



Statutory Review of the *Data Availability and Transparency Act 2022* – Issues Paper

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Statutory Review of the Data Availability and Transparency Act

On 20 March 2025, the Minister for Finance, Senator the Hon. Katy Gallagher initiated a statutory review on the operation of the *Data Availability and Transparency Act 2022* (DAT Act) and appointed an independent reviewer to lead it.

Purpose of the Review

Section 142 of the DAT Act requires a review of the DAT Act to be started by 1 April 2025 and completed within 12 months. This requirement aims to ensure the DAT Act remains relevant, fit-for-purpose and meets public expectations.

In addition, section 143 of the DAT Act provides that the DAT Act ceases to have effect 5 years after it commences. The explanatory memorandum to the DAT Bill notes this provision ‘means the DATA Scheme must demonstrate its value to the Australian public to continue into the future’.

The Review will allow an independent assessment of the operation of the DATA Scheme, including forming a view on whether the DAT Act should continue, continue with amendments, or be allowed to cease.

The Review will be completed when the Minister responsible for the DAT Act is given a written report about the Review. A copy of the report must also be provided to each House of the Parliament within 15 sitting days after the Minister receives it.

Terms of Reference

The Review will consider:

- Does the DAT Act support improved public sector data availability and transparency, including sharing public sector data in a controlled way?
- Has the operation of the DAT Act advanced its objects?
- How does the operation of the DAT Act compare and interact with other existing mechanisms for facilitating access to, sharing and use of public sector data?
- Stakeholder satisfaction with the operation of the DAT Act as a tool for reducing barriers and enabling effective access to, sharing and re-use of public sector data.
- Should the DAT Act remain in force past its current sunset date of 1 April 2027?
- Any other relevant matters.

Consultation Process

The Review will be informed by public consultation and targeted engagement with representatives from industry, the private sector, universities, different levels of Government, and other interested parties. Feedback can be provided to the Review during public consultation as well as through official submissions.

This issues paper is designed to support these consultation processes and provide additional context to support interested parties to engage with the Review.

How to make a submission

Interested parties are invited to comment on the issues raised in this paper, and provide any other feedback on the DAT Act, by 30 May 2025. Submissions may be lodged electronically or by post.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via e-mail in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in formal submissions will be made available to the public on the Department of Finance website, unless you indicate you would like all or part of your submission to remain confidential with sufficient reasons. Automatically generated confidentiality statements in e-mails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked as such in a separate attachment, together with the reasons the relevant material should remain confidential. Parties are encouraged to contact the Department of Finance for further information and advice before submitting such material.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Submissions are due by 30 May 2025 and should be sent to the following address.

Email: DATActReview@finance.gov.au

Mail: Taylor Black, 1 Canberra Ave, Forrest ACT 2603

Enquiries should be initially directed to DATActReview@finance.gov.au or 1 Canberra Ave, Forrest ACT 2603. Media enquiries should be directed to mediaenquiries@finance.gov.au.

Overview of the Data Availability and Transparency Act

Background to the Review

The DAT Act was introduced as a response to the recommendations of the Productivity Commission's *Inquiry Report into Data Availability and Use (2017)*. The *Inquiry into Data Availability and Use* identified many potential benefits flowing from greater data availability and use, including supporting economic and research opportunities, and enabling streamlined and efficient service delivery. The report estimated the value of Australian public sector data could be between \$625 million per year up to \$64 billion per year. One goal of the DAT Act was to help realise that value.

Objects of the DAT Act

The objects of the DAT Act are to:

- serve the public interest by promoting better availability of public sector data
- enable the sharing of public sector data consistently with the Privacy Act and appropriate security safeguards
- enhance integrity and transparency in sharing public sector data
- build confidence in the use of public sector data, and
- establish institutional arrangements for sharing public sector data.

The objects of the DAT Act are to maximise the value of public sector data by providing a mechanism to overcome existing barriers to data sharing, including through an authorisation to override other laws, with appropriate safeguards in place. The DAT Act establishes the DATA Scheme, designed to support a modern data-based society, driving innovation and stimulating economic growth. The DATA Scheme is a new initiative in a complex and rapidly evolving policy space.

