

Data, ethics and best practice Being Human in Life 3.0

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information and
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The contemporary government information landscape

Characterised by three immutable features:

1. digital government and data application
2. increasing partnerships and outsourcing arrangements
3. novel models of government that transcend traditional sectoral arrangements.

Session Objectives

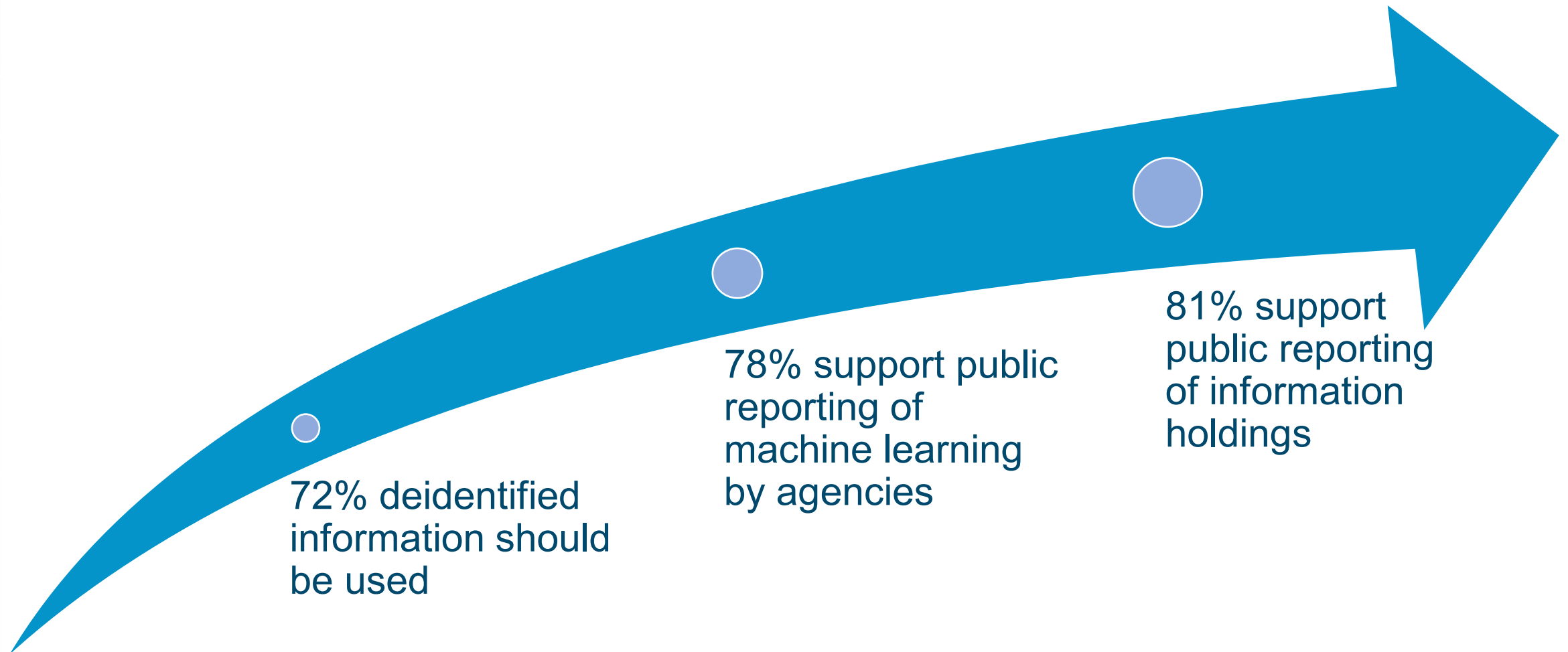
1. Understanding the relationship between data, the law and ethics
2. Best practice for analysing and applying data to achieve positive citizen outcomes without compromising privacy
3. Lawfully and ethically unleash concrete business value from data



