

Submission to DAT Act Statutory Review

Background

I am pleased to be able to provide a submission to assist the Statutory Review of the Data Availability and Transparency Act 2022.

This submission is prepared from the context of my significant professional engagement with the use and oversight of the production of public data, including deliberately and purposefully promoting availability, access and use of public data in many ways:

- As Australian Statistician (head of the ABS) from December 2014-2019, when large data integration datasets of MADIP (now called PLIDA) and BLADE were established, and the ABS took a distinctly more positive approach to markedly improve access to its valuable public data resource across governments and researchers. This approach has been continued by my successor as Australian Statistician, Dr David Gruen AO, since December 2019.
- As Director of the Australian Institute of Health and Welfare (AIHW) from December 2010-14 when the AIHW took deliberate steps to improve access to its valuable data resource and build its data integration capability to make better use of valuable health and welfare data across government.
- In a number of Senior Executive roles in the Commonwealth Departments of Social Security, Prime Minister and Cabinet, Family and Community Services and Health and Ageing, to make better use of public data for policy purposes and make public data available to academic researchers.
- Appreciating the importance of quality available and accessible data through employment at the Bureau of Labour Market Research, the Department of Employment, the Organisation for Economic Cooperation and Development (OECD) in Paris and as a Commissioner at the Productivity Commission.
- An understanding of international data developments and trends, through engagement with the OECD, United Nations and many statistical agencies within the G20.

This Submission is prepared from a strong track record over many decades of not just supporting the availability and use of public data as a theoretical concept but from many years of practical experience making it happen.

The 2017 Productivity Commission report

Consideration of the DAT Act should not be undertaken without reference to the Productivity Commission (PC) report in 2017 on Data Availability and Use.

The PC report was undertaken at a time when there had been widespread and understandable frustration amongst public policy officials and researchers that official government data agencies were unnecessarily limiting the availability and utility of public data for worthwhile public purposes. This frustration was real and was well founded in experiences between 2008 and 2014.

However, the broader environment supporting data availability and use has been markedly different since the mid 2010s. This has occurred through very deliberate changes by the ABS, other data agencies and some government departments to enable better access to public data for a range of public policy purposes. These practical changes preceded the DAT Act and was

not a result of the DAT Act and/or the design and implementation of its infrastructure. Rather, the key change driving marked improvements in data availability and use over the past decade has been greater appreciation by influential public officials of the value and importance of better access to public data and practical steps and prioritisation by respective agencies to deliver improved outcomes across data availability and data use.

I would suggest that the PC would not be asked today to conduct a Data Availability and Use Inquiry because this issue does not require such focussed attention by the PC. That should not be interpreted as suggesting no further improvements in data availability and use can be achieved, as that is certainly desirable and possible. I also do not believe that the PC of today would propose such an expansive, cumbersome and expensive regulatory structure that is such a feature of the DATA Scheme.

Response to the Review Terms of Reference and the Issues Paper released in April 2025

I will focus my submission to the Statutory Review of the Data Availability and Transparency Act 2022 on the Review Terms of Reference and the aspects posed in the Issues Paper.

Terms of Reference of the Review and Summary Response

Providing an overall response to the questions in the Terms of Reference for this review, I would answer no to each of the questions that are posed.

The elaborate and costly bureaucratic infrastructure that is a key feature of the current design and implementation of the DAT Act has not contributed to improvements in the use of public data. This is corroborated by the evidence provided in the Review Issues Paper of the extensive sharing and use of public data (many thousands of cases) outside of and irrespective of the scope of the DAT Act. The only example provided of progress delivered to date by the DAT Act of the 8 data sharing agreements related to the National Disability Data Asset would have been able to be delivered without the DAT Act, drawing upon Commonwealth-State support for such activity, alongside improved senior official support for and prioritisation of data sharing for worthwhile public policy purposes. The arrangements implemented by the DAT Act were not required to deliver the National Disability Data Asset.

This is not just reflective of the early stages of implementation of the DAT Act but is reflective of a cumbersome regulatory structure enshrined in the DAT Act that absorbs scarce and valuable skills that could otherwise be redeployed to improve availability and use of public sector data.

There is an opportunity to modestly improve public sector productivity and reduce regulatory red tape while improving data availability and use.

The DATA Scheme has been an interesting and unique experiment in Australia that has not delivered value to the community. There is no other parallel arrangement in OECD or G20 nations, and the Australian experience will not encourage other countries to adopt this regulatory approach to data availability and use.

The experience over at least the past decade shows that the following dimensions are more likely to contribute to improved data availability and sharing:

- Recognition from Government leaders that improved public data sharing and availability will deliver value and benefits to public policy and community services;
- Appreciation across the public sector that innovative and safe use of available administrative and statistical data can provide valuable insights for governments and other decision makers, and understanding that this should be a primary role for the public sector;
- Curiosity amongst public officials and researchers to consider what important national issues could be better informed by more effective use of data and evidence; and
- Sufficient and sustainable funding of the effort and expertise required to make quality data available, undertake safe data integration and enable effective use of data for sound public policy purposes.

Objects of the DAT Act

I strongly support the stated objects of the DAT Act. They are sound and provide clear guidance to public officials who have governance responsibilities and accountabilities for the collection, availability and use of the public data resource.

