Rachel Stephen-Smith MLA
Minister for Health
Minister for Mental Health
Minister for Finance
Minister for the Public Service

Member for Kurrajong

Dr Stephen King
Lead Reviewer
Statutory review of the *Data Availability and Transparency Act 2022*
Australian Government Department of Finance
Via email: DATActReview@finance.gov.au

Our ref: CMTEDD2025/2255

Dear Dr King

ACT Government submission: Statutory review of *the Data Availability and Transparency Act 2022*

Thank you for providing the ACT Government with the opportunity to make a submission to the statutory review of the *Data Availability and Transparency Act 2022* (DAT Act). The enclosed submission outlines our experience working with the DAT Act as part of the national data sharing ecosystem and directly responds to the *Issues Paper* to inform the review process. We hope our insights will support the Commonwealth make an informed decision with regards to the future of the DAT Act.

I would like to acknowledge the significant efforts and leadership of the Office of the National Data Commissioner in advancing a national data sharing ecosystem through the implementation of the DAT Act. The ACT is of the view that the DAT Act could present great opportunities to deliver value in this ecosystem, should it be set-up as a truly nationally-enabling legislation.

Yours sincerely

[redacted]

Rachel Stephen-Smith MLA
Minister for the Public Service

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ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601
+61 2 6205 2661 stephen-smith@act.gov.au
rachelssMLA rachelss_mla

ACT Government

Government Submission

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June 2025

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Australia faces significant human, societal and environmental challenges. Addressing these challenges requires national efforts to understand them, and develop evidence informed, future focused public policy. This evidence base demands a truly national data sharing ecosystem, enabled by underpinning legislation that enhances the availability and use of government data within appropriate ethical and security frameworks.

The ACT Government acknowledges the significant efforts and leadership of the Office of the National Data Commissioner (ONDC) in advancing a national data sharing ecosystem through the implementation of the *Data Availability and Transparency Act 2022* (DAT Act). The DAT Act presents great opportunities to deliver value in this ecosystem, should it be set-up as a truly nationally-enabling legislation.

The ACT's experience with the DAT Act

States and territories deliver most public services and infrastructure to Australians. Setting up national data assets to improve service delivery, inform policy and support research and development requires significant amount of data from these jurisdictions.

The ACT signed the *Intergovernmental Agreement on Data Sharing* in 2021 and has been participating in national data sharing initiatives in good faith and with the belief that we can deliver better outcomes for the people of Australia and drive progress through a national approach to understanding wicked policy problems, supported by harnessing government data assets. However, the imbalance between federal and state and territory powers in the current national data sharing ecosystem underpinned by the DAT Act constrains the ability of states and territories to effectively participate. This leads to lengthy and costly processes to set-up national data assets, or access data under the DAT Act.

In response to the *Issues Paper* and aligned with the *Terms of Reference*, the ACT Government has identified a range of current challenges and opportunities for reform that an updated or new legislation would need to address. The specific questions set out in the *Terms of Reference* are addresses below.

1. ***Has the operation of the DAT Act advanced its objectives?***

Considering the DAT Act was established to create an authorising environment for Commonwealth bodies to share public sector data, the ACT is not able to comment on the extent to which it has made data sharing seamless for these Commonwealth agencies.

At the national level, the DAT Act has only been used as the legal framework for the delivery of the National Disability Data Asset (NDDA). The ACT's experience working with the DAT Act for the NDDA over the past three years demonstrated that the Act has not improved information flows between public sector bodies nationally. From our perspective, the DAT Act has failed to achieve its primary objective of overcoming existing barriers to data sharing. Instead of streamlining data sharing, the DAT Act has introduced a complex web of provisioning instruments between the ACT and Commonwealth bodies, to enable ACT data to be ingested into the NDDA. Operating under the DAT Act has proved to be more complex and cumbersome, requiring the ACT to undergo long and resource intensive legal processes to negotiate, finalise or vary agreements to provision data into the DATA Scheme.

This is a direct effect of the DAT Act not recognising state and territory entities as data custodians, leading to multiple data sharing agreements being needed for each data set to enter national assets set-up under the DAT Act. The ACT Government considers it critical to ensure that it retains effective control over the data being provided under the DAT Act prior to entering any agreement, for the provision of data to be considered a 'use of data' rather than a 'disclosure'. In practice, protecting the ACT's rights is complicated to achieve under the current DAT Act, given state and territory data suppliers are not recognised as custodians.

The DAT Act operates under different arrangements to those governing the supply of data for linked projects through the Person Level Integrated Data Asset (PLIDA), which is the asset underpinning the Life Course Data Initiative pilot for which the ACT has supplied data. Under PLIDA, the ACT remains data custodian of the supplied data and retains control over access and use of data supplied. PLIDA is a more appropriate model for collaborative engagement between the Commonwealth, states and territories on linked data assets that could be set-up as national assets. Potential changes to the DAT Act should leverage data custodian arrangements currently operating under PLIDA.

To improve state and territory participation in the DATA Scheme, expanding the scope of the DAT Act and providing states and territories the same status that Commonwealth agencies have would improve the efficiency in the development of two-way data sharing arrangements and two- way data flows. This would not only reduce the administrative and legal burden on all participating entities but also facilitate timely and efficient data flows across agencies to set up and operate national data assets.

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

The ACT is unable to assess the extent to which the accredited entities have been able to use the NDDA and/or DATA Scheme data to ascertain if the information flow between public sector bodies and accredited entities has improved due to the DAT Act. The information provided to the ACT by the lead Commonwealth agencies point to no data having yet exited the NDDA, the only asset currently set up under the DAT Act.

