond accordingly.

Consent and transparency

Consultation participants noted First Nations clients and communities need to be empowered with a clear understanding of how data concerning them is being collected, utilised and stored so that they are best positioned to voluntarily provide the information to the Commission.

In doing this, it is important that First Nations clients and communities understand:

- why that data is being collected; and
- how it will be used or disclosed; and
- what benefit this has for First Nations clients and communities as well as the Commission.⁶

⁵ Organisation consultation participant.

⁶ Social Compass, ‘Report: Aboriginal and Torres Strait Islander Engagement Strategy’ (Report), Victorian Equal Opportunity and Human Rights Commission (25 March 2020), 14.

Disclosing data

Consultation participants noted the inherent value and power in having access to, and understanding, data.

‘If you’ve got data on a lot of people utilising in this area, it will help you identify and address issues and funding’.⁷

By having access to de-identified and general forms of data concerning First Nations clients, key First Nations stakeholders and organisations are able to identify and understand trends or issues emerging in First Nations communities. It may also assist in indicating what, if any, barriers to access are experienced by First Nations people seeking to utilise the Commission’s services.

‘I think the point to make is that if you’re going to collect that material, you have to feed it back to communities. We’ve done that at [organisation] – to feed it back and explain why we do what we want to do. Found that useful that shows how we use the data we take.’⁸

First Nations Data Principles

To achieve the strategic purpose outlined above, we commit to collecting, using, disclosing and storing data concerning First Nations clients in line with the following First Nations Data principles (**Principles**):

- Privacy and consent
- Self-determination and data sovereignty
- Cultural rights
- Transparency and accountability.

The Principles provide a high-level framework to model our data practices on. This high-level approach also provides flexibility, rather than being prescriptive, so that we can develop any future actions to update our processes or data software in accordance with the Principles.

⁷ Community consultation participant.

⁸ Organisation consultation participant.

Legal obligations

Privacy

The Commission is required to handle data and personal information it receives in accordance with the *Privacy and Data Protection Act 2014* (Vic) (**Privacy Act**) and the Information Privacy Principles (**IPPs**). The Privacy Act provides a legal framework for the handling of data and personal information and the IPPs (contained within the Privacy Act) provide minimum standards for the collection, storage, handling, use, disclosure and destruction of personal information by Victorian public sector organisations. Personal information is any information that is capable of identifying the individual to whom the information relates.

Adhering to this legal framework ensures the Commission's proper handling of information and data, including any personal information provided by members of the public.

The Commission also has a privacy policy on its website which explains how information will be collected, used and disclosed and how the Commission collects and manages personal and health information in accordance with the law.

As information about an individual's race or ethnic origin is considered sensitive information under the Privacy Act, it is necessary to obtain an individual's consent before collecting this information.

In accordance with the Commission's privacy policy, we will only disclose in accordance with the IPPS.

Secrecy

The Commission is also bound by strict secrecy obligations under the *Equal Opportunity Act 2010* (Vic) which requires it to keep information it receives about the affairs of a person confidential, and to only disclose or communicate information if it is necessary for the Commission to perform its functions or where other limited exceptions apply. The First Nations Data Strategy continues the Commission's commitment to its privacy policy, and legal obligations concerning the disclosure of data and personal information.

Principle – Privacy and consent

We will implement the First Nations Data Strategy in accordance with all relevant laws, including the *Privacy and Data Protection Act 2014* (Vic) and the *Equal Opportunity Act 2010* (Vic), so that our clients' data, personal information, confidentiality and privacy continues to be protected.

Self-determination and data sovereignty

The right to self-determination is protected under international human rights law by the United Nations Declaration on the Rights of Indigenous Peoples and is a foundational principle for the First Nations community.⁹ As a human rights body, the Commission supports self-determination¹⁰ and seeks to embed self-determination into all of its work with the Victorian First Nations community. The Commission also upholds the principles of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), including the principle that human rights have a special importance for the First Nations people of Victoria as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and water.

'Data sovereignty' is an extension of self-determination and, when applied to First Nations people who are seeking to access services, refers to the right of First Nations communities to exercise ownership over data concerning First Nations people.¹¹ It recognises that access to and control over data is a key enabler for First Nations communities to direct their political, economic and social direction and practically fulfill self-determination. Without this, First Nations communities are unable to govern from an informed position.

