



# Submission to the Statutory Review of the Data Availability and Transparency Act 2022

The Department of Employment and Workplace Relations (DEWR) welcomes the opportunity to make a submission to the Statutory Review of the *Data Availability and Transparency Act 2022* (the DAT Act) and the operation of the DATA Scheme.

DEWR supports people to have safe, secure and well-paid work with the skills for a sustainable future, and collects and produces data from its interactions with the Australian public (including individuals, businesses, staff and contractors). These datasets together form an important national asset, and its value is realised through the sharing and release of the data. DEWR balances this sharing taking into account the legal obligation to keep personal information protected.

## Terms of Reference for the review

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

There are 3 key areas that DEWR would like to provide commentary on:

- Section 137 of the DAT Act - Authorised officers and individuals authorised to do particular things
- Operation of the Data Scheme
- General Feedback on the Terms of Reference

## Section 137 - Authorised officers and individuals authorised to do particular things

Section 137 of the DAT Act prescribes the individuals and entities that are authorised to perform particular functions under the DAT Act. This includes a Department, an Executive Agency within the meaning of the *Public Service Act 1999*, a Statutory Agency within the meaning of the *Public Service Act 1999*, and a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*. (Refer to Attachment A)

DEWR meets the requirements of Section 137 of the DAT Act as an entity authorised to perform particular functions. However, Jobs and Skills Australia (JSA) does not satisfy the types of entities prescribed in Section 137 (1) and is therefore not authorised to perform particular functions under the DAT Act.

JSA is established under the Jobs and Skills Act 2022 and Section 8 of that Act prescribes that JSA is part of the Department for the purposes of the PGPA Act. Further, JSA does not meet the conditions of any other entity types prescribed in Section 137 (1) of the DAT Act. The most relevant entity type for JSA is set out at Item 3, "A person who is prescribed within the meaning of paragraph (c) or (d) of the definition of prescribed authority in subsection 4(1) of the Freedom of Information Act 1982 (the FOI Act) and not covered by item 1 or 2". JSA meets the definition of a prescribed authority as set out in paragraph (a) of the FOI Act though does not meet the meaning set out in paragraph (c) or (d) which is relevant for the purpose of being authorised to perform functions under the DAT Act.

As such, JSA is not able to appoint an Authorised officer under the DAT Act. Responsibility for operating within the bounds of the DAT Act would require DEWR to perform those functions on JSA's behalf. This creates a potential conflict of interest since DEWR and JSA are separate entities for DAT Act purposes (e.g. if DEWR were to request data from JSA under the DAT Act).

As an example of how this impacts on DEWR's operations under the DATA Scheme, DEWR is in the process of applying to be an Accredited Data Service Provider (ADSP). In preparing DEWR's application, the operations and related data services of JSA have not been considered, and as such the ADSP application does not extend to JSA. JSA cannot apply for accreditation as an Accredited User or ADSP as a result of not having its own Authorised officer.

This restriction applies to all activities which means that if JSA wish to establish a Data Sharing Agreement under the Act, they would have to refer that request to DEWR's Chief Data Officer (CDO) as Authorised officer. This arrangement may not align with the objectives of the DAT Act.

**Recommendation / comment:** DEWR recommends that changes be made to Section 137 of the Act allowing entities like JSA to meet the definition of an entity type prescribed within. This would allow JSA to have an Authorised officer under the Act and participate in the DATA Scheme in its own right without any dependency on DEWR.

## Operation of the DATA Scheme

The DAT Act established the DATA Scheme for sharing Australian Government data which is underpinned by strong safeguards and consistent, efficient processes. It is focused on increasing the availability and use of Australian Government data to deliver government services that are simple, effective and respectful, inform better government policies and programs, and support world-leading research and development.

DEWR became an Accredited User under the DATA Scheme in April 2024 and is currently applying to be an ADSP. DEWR strongly believes that accreditation under the Act demonstrates a level of data maturity when it comes to the collection and use of shared data.

Despite the safeguards and assurances provided from the accreditation process, some entities, both within and outside of government, have expressed some reservations when discussing the use of the DAT Act for data sharing activities. This includes concerns that:

- the DATA Scheme may add additional administrative requirements (such as registering agreements in Dataplace)
- the DAT Act requirement for legal advice may extend timeframes
- staff may not have sufficient training in Dataplace and may prefer to explore alternative options to authorise and establish data sharing activities.

More generally, some entities stated that they do not have appropriate resourcing to undertake data sharing activities making it difficult to engage with the DATA Scheme without support.

There may be a perception that the DATA Scheme is not as user friendly as it could be which may affect the capacity of the Act to achieve its objectives. One example is that it is not currently possible to use data that has been shared with an entity for a new or different purpose. In this instance, a new Data Sharing Agreement must be established which requires additional legal advice and underpinning governance documents (such as privacy threshold assessments).

**Recommendation / comment:** Consideration could be given to amending the existing legislation to streamline some of the requirements under the Act to support data sharing (including to support data sharing with state and territory jurisdictions). This needs to be done in a way that is clear, user-friendly and encourages participation in the DATA Scheme to achieve the objects of the DAT Act in an efficient manner.

