



Prepared by: The Indigenous Data Network

Version: 1.0

Date: 28 May 2025

Declared Interests/affiliations:

- *Indigenous Data Network Community Data Project 2021-25* | Funding: National Indigenous Australian's Agency | Project Lead: Professor Marcia Langton | University of Melbourne.
- *Improving Indigenous Research Capabilities: Building and Aboriginal and Torres Strait Islander Data Commons 2021-28* | Funding: Australian Research Data Commons | Project Lead: Professor Marcia Langton | University of Melbourne.

Members of the Indigenous Data Network have sat on various related national Expert Committees and Working Groups including the Commonwealth Deputy Secretaries Data Group Sub-Committee on Governance of Indigenous Data and the Data Champions Network Working Group: Governance of Indigenous Data.

To the DAT Act Review Team, Digital ID and Data Policy Division
Department of Finance,

This submission is made on behalf of the Indigenous Data Network (IDN) to comment on issues of concern related to the Statutory Review of the Data Availability and Transparency Act. The IDN is an initiative of the Indigenous Studies Unit, Onemda: Aboriginal and Torres Strait Islander Health and Wellbeing, Melbourne School of Population and Global Health, University of Melbourne.

Executive Summary

The Indigenous Data Network (IDN) has significant concerns regarding the Data Availability and Transparency (DAT) Act and the DATA Scheme. In its current form, the legislation fails to fully achieve its objects of promoting better public sector data availability and establishing robust institutional arrangements with adequate safeguards. Notably, it neglects to incorporate principles of Indigenous data governance and sovereignty, and best practices advocated by Aboriginal and Torres Strait Islander communities.

A fundamental issue is the absence of the Aboriginal Community-Controlled sector as users of the scheme and the failure to incorporate the CARE Principles for Indigenous Data Governance (Collective Benefit, Authority to Control, Responsibility, and Ethics). This oversight represents a missed opportunity to contribute to the Priority Reforms outlined in the National Agreement on Closing the Gap 2020, particularly those related to shared decision-making, building the community-controlled sector, improving data and reporting, and ensuring Aboriginal and Torres Strait Islander peoples' involvement in decision-making processes.



To address these shortcomings, the IDN recommends significant amendments to the DAT Act and DATA Scheme. Key revisions include enshrining the CARE Principles, mandating shared decision-making with Indigenous communities, expanding the scheme to include community-controlled organisations, establishing a national advisory body with Indigenous representatives, incorporating capacity-building initiatives, and reviewing limitations on data sharing for enforcement purposes. If the Act is allowed to sunset, any new legislation should be co-designed with Aboriginal and Torres Strait Islander peoples, incorporating the CARE Principles and Priority Reforms from the outset.

Has the operation of the DAT Act advanced its objects?

The IDN does not consider that the DAT Act has fully achieved its objects of promoting better availability of public sector data and establishing robust institutional arrangements for data sharing with adequate integrity, confidence, and safeguards.

The IDN initially raised concerns regarding the DAT Act and DATA Scheme in 2022, prior to the legislation of the Act. These concerns were articulated in our [public submission](#) to the Office of the National Data Commissioner in response to the exposure draft of the *Data Availability and Transparency Code 2022*, regarding the notable omission of the Aboriginal Community Controlled sector from the scheme.

In this submission we highlighted this omission, stating that:

The Aboriginal Community Controlled sector are not expressly referred to in The Act, The Exposure Draft or DATA Scheme as entities (users/data service providers), however this sector are leading entities delivering government services, informing public policies and programs, and R&D for the Aboriginal and Torres Strait Islander population of Australia. (IDN, 2002, p.2)

We called for the DAT Act to incorporate the nationally and internationally recognised CARE principles of Indigenous Data Governance¹ (Collective Benefit, Authority to Control, Responsibility, and Ethics), asserting they should be recognised as a key concern for the aims of Australia's legal data framework.

In our submission, we further expressed our concerns that despite its stated aims, the DATA Scheme represented a shift away from transparency and open access to that of restriction of access to existing public data, particularly for Aboriginal and Torres Strait Islander people. We argued that by failing to incorporate established knowledge and practices on Indigenous data sovereignty and governance, digital information best practices, and legislation in other leading international jurisdictions, the Scheme missed a significant opportunity to contribute to the *National Agreement on Closing The Gap 2020 (National Agreement)* Strategic Priority Reforms.

This lack of alignment raises doubts about the institutional arrangements' ability to instil confidence and implement appropriate safeguards, particularly for Indigenous communities and their data.