Data sovereignty is currently a best practice goal across the Victorian Public Sector. The Victorian Aboriginal Affairs Framework, which provides guidance to the Victorian Public Sector on engaging with Victorian First Nations communities, supports data sovereignty, providing that:

Aboriginal ownership and control of data is a key enabler of self-determination. When community is adequately resourced to undertake this work, data can strengthen Aboriginal advocacy, sector planning and decision making.¹²

The Commission acknowledges the importance of data sovereignty and the vital impact this will have in supporting self-determination of First Nations peoples and commits to ensuring transparency and openness in the sharing of data. The Commission will balance its commitment to promote data sovereignty alongside its responsibility to comply with relevant legal obligations.

⁹ *United Nations Declaration on the Rights of Indigenous Peoples*, opened for signature on 13 September 2007.

¹⁰ Victorian Equal Opportunity and Human Rights Commission, 'Towards Self-determination' (13 February 2019) <<https://www.humanrightscommission.vic.gov.au/home/news-and-events/commission-news/item/1793-towards-self-determination>>.

¹¹ Maïam Nayri Wingara and the Australian Indigenous Governance Institute, 'Indigenous Data Sovereignty' (Communique, Indigenous Data Sovereignty Summit, 20 June 2018); Kukutai, T. and Taylor, J. eds. 2016. *Indigenous Data Sovereignty: Towards an Agenda* (Vol. 38) ANU Press.

¹² Department of Premier and Cabinet, 'Victorian Aboriginal Affairs Framework 2018 – 2023', (Policy Framework, 2018) 59.

Principle – Self-determination and data sovereignty

We will collect, utilise and disclose data concerning First Nations clients in consideration of data sovereignty and self-determination, while also adhering to our legal obligations and privacy policy regarding the disclosure of personal information and data. (see *Process for how we will share data* for further details).

Cultural rights

Section 19 of the Charter recognises the distinct cultural rights of First Nations Victorians and provides that public authorities, such as the Commission, must consider these cultural rights when making decisions concerning First Nations Victorians. The Commission applies cultural rights to its practices.

As part of the First Nations Data Strategy, we will embed cultural rights into how we collect and utilise data concerning First Nations clients. For example, we are supporting our staff to collect information and data from First Nations clients in a culturally appropriate and tailored way by providing in-depth cultural competency training to staff and ongoing guidance on providing culturally safe services.¹³

Principle – Cultural rights

We will collect and handle data from First Nations clients in a way that is culturally safe and respectful in accordance with cultural rights under section 19 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Transparency and accountability

As a public authority, accountability to the public is a key value for the Commission.¹⁴ In order to be accountable, we must be transparent in our processes. As part of the First Nations Data Strategy, we will extend this by acting with transparency by clearly informing First Nations clients how and why we are collecting data, so that we are accountable to our First Nations clients as well as First Nations communities.

Principle – Transparency and accountability

We will demonstrate the values of transparency and accountability when collecting, using and disclosing data on First Nations clients.

¹³ Victorian Equal Opportunity and Human Rights Commission, Action Table – Aboriginal Community Engagement Strategy 2020–22 (Strategy, 2020) Objective 3 – 2(c)(i)-(ii).

¹⁴ Victorian Equal Opportunity and Human Rights Commission, *Upholding Human Rights Close to Home 2017–22* (Strategic Plan, 2017) 18.

Process for how we will disclose data

To practically advance the Principles, there is a supporting document outlining the process to disclose data.

The Commission will do the following in the immediate term (in addition to our existing commitments concerning First Nations client data under the ACES):

- Include high level, de-identified 'First Nations client data' as a specific section of analysis in our Annual Report for the general public
- Engage with key First Nations stakeholders to create an annual 'First Nations Data Report' for key First Nations stakeholders that outlines:
 - high-level data concerning First Nations clients in a de-identified way
 - any trends that we have identified
 - how we have managed and processed data concerning First Nations clients
 - how we have practically used the data concerning First Nations clients or responded to it in our work.¹⁵

¹⁵ The Commission is subject to legal restrictions around how we can share data. We will undertake all actions while respecting and adhering to our legal requirements concerning client privacy, confidentiality, data and information.

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