Authorising environment

1. Permissive sharing and access statutory regimes
2. Permissive statutory use cases
3. Permissive soft law sharing and use
 - Agency to agency, entity to entity
 - Purpose, function, role
 - Directive, Policy, sharing arrangements
4. Restrictive regime exemptions
5. Soft law regime exemptions

Information holdings – 2021 Community Attitudes Survey



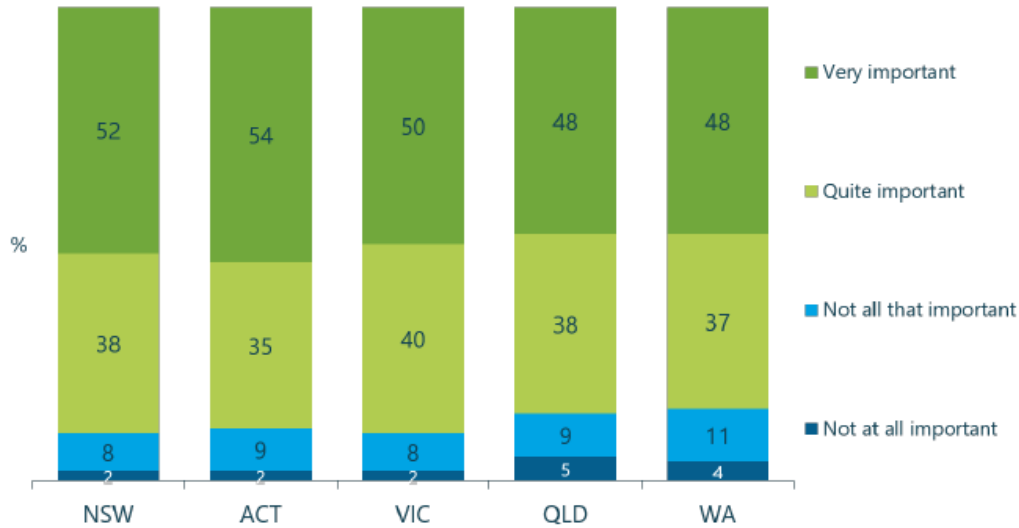
72% deidentified information should be used

78% support public reporting of machine learning by agencies

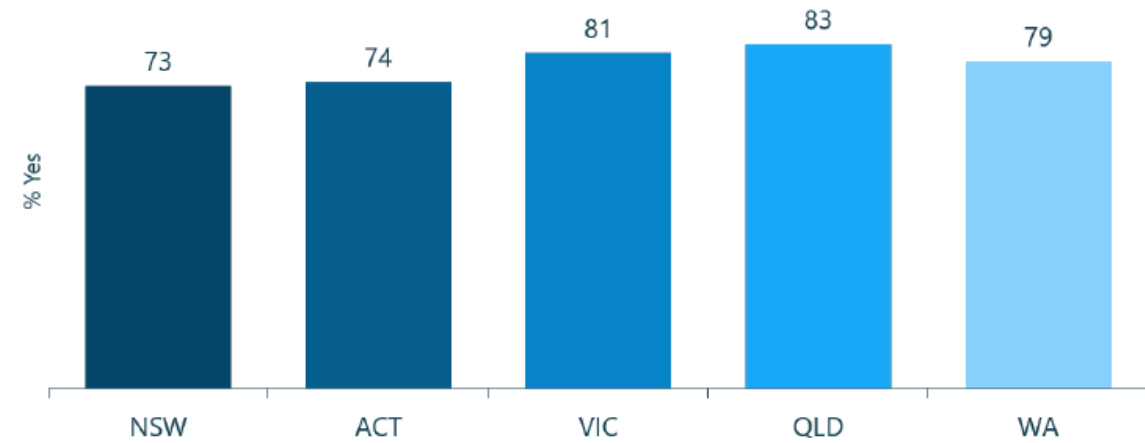
81% support public reporting of information holdings