Areas for improvement include:

¹ <https://ardc.edu.au/resource/the-care-principles/>



- Reconsidering the restrictions on access to existing public data under the DATA Scheme to align with the object of promoting data availability.
- Incorporating principles of Indigenous data governance and sovereignty, digital information best practices, and guidance from relevant international legislation to strengthen institutional arrangements, integrity, and safeguards.
- Conducting meaningful consultations with Indigenous communities and organisations to ensure their perspectives, rights, and interests are adequately represented and protected by the data sharing framework.

By addressing these areas, the DAT Act and DATA Scheme can better achieve its stated objects while upholding the rights and interests of Indigenous Peoples in relation to their data.

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

The IDN recognises the importance of facilitating appropriate data flows and sharing between public sector bodies to support evidence-based decision-making and service delivery. However, we have serious concerns about the approach taken by the DAT Act and DATA Scheme, and their impact on Indigenous data rights.

Role and Performance in Enabling Nationwide Public Sector Data Sharing

While the DAT Act aims to enable better data flows, the restrictions on access for the Aboriginal Community Controlled sector to existing public data under the DATA Scheme contradict this objective. Further, the failure to incorporate of Indigenous data governance principles and best practices raises doubts about the institutional arrangements' ability to instil confidence and implement adequate safeguards for Indigenous data.

Measures to Facilitate Improvements to Data Flows

To facilitate improvements to data flows while respecting Indigenous rights and interests, the IDN recommends the following measures:

- Inclusion of the CARE principles in the DAT Act to support Indigenous communities to exercise control over the collection, use, and sharing of their data.
- Establishment of robust consultation mechanisms with Indigenous communities and organisations to ensure their perspectives and interests are represented in data sharing arrangements.
- Develop clear protocols and guidelines for data sharing involving Indigenous data, ensuring free, prior, and informed consent, and respecting cultural protocols and Indigenous knowledge systems.



Facilitating State and Territory Participation

To facilitate greater State and Territory participation in the DATA Scheme and embed efficiency in two-way data sharing arrangements, the IDN suggests:

- Collaborating with State and Territory governments to standardise data governance frameworks and align with Indigenous data governance principles.
- Establishing a national advisory body or working group comprising Indigenous representatives to provide guidance and oversight on data sharing involving Indigenous data.
- Facilitation of capacity-building programs and resources to support Indigenous communities and organisations in understanding and engaging with data sharing processes.
- Implementing standardised data sharing agreements and protocols that respect Indigenous rights and interests, reducing the need for case-by-case negotiations.

By addressing these recommendations, the DAT Act and DATA Scheme can improve information flows while upholding the rights and interests of Indigenous Peoples in relation to their data.

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

The DAT Act and DATA Scheme operate within a complex ecosystem of data holdings and sharing arrangements across jurisdictions, sectors, and stakeholders. While the Act's authority is limited to Commonwealth entities, its impact extends beyond this scope due to the interconnected national data ecosystem and the need for consistent and robust data governance frameworks.

Effectiveness of the Accreditation Framework

The effectiveness of the DATA Scheme's accreditation framework in providing assurance to data custodians about accredited users' and Accredited Data Service Providers' (ADSPs) capability to handle data appropriately is a concern for the IDN. The framework lacks adequate incorporation of Indigenous data governance principles, digital information best practices, and guidance from relevant international legislation (e.g. The EU General Data Protection Regulation (GDPR)).

Balancing Access, Confidence, and Regulatory Burden

The accreditation framework aims to balance ease of access, confidence in accredited entities, and regulatory burden, however, we contend that the current approach fails to recognise key Indigenous rights and interests. We advocate for greater access to public data for Indigenous entities; however, we also contend that stronger measures are required to facilitate Indigenous community control over the collection, use, and sharing of their data, and that their cultural protocols and Indigenous knowledge systems are respected.



Impact of Excluding Private and Non-Government Entities

The exclusion of private and non-government sector entities from the DAT Act and DATA Scheme limits its value proposition and effectiveness in the wider data sharing ecosystem. Indigenous data is often held by various stakeholders, including non-profit organisations, research institutions, and private companies. Excluding these entities from the data framework creates gaps and inconsistencies in the protection and management of Indigenous data.

Operationalisation and Flexibility

The operationalisation of the DATA Scheme and the ease with which participants can navigate it are areas that require further assessment and improvement. We recommend the establishment of consultation mechanisms with Indigenous communities and organisations to embed their perspectives and interests are represented in the data sharing processes. Further, we contend that the development of protocols and guidelines for data sharing involving Indigenous data would enhance the flexibility and effectiveness of the scheme.