The Review will consider several related developments, including:

- the Productivity Commission's ongoing inquiry into harnessing data and digital technology.¹
- legislation that is currently being formulated in response to the Attorney-General's Department Privacy Act Review 2022.²

¹ [Harnessing data and digital technology - Public inquiry - Productivity Commission](#).

² [Review of the Privacy Act 1988 | Attorney-General's Department](#).

Statutory Framework

The DAT Act establishes a data sharing scheme under which Commonwealth bodies are authorised to share public sector data with accredited users, and accredited users are authorised to collect and use the data, in a controlled way. The sharing, collection and use of data must be part of a project that is done for one or more of the data sharing purposes set out in section 15 of the DAT Act and must be undertaken consistently with data sharing principles set out in section 16 the DAT Act.³

For the purposes of the DAT Act, public sector data encompasses all data lawfully collected, created, or held by a Commonwealth body, or on its behalf. This includes data provided to a Commonwealth body by bodies outside of the Commonwealth such as from State or Territory Governments, or the private or non-profit sectors. Data includes facts, statistics, and other information capable of being communicated, analysed or processed via physical or electronic means.

Vast quantities of public sector data are generated every day in the course of government business both internally and from people and private sector entities engaging with the Government, ranging from citizen healthcare records, business tax data, and the data underpinning digital maps. Some of this data is not sensitive. Other data can be sensitive and appropriate consideration and processes are required when responding to requests for access to this data.

The DAT Act helps facilitate sharing of public sector data, with appropriate safeguards. It provides a mechanism to overcome existing barriers to sharing through an authorisation to override other laws (c.f. section 23 of the DAT Act).

Under the DATA Scheme data custodians are not under an obligation to share data but are required to provide reasons to accredited users when they refuse to share requested data. The Scheme allows for pathways existing at the time the DAT Act commenced and other mechanisms for data sharing to continue to operate unaffected.

The Revised Explanatory Memorandum of the DAT Bill describes the DAT Act as being underpinned by four key safeguards to ensure safe sharing of data under the DATA Scheme:

1. Accreditation
2. Data sharing requirements and penalties
3. Privacy protections
4. The National Data Commissioner (the Commissioner)

Accreditation

There are three categories of participants under the DATA Scheme: data custodians, accredited users, and accredited data service providers (ADSPs).

- Data custodians are Commonwealth entities that hold data that can be shared under the DATA Scheme and accredited entities collect and use the shared data.

³ Please see Part 1.2 of the DAT Act for full detail on key concepts.

- Accredited users are Commonwealth, state and territory government bodies, and Australian universities, that are accredited to obtain and use Commonwealth data.
- ADSPs are Commonwealth, state and territory government bodies, and Australian universities, that are accredited to provide one or a combination of data services including de-identification, secure access, and complex data integration.

Commonwealth bodies that are data custodians are automatically participants in the DATA Scheme and are not required to apply for this role.

Other entities that wish to participate in the DATA Scheme must demonstrate they can be trusted to handle relevant data by applying for accreditation, to become either an accredited user or an ADSP.

- Accredited users can collect and use shared data in accordance with a valid data sharing agreement.
- ADSPs are expert intermediaries that can assist data custodians to prepare and share data appropriately before access is provided to an accredited user.

The accreditation framework, set out under Part 5.2 of the DAT Act, is intended to ensure the suitability of accredited entities to collect and use shared data.

Private entities (bodies corporate), individuals, and unincorporated bodies (such as partnerships and trusts) cannot participate in the DATA Scheme. An excluded entity cannot share, collect, or use data under the DATA Scheme. Certain other entities, such as Australian Government law enforcement and intelligence entities, are also excluded from the DATA Scheme.

Applications for accreditation are assessed under the DAT Act's accreditation framework by the relevant accreditation authority (either the Minister or the Commissioner). The accreditation authority is responsible for assessing the entity's capability to handle data safely and manage risks against the criteria for accreditation.