Community Attitudes Survey 2021

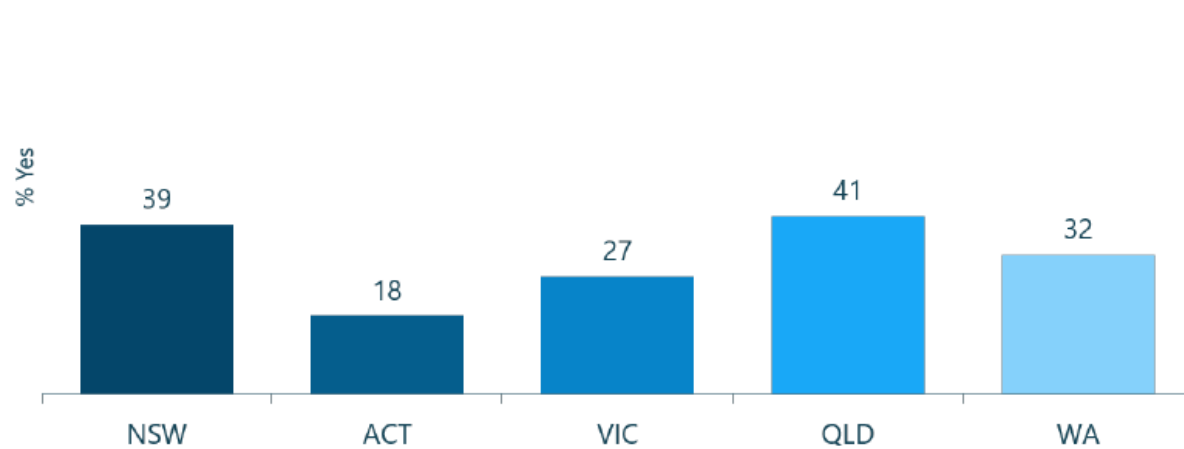
Importance of having the right to access government information



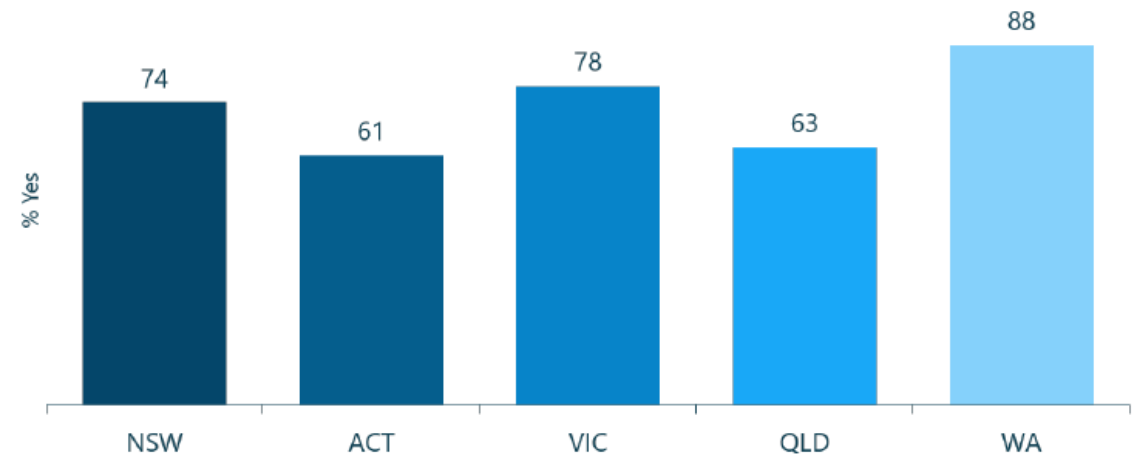
Total awareness of right to access information



Total attempts to access information



Total success in attempting to access information



Open access and open data

Legislation:

- *Government Information (Public Access) Act 2009 (NSW)*
 - Features – mandatory proactive release of prescribed information
- *Data Sharing Act 2015 (NSW)*
- *Data Availability and Transparency Act 2022 (Cth)*



Public purpose – best practice and ethics

Global Data Barometer - Data for Public Good

- Governance
- Capability
- Data Availability
- Use
- Impact

Land Use - goals, including:

- **SDG 1:** No poverty
- **SDG 2:** Zero hunger
- **SDG 5:** Good land governance is central to achieving a number of the sustainable development under equality
- **SDG 11:** Sustainable cities and communities
- **SDG 15:** Life on land (Land Portal 2020).