Accessing the DATA Scheme data is as restrictive as getting the data in. While we appreciate the complex governance measures introduced to protect the data, they create barriers for both public sector bodies and accredited entities. The DAT Act operates in ways that make roles and data and insights flows overly prescriptive, for example, by restricting researchers' ability to generate and use insights – in the case of the NDDA, these insights need to undergo validation by the Australian Bureau of Statistics (ABS) before they're published, and any utilisation of insights from the respective research project needs to be notified to the ABS. This is not aligned with best practice data integration, access, and use arrangements that seek to streamline data access in a safe manner, encourage insight generation and, to some extent, democratise the use of data and insights.

The current operation of the DATA Scheme under the DAT Act restricts the ability of originating custodians in states and territories to access their own (full) jurisdictional data from a national asset like the NDDA once it has been shared with the Commonwealth and entered the relevant asset. The custodians are required to undergo a complex and lengthy 'research project' proposal and vetting process to access their own data from the asset. This constraint in the Scheme's operation, along with the loss of custodianship rights once data is shared under the DAT Act, are major concerns for data custodians across the ACT Government and leads to lengthy and expensive legal processes and agreement negotiations.

The requirement for entities to be accredited to access data provides strong governance and assurance for custodians that data will be handled safely and the risk of inadequate disclosure, data spills or data breaches minimised. In practice the Accredited Data User process is complex, administratively burdensome and very resource intensive for entities, requiring significant evidentiary documentation to be submitted to the Office of the National Data Commissioner (ONDC).

Whilst the accreditation process itself tests the broader data and related capabilities in an organisation, the accreditation, once obtained, is linked to a legal entity due to the restrictions in the DAT Act. This means that when machinery of government (MoG) changes are enacted and entities are moved between units, they are required to re-apply for accreditation – there is no transfer of accreditation process that accounts for MoGs. This restriction is currently impacting the ACT – the unit currently accredited with the ONDC is transitioning into a new legal entity (Digital Canberra) from 1 July 2025 through a MoG change. Given the relative frequency of MoG changes within the Commonwealth and state and territory governments, this represents an example of where legislation can result in unintended and burdensome consequences.

In relation to data linkage accreditation (Accredited Data Services Providers (ADSP)), the separation of duties principle introduces a requirement for data integrators (linkage authorities) to be separate from data users. This restricts the ACT's ability to establish a whole of government DAT Act-compliant data linkage facility within the same whole of government data capability unit and obtain the relevant accreditation from the ONDC. Securing ADSP accreditation in the ACT would require significant capability uplift for a data unit in directorates to undertake to be eligible to seek ADSP accreditation and undertake data linkage projects as a whole of government capability.

Access to data shared under the DAT Act is only open to Commonwealth, states and territories and Australian universities. This limits the utility of using the DATA Scheme to promote sharing and use of public sector data to the community and broader economy. Two areas where these restrictions are limiting the ability to progress other areas of national priority or interest are:

- The current form of the DAT Act undermines First Nations data sovereignty principles and national efforts in this space, under the newly-established Data Policy Partnership (DPP). It significantly impacts Closing the Gap Priority Reform 4, as Aboriginal Community Controlled Organisations (ACCOs) are not recognised as entities and hence unable to access data. Should the Act recognise ACCOs as entities, accreditation requirements for access to the data need to be carefully considered to ensure the process itself does not restrict ACCOs from accessing data due to the burdensome evidentiary requirements placed on entities for accreditation. These criteria would be unlikely to be demonstrated by ACCOs due to the required investment in capability uplift. Whilst ACCOs might have opportunities to run research projects through accredited partners, the current form of the DAT Act does not allow these organisations direct access to and control of Indigenous data.
- Allowing private sector entities (for example, consultancies, think tanks, etc.) to obtain accreditation and advance projects that are in the public interest would further advance Australia's evidence informed economic development by allowing public data to feed into complex analytical models to deliver enhanced productivity and economic growth. This requires legislative and governance changes.

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

The DAT Act in its current form was designed to streamline data flows between Commonwealth entities. Given its narrow scope, it consequently has not demonstrated its value in the wider data sharing context. The ACT data custodians' experience working with other legal frameworks for linked data assets

(for example PLIDA) shows the DAT Act has not realised any potential for additional value in the national data sharing ecosystem, for example fostering an improved value around data sharing.

Given the current barriers to entry into and exit from the DATA Scheme, the review of the DAT Act should consider a better balance between barriers and enabling frameworks and infrastructure, to allow broader and seamless participation in the ecosystem.

4. ***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 submission outlines opportunities for reform where current operations hinder the advancement of a truly national and integrated government data sharing ecosystem. Further, we note that the DAT Act was introduced as a response to the recommendations of the Productivity Commission's Inquiry Report into Data Availability and Use (2017). We suggest the statutory review is an opportunity for the Commonwealth revisit the Report and assess the gaps between the Report's intended outcomes in terms of improving the availability and use of data, and where the DAT Act has met or not met this intent.

5. ***Should the DAT Act be allowed to sunset?***

The ACT's experience with the DAT Act has been limited to sharing data to enduring linked data assets. It would therefore be premature for the ACT to form an opinion with regards to sunsetting the DAT Act. Should the considerable barriers the DAT Act represents to national data sharing not be able to be addressed, the ACT is confident the Commonwealth will make an appropriate determination about sunsetting.