To become accredited an entity must have:

- appropriate data management and governance policies and practices;
- an appropriately qualified individual in a position that has responsibility for data management and data governance;
- ability to minimise the risk of unauthorised access, sharing or loss of data;
- the necessary skills and capability to ensure the privacy, protection and appropriate use of data; and
- any additional criteria prescribed by Rules.

In addition, ADSPs are required to demonstrate their capability to deliver the services they are seeking accreditation for, which include one or a combination of the following:

- de-identification data services;
- secure access data services; and
- complex data integration services.

ADSPs must renew every 5 years. There is no renewal requirement for accredited users. However, to maintain accreditation, accredited users must report any changes in circumstances that are relevant to their accreditation (such as, for example, material changes to governance structures, or information technology environments).

Data sharing requirements and penalties

The DAT Act establishes a rigorous set of responsibilities for entities participating in the DATA Scheme, as well as requirements for data sharing projects, and strong penalties for non-compliance. This is intended to ensure sharing, collection, and use of data is safe and fit-for-purpose, and that sharing under the DAT Act is done in accordance with consistent and standardised arrangements.

The requirements include the following:

1. Scheme entities may only share, collect or use data for a project if the purpose of the project is to deliver government services, to inform government policy and programs, or to undertake research and development.
 - A project must not be for a precluded purpose, such as enforcement or compliance.
2. Data sharing projects must be consistent with the data sharing principles set out under section 16 of the DAT Act.
 - These are five risk management principles otherwise known as the ‘five safes’: Project, People, Setting, Data and Output.
3. Scheme entities must also enter into a data sharing agreement, setting out the details of the data sharing project.
 - a data sharing agreement must contain certain details, including a description of how Scheme entities will give effect to the data sharing principles and how the project serves the public interest.
 - these details will be recorded on a register, kept and maintained by the Commissioner, and should include the description of the data to be shared and whether personal information is to be shared.
 - data cannot be shared until the data sharing agreement has been registered.

Penalty provisions under the DAT Act apply where the sharing, collection or use of public sector data are found to have not met the above requirements.

Privacy protections

The DAT Act has robust privacy protections to safeguard privacy and manage the risks of privacy interference. In particular, the DAT Act provides for general privacy requirements applicable to all data sharing under the DATA Scheme, as well as privacy requirements for specific data sharing purposes.

Key privacy protections and privacy enhancing measures include:

- a requirement that all data shared, collected or used under the DATA Scheme must be done consistently with the *Privacy Act 1988* (the Privacy Act).

- a starting position that data shared under the DATA Scheme must not include personal information unless relevant individuals provide consent or an exception applies.
- data minimisation requirements that ensure personal information can only be shared where necessary.
- a requirement for express consent for the sharing of biometric data.
- a prohibition on the re-identification of de-identified data.
- a prohibition on the storing or accessing of personal information outside of Australia.

The Commissioner

The DAT Act establishes the Commissioner as an independent statutory office holder responsible for overseeing the DATA Scheme as its regulator and holding participants accountable to robust standards of privacy, security and transparency. The Commissioner is supported by the National Data Advisory Council, whose role is set out under Part 4.3 of the DAT Act.

The Commissioner's responsibilities include accrediting eligible entities, handling Scheme complaints, providing education and support in relation to handling public sector data, and maintaining registers of accredited entities and data sharing agreements. As set out in subsection 42(2) of the DAT Act, the Commissioner may only perform these functions in relation to data shared under the DAT Act, or for matters incidental to the execution of the powers of the Parliament or the Executive.

To promote transparency and enhance the integrity and transparency of sharing public sector data, the Commissioner is required to prepare and give an annual report to the Minister, for presentation to the Parliament, on the Commissioner's activities.