Global Data Barometer – Land

Availability: Land tenure

- Justification: The way in which societies interact with land has broad impacts, from shaping social and economic development, to supporting cultural, and even religious life. The eradication of hunger and poverty, and the sustainable use of the environment depend in large measure on how people, communities, and others gain access to land and other related assets. Many initiatives, policy recommendations, and research papers highlight land tenure as fundamental to understanding land dynamics.

Availability: Existing land use

- Justification: Good governance in land use is critical to achieving goals related to socioeconomic development, maintaining ecological systems, and enabling adaptation to climate change Both land use restrictions as well as land use decision-making processes should be transparent, efficient, and predictable (Deininger et al. 2011). When used in conjunction with land tenure or land ownership data, land use data opens up avenues for addressing environmental issues, corruption, land access, food sovereignty, housing, health, and a plethora of other challenges.

Use: Influencing policy for equity and inclusion

- Equity and inclusion are key areas of concern for land governance. Qs: *Is there evidence of this data being used to influence policy in the interests of more equitable land tenure and use?*
- *There is evidence of civil society organizations using data in this way? Media, academics/researchers/private sector/use of AI?*

What is ethics?

How should technology enter our lives?

- Data driven technology – ex ante and ex post
 - Training data
 - Limitations – model complexity
 - Misclassifications
 - Machine bias
 - Changing inputs and other alterations
 - Performance as intended – **how do we know?**
- *Ireland v Central Coast Council [2022] NSWCATAD 366*
 - Two “hard copy” documents relating to flood depth level reports about his property, being an engineer’s plan (‘item 1’) and engineering calculations “of the quoted Depths 0.2 and 2.1 m” (‘item 2’).
 - The Council used an aerial software program to calculate the flood depths rather than traditional human calculations.

Barriers - What is Government information?

Redfern Legal Centre v Commissioner of Police [2021] NSWCATAD 288

- Results of strip searches drug related charges over distinct periods
- Separate data bases within NSW Police holding subsets of information
- SQL required by agency – substantial and unreasonable diversion of resources
- “Government information” is limited to information which exists at the time of the access application
- The Tribunal had regard to the context of the GIPA Act:
 - section 53(1) – information held by the agency when the application is received
 - section 75 – an agency is not obliged to create a new record in response to an access application
- The Tribunal held that the information sought was not “government information”
- **Consider data as the core ingredient to AI.**

Barriers – Automated decision-making

O'Brien v Secretary, Department Communities and Justice [2022] NSWCATAD 100

- **Right of access to enable assertion of rights**
- Outsources algorithm
- Third party contractor – Intellectual Property
- Diminution of rights under section 121 of the GIPA Act:
 - (a) information that relates directly to the performance of the services by the contractor,
 - (b) information collected by the contractor from members of the public to whom it provides, or offers to provide, the services,
 - (c) information received by the contractor from the agency to enable it to provide the services
- **Is AI decision making or service provision or both, how do we audit?**

Legislative, cultural & technical solutions - best practice

- Legislative
 - Permissive regimes
- Technical
 - Perturbation
 - Alteration – anonymisation
 - Synthetic data sets
 - PETs
- Ethical, Cultural and other Permissions
 - Cultural context
 - Purpose

Procurement contracts - best practice

Purchaser must have access to:

- data sets and any input to training; configuration, quality testing, potential bias and proposed methodologies
- test version of system and performance analysis
- training and technical manuals.

Vendor agrees to:

- undertake algorithmic impact assessment and revalidation
- waive legal rights in respect of purchaser's testing/auditing
- provide ongoing advice of any legal claims, systems failures/unintended consequences
- ensure system operates within law/compliance requirements and subcontractors compliance
- ensure security and access by purchaser.

**The three
fundamental
questions to
preserve
information and
secure access**

1. Who holds the information?
2. How access is provided?
3. In what form can access be provided?

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