The existing five objects of the DAT Act could be retained to signal clear Parliamentary and Government support for continuing improvement of the availability and use public sector data if a revised DAT Act is to extend beyond its sunset date. The Objects of the DAT Act can be retained without the cumbersome regulatory structures of the DATA Scheme.

Has the operation of the DAT Act advanced its objects?

The current complex and cumbersome regulatory structures that are a key feature of the current DAT Act do not advance the objects of the DAT Act.

The current design and operation of the DAT Act could even be counterproductive to the effective sharing and use of public sector data, in several ways:

- The regulatory overhead experienced by the ABS, AIHW and other public sector agencies to comply with the range of regulatory requirements varies by Agency but nonetheless reduces their ability to fund data sharing from within their existing agency resources. The cost of the DAT Scheme is not just reflected in the funding provided to the Office of the National Data Commissioner but is also reflected in the opportunity costs incurred by scheme participants to meet the regulatory requirements. These costs are a burden to these scheme participant agencies rather than a benefit.
- The costs of the existing regulatory design and administrative burden within the current DAT Scheme could be more productively spent on improved funding of the cost of data sharing incurred by ABS, AIHW and other public sector agencies. The existing ONDC budget should be diverted to practically funding more data sharing rather than largely absorbed by the existing bureaucratic infrastructure based on the evidence that it has not contributed to improved data sharing.
- The Office of the National Data Commissioner (ONDC) draws on scarce skills and expertise to carry out the regulatory functions expected of them as reflected in the DAT Act. Australia as a nation has limited people with these skills. There is a major opportunity cost from the regulatory structures established by the DAT Act absorbing

such scarce skills. More effective use of such scarce skills outside of the ONDC would increase the number of data sharing arrangements that can be practically delivered by data agencies and other public sector bodies who are looking to use data for worthwhile public policy purposes.

- Those agencies seeking to undertake specialised data integration activities and complex data sharing should be expected to internally assess whether they have the internal skills and infrastructure to undertake these activities properly, safely and efficiently. They should clearly have the accountability and responsibility to undertake such public sector data roles if they choose to do so. The existing arrangements with the DAT Act could be seen to deliver an outcome where the ONDC takes on some of that accountability (through their existing regulatory roles) while also leaving accountability with public sector accredited agencies – contributing to an undesirable situation of mixed and unclear accountability.

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

The one practical support which the DAT Act could deliver is to provide improved information about public sector bodies that respectively manage and use public data. The extent to which this is required within the sphere of the Commonwealth Government is questionable, as most government agencies are aware already of these aspects.

Such information might be more useful to academics and other researchers who fall within the scope of the DAT Act, but curating such information and making it available on a public website is not an onerous task that could be undertaken by an existing data agency or a Department with responsibility for data policy (such as the Department of Finance in current arrangements).

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

I would suggest that the appropriate question is not how the DAT Act and the DATA Scheme have added value to the wider data sharing context, but rather how to make best use of the current \$15m a year DATA Scheme Budget to deliver improvements to data sharing.

The Issues Paper notes that the outcomes delivered by the new Scheme to date have been negligible. The DAT Act and the DATA Scheme have delivered much process, absorbed considerable taxpayer funding, but delivered no real outcomes.

Earlier in this Submission, I noted other actions that are more likely to lead to improved data sharing and data availability, and resources could be diverted to these actions.

What changes should 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?

Three substantive changes should be made to the DAT Act and the DATA Scheme to make it more effective:

- The regulatory structures, the Office of the National Data Commissioner and the funding for the staffing and processes of the ONDC should be ceased as soon as practicable, with funding and staffing redeployed to the public agencies that deliver data sharing and public agencies that can make effective use of such data.
- The existing focus of the DAT Act on the Commonwealth Government jurisdiction largely disregards the major benefits from data sharing and data use across the Federation. Key public policy areas of education, health, transport and infrastructure, social services, agriculture, environment, industry and many others involve at least two levels of government in policy, service provision, regulation and funding. There would be considerable value to all governments from greater attention to data sharing across the Federation to provide public policy and delivery insights of benefit to the nation and its people, but without the cumbersome DATA Scheme dimensions.
- The current restrictions in the DAT Act that preclude private sector organisations from making broader use of public data sharing should be revisited. Australia has a growing number of private sector and not for profit organisations beyond the formal university sector that have the interest and the expertise to make effective use of this data, contributing to the understanding of key public policy issues.

The existing clause in the DAT Act precluding such data use for compliance purposes should be retained. Compliance activities, such as in the tax and social security areas, are well covered by other legislation for data matching, etc

Should the DAT Act be allowed to sunset?

There may be value keeping very limited parts of the DAT Act (such as the Objects) to signal clear Parliamentary and Government support for improved data sharing and availability by Commonwealth agencies.

The DAT Act could also provide clarity to the public sector that data availability and data use should be prioritised within public agency budgets, recognising the public value that is delivered to the community well beyond the internal agency considerations.

The regulatory structures enshrined in the DAT Act should be removed from the DAT Act or, if that is not agreed, then the DAT Act should be allowed to sunset.

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