The Commissioner is also responsible for dealing with complaints from Scheme entities about other Scheme entities, as well as complaints from any person or entity (including members of the public) about the administration and operation of the DATA Scheme. The DAT Act confers a range of regulatory and investigative powers on the Commissioner to support their function to deal with complaints as well as general monitoring and assessment of the DATA Scheme. In the case of a privacy complaint, the Commissioner may refer the complaint to the Office of the Australian Information Commissioner.

Supporting legislation

The DAT Act is supported by subordinate legislation, including:

- the Data Availability and Transparency Regulations 2022 which support the operation of the DATA Scheme by prescribing specific circumstances where data is barred from being shared under the DATA Scheme.
- the Data Availability and Transparency Code 2022 which provides further guidance and conditions relating to the operation of the DAT Act.
- the Data Availability and Transparency (National Security Measures) Code 2022 which provides further guidance and conditions relating to the operation of the DAT Act in respect of National Security issues.

Progress to date

The DAT Act came into effect on 1 April 2022 and established the Commissioner as independent regulator of the DATA Scheme. The Office of the National Data Commissioner (ONDC) has around 40 permanent staff, which are provided by the Department of Finance to support the Commissioner, with a budget of \$16 million for 2024-25. The accreditation framework provided by the DAT Act has been implemented. As of 20 March 2025, 34 entities are accredited to participate in the DATA Scheme (17 Commonwealth entities, 10 State & Territory entities, and 7 Universities).

There have been 8 data sharing agreements under the DATA Scheme since the DAT Act commenced, all of which are related to the delivery of the National Disability Data Asset (NDDA).⁴ This represents a small fraction of the total current public sector data sharing. In June 2024, a survey of 19 Commonwealth entities showed those agencies had over 11,000 data sharing agreements outside of the DATA Scheme (noting that some of these agreements may go back further than the 3 years the DATA Scheme has been in operation). Arrangements for data sharing outside of the DAT Act are discussed in more detail below.

The Commissioner can exercise numerous powers under the DAT Act to facilitate effective data sharing.

These include:

- issuing penalties
- conducting assessments
- powers in relation to complaints
- initiating external dispute resolution
- making guidelines, and
- transferring matters to other agencies.

At present only some of these powers have been exercised by the Commissioner. The Commissioner has used their powers to make two data codes under section 126 of the DAT Act.

Key consultation points for discussion

Interested parties are invited to make submissions on any or all issues raised by the Terms of Reference. The following points are provided for discussion and are not intended to be exhaustive.

Has the operation of the DAT Act advanced its objects?

The objects of the DAT Act, set out in section 3, include promoting better availability of public sector data and establishing institutional arrangements for sharing public sector data that increase the integrity, confidence, and safeguards around that sharing.

⁴ To date, there have been 30 data sharing requests for data under the DATA Scheme.

Do you consider that the DAT Act achieved these objects and are there areas for improvement?

Does the DAT Act improve information flows between public sector bodies and accredited entities?

The Productivity Commission report from the Inquiry into Data Availability and Use (the Productivity Commission Report) identified improving information flows between public sector bodies nationally, as critical to the operation of the modern data-based society. The DAT Act was intended to help facilitate these flows.

The Review is seeking feedback on:

- the role and performance of the DAT Act in enabling nationwide public sector data sharing and enabling better data flows.
- possible measures the DATA Scheme could adopt to facilitate improvements to data flows.
- opportunities to further facilitate State and Territory participation in the DATA Scheme, including embedding greater efficiency in the development of two-way data sharing arrangements.

How does the DAT Act add value in the wider data sharing context?

The DAT Act has authority only over Commonwealth entities but exists within the context of significant external data holdings, for example cross-jurisdictional, private-sector and not-for-profit sector data, and alternative data sharing arrangements.⁵

The Review is interested in receiving feedback on the extent to which the DAT Act and DATA Scheme adds value in both form and function to the data sharing ecosystem and whether it complements or conflicts with alternative data sharing mechanisms.