Regarding education of the DATA Scheme, this could be addressed by extending the Commissioner's role in providing education and support for entities participating in the DATA Scheme. As an example, a recent United Kingdom Data In government article on [Unlocking data sharing across government](#) discusses the role of the Data Sharing Network of Experts (DSNE). DSNE provides impartial advice to resolve complex data sharing issues, including legal, policy and security concerns. Its work helps influence systemic changes to improve data sharing and was set up to:

- understand how government shares data
- learn from best practice

- identify common challenges, and
- reduce duplication

## General feedback on the Terms of Reference

DEWR considers the establishment of the DATA Scheme has been a positive contribution to achieving the objectives of the Act. This includes the work done by the Commissioner and Office of the National Data Commissioner (ONDC) to set up and establish:

- the *Data Availability and Transparency Code 2022*
- Dataplace
- Data Sharing Agreement templates and clause bank, and
- the Australian Government Data Catalogue

## Accreditation

DEWR recognises the importance of accreditation under the DAT Act and the role that it plays in providing assurances regarding the safe use of data as part of data sharing agreements. This is a time saver for DEWR, knowing that an entity has already had its data governance and management practices reviewed and that accreditation has been granted accordingly.

The issue of what constitutes a ‘*Trusted Entity*’ when considering data sharing activities has been raised in various forums. DEWR has been satisfied that accreditation under the DATA Scheme provides sufficient assurance about an entity’s ability to safely use data that is shared under a Data Sharing Agreement.

## Dataplace

DEWR has advocated for the use of the DATA Scheme and, in the last 12 months, has registered two Data Sharing Agreements with Accredited Users in Dataplace. Whilst neither of these agreements were under the DAT Act it provided a valuable opportunity to use some of the tools afforded by the ONDC. Throughout the process ONDC staff provided good assistance and were very responsive to questions DEWR staff had whilst using Dataplace to record the Data Sharing Agreements.

There is an opportunity to extend the use of Dataplace to facilitate the inclusion of less detailed (existing) data sharing activities. This would provide a central repository across government and facilitate any future audits undertaken for data sharing activities. This would contribute to the objectives of the DAT Act to improve transparency of data sharing activities in general.

## Should the Act remain in force past its current sunset date of 1 April 2027?

DEWR is supportive of the objectives of the Act and acknowledges the work invested by the ONDC in the DATA Scheme. However, the low uptake over the first 3 years of operation of the Act has meant that those objectives have not been fully realised. DEWR is supportive of changes to the DAT Act to better support the sharing of public sector data and the achievement of the objectives of the Act.

## Attachment A – 137 Authorised officers and individuals authorised to do particular things

- (1) An individual is an authorised officer of an entity if the individual is specified in paragraph (a) of the column headed “Individuals” in an item in the following table, or authorised under subsection (2), in relation to the entity.

Note: An individual may also be authorised under subsection (3) or (4) to do particular things. These individuals are authorised to do those things but are not authorised officers.

Authorised officers and individuals authorised to do particular things		
Item	Kind of entity	Individuals
1	Any of the following: (a) a Department; (b) an Executive Agency within the meaning of the <i>Public Service Act 1999</i> ; (c) a Statutory Agency within the meaning of the <i>Public Service Act 1999</i>	The following: (a) the Agency Head within the meaning of the <i>Public Service Act 1999</i> ; (b) an SES employee, or an acting SES employee, in the entity authorised by the Agency Head under subsection (2), (3) or (4); (c) an SES employee, or an acting SES employee, in another Department, Executive Agency or Statutory Agency authorised by the Agency Head under subsection (4)
2	Any of the following: (a) a corporate Commonwealth entity within the meaning of the <i>Public Governance, Performance and Accountability Act 2013</i> ; (b) a Commonwealth company within the meaning of the <i>Public Governance, Performance and Accountability Act 2013</i>	The following: (a) the chief executive officer (however described) of the entity; (b) an individual authorised by the chief executive officer under subsection (2) or (3)
3	A person who is a prescribed authority within the meaning of paragraph (c) or (d) of the definition of <b>prescribed authority</b> in subsection 4(1) of the <i>Freedom of Information Act 1982</i> and not covered by item 1 or 2	The following: (a) the person; (b) a person authorised by that person under subsection (2) or (3)
4	A State body or a Territory body that is the holder of a statutory office	The following: (a) the holder of the statutory office; (b) a person authorised by the holder of the statutory office under subsection (2) or (3)
5	A State body or a Territory body other than the holder of a statutory office	The following: (a) the chief executive officer (however described) of the body;

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**Authorised officers and individuals authorised to do particular things**

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Item	Kind of entity	Individuals
		(b) a person authorised by the chief executive officer under subsection (2) or (3)
6	A body corporate not covered by any other item	The following:  (a) the chief executive officer (however described) of the entity and any director of the entity;  (b) an employee of the entity authorised by the chief executive officer under subsection (2) or (3)
7	A body politic not covered by any other item	The following:  (a) the chief Minister (however described);  (b) a person authorised by the chief Minister under subsection (2) or (3)

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Note: The expressions **SES employee** and **acting SES employee** are defined in the *Acts Interpretation Act 1901*.

- (2) If an item of the table in subsection (1) refers to an individual (the authoriser) authorising another individual under this subsection, the authoriser may, by written instrument, authorise the other individual to be an authorised officer for the purposes of the data sharing scheme.

Note: An individual authorised under this subsection is an authorised officer (see subsection (1)).

- (3) If an item of the table in subsection (1) refers to an individual (the authoriser) authorising another individual under this subsection, the authoriser may, by written instrument, authorise the other individual to enter into variations to data sharing agreements for the entity.
- (4) If an item of the table in subsection (1) refers to an individual (the authoriser) authorising another individual under this subsection, the authoriser may, by written instrument, authorise the other individual to do all of the following for the entity:
- (a) enter into data sharing agreements;
  - (b) enter into variations to data sharing agreements;
  - (c) make decisions that subsection 16D(4) applies to a proposed integration of data and make the required records under subsection 16D(6).