This may include consideration of, for example:

- the effectiveness of the DATA Scheme accreditation framework in terms of its ability to provide assurance to data custodians of accredited users' and ADSPs' capability to appropriately handle data (both within, and outside of the DAT Act).
- the extent to which the DATA Scheme's accreditation framework balances ease of access to the DATA Scheme, confidence in accredited users and ADSPs (including the standards to which accredited entities are held), and regulatory burden.

⁵ Currently, most sharing of public sector data takes place outside the DATA Scheme. This is achieved through a variety of mechanisms, including: both bespoke and other legally binding arrangements (contracts, agreements, and licenses), legislative or administrative instruments (such as treaty arrangements, public interest certificates, and protected information disclosures), informal non-legally binding agreements (including client service arrangements, office-level arrangements, and informal data exchanges), and formal non-legally binding written agreements like memoranda of understanding or an exchange of letters.

- the impact of excluding private and non-government sector entities on the value proposition of the DAT Act and DATA Scheme.
- the current operationalisation of the DATA Scheme, including the ease with which participants can navigate it and the extent to which it supports flexibility in data sharing.

What changes could be made to the DAT Act or the DATA Scheme to make it more effective in facilitating access to, sharing and use of public sector data?

This Review will consider whether existing legislation that underpins the DATA Scheme is fit-for-purpose, agile and responsive enough to support the benefits of greater data availability and use identified by the Productivity Commission's Inquiry Report into Data Availability and Use (2017).

Accreditation under the DATA Scheme is currently limited to Commonwealth entities, state and territory entities, and some Australian universities. Other entities that could potentially benefit from access to public sector data are excluded from participating directly. Many private sector entities already access public sector data through other avenues to advance projects that are in the public interest. The Review seeks feedback on whether there may be benefits to expanding the scope of the DATA Scheme to allow additional participants.

The DAT Act also precludes data sharing for any enforcement related purposes. This includes the detection, investigation and response to offences, the contravention of laws punishable by pecuniary penalties, and acts or practices detrimental to the public revenue. Using data to identify individuals for compliance review or compliance activity is also an enforcement related purpose. This may exclude many potential use cases for sharing public sector data.

The Review is interested in feedback on whether these limitations are appropriate, or whether they should be revisited. For example, should the DATA Scheme be broadened to support more types of use cases than delivering government services, research and development, and informing government programs and policies? Should private sector entities and non-government entities be allowed to participate in data sharing under the DATA Scheme?

Feedback is also sought on the following topics related to the current legislative settings of the DATA Scheme:

- possible changes to the DAT Act that would increase the effectiveness of the DATA Scheme in facilitating access to, sharing and use of public sector data.
- the application of the public interest test to data sharing and exclusions for 'precluded purposes' (which include enforcement-related purposes).
- the necessity of setting out data sharing principles in the DAT Act.
- the interaction between the DAT Act and other non-legislative data sharing options, and broader efforts to establish a culture of data sharing.

Should the DAT Act be allowed to sunset?

Section 143 of the DAT Act provides that the DAT Act will cease to have effect at the end of the day that is the fifth anniversary of the day the DATA Scheme commences. This provides another accountability mechanism to ensure the operation of the DATA Scheme is considered by Parliament following this Review. This timing was intended to allow sufficient time to determine whether the DAT Act is achieving its objects, and to determine whether legislation should be enacted to continue the DATA Scheme. Without legislative intervention, the DAT Act will cease to have effect on 1 April 2027.

This Review is seeking input that can inform the Parliament on whether to maintain or amend the DATA Scheme, or alternatively to allow the sunset provision under section 143 to apply.

Matters to consider include but are not limited to:

- aspects of the DAT Act which should be preserved, amended or removed, if a decision is made to retain it.
- whether the DAT Act should be wound up entirely.
- ongoing and transitional arrangements if the DAT Act is allowed to sunset, including any proposed extensions to, or conditions on its sunset.

Further information

Further relevant information that may be helpful in providing feedback for the Review can be located here:

- The [Productivity Commission's Inquiry Report into Data Availability and Use \(2017\)](#)
- The [Data Availability and Transparency Act 2022](#)
- The [website for the Office of the National Data Commissioner](#).