By addressing these recommendations, the DAT Act and DATA Scheme can complement and add value to alternative data sharing mechanisms, while upholding the rights and interests of Aboriginal and Torres Strait Islander people in relation to their data.

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?

A critical consideration for enhancing the effectiveness of the DAT Act and DATA Scheme is ensuring their alignment with the CARE Principles for Indigenous Data Governance. These principles provide a normative framework for upholding the interests and rights of Aboriginal and Torres Strait Islander peoples in data governance practices.

Incorporating the CARE Principles into the legislative and regulatory architecture of the DAT Act and DATA Scheme could further serve as a catalyst for facilitating the four [Priority Reforms](#) outlined in the *National Agreement on Closing the Gap National Agreement*:

1. Priority Reform One: Shared Decision-Making

Mandating shared decision-making processes with relevant Aboriginal and Torres Strait Islander communities and organisations as a prerequisite for sharing or utilising data related to Indigenous communities would align with this Priority Reform. This could be achieved by embedding the CARE Principles (particularly the 'Authority to Control' principle), within the DAT Act.

2. Priority Reform Two: Building the Community-Controlled Sector

Expanding the scope of the DATA Scheme to encompass Aboriginal and Torres Strait Islander community-controlled organisations as potential participants would support this Priority Reform. This would enable community-controlled organisations to access and



share data relevant to their service delivery and community needs, thereby building their capacity and autonomy.

3. Priority Reform Three: Improving Data and Reporting

Establishing a national advisory body made up of representatives from Aboriginal and Torres Strait Islander communities and organisations to provide guidance and oversight on data sharing practices would support this Priority Reform. Implementing capacity-building initiatives and resources to enhance the understanding and participation of these communities and organisations in data sharing processes under the DATA Scheme would further contribute to improving data and reporting.

4. Priority Reform Four: Ensuring Aboriginal and Torres Strait Islander Peoples' Involvement in Decision-Making

Developing comprehensive protocols and guidelines for data sharing of Aboriginal and Torres Strait Islander data, co-designed in collaboration with community-controlled organisations, would advance adherence to the CARE Principles and respect for cultural protocols and Indigenous knowledge systems. This would facilitate the engagement of Aboriginal and Torres Strait Islander peoples in decision-making processes related to their data.

By restructuring the DAT Act and DATA Scheme to align with the CARE Principles and the National Agreement on Closing the Gap, the national data framework could support the self-determination, collective benefit, and interests of Aboriginal and Torres Strait Islander people, while promoting responsible and ethical data sharing practices.

Should the DAT Act be allowed to sunset?

The IDN contends that the DAT Act in its current form fails to adequately incorporate the interests of Aboriginal and Torres Strait Islander people. However, rather than allowing the DAT Act to sunset entirely, the IDN suggests it should undergo significant amendments and revisions to address these shortcomings. Aspects of the DAT Act that should be preserved and amended include:

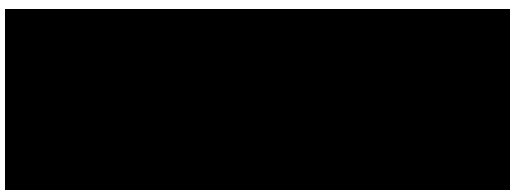
- Preserving the overarching objective of promoting better availability and sharing of public sector data but amending the Act to enshrine the CARE Principles as guiding tenets for data sharing involving Aboriginal and Torres Strait Islander data.
- Amending the Act to mandate shared decision-making processes with relevant Aboriginal and Torres Strait Islander communities and organisations before sharing or utilising data related to their communities.
- Expanding the scope of the DATA Scheme to include Aboriginal and Torres Strait Islander community-controlled organisations as potential data users, supporting the National Agreement Priority Reforms to build the community-controlled sector.
- Establishing a national advisory body with representatives from Aboriginal and Torres Strait Islander communities and organisations to provide guidance and oversight on data sharing practices.



- Incorporating provisions for capacity-building initiatives and resources to enhance the understanding and participation of Aboriginal and Torres Strait Islander communities and organisations in data sharing processes under the DATA Scheme.
- Reviewing and amending the limitations on data sharing for enforcement-related purposes, ensuring clear safeguards and oversight mechanisms aligned with the CARE Principles to prevent the misuse of data that could marginalise or adversely impact Aboriginal and Torres Strait Islander communities.

If the DAT Act is allowed to sunset, the IDN recommends that any new legislation or data governance framework proposed to replace it should be co-designed in collaboration with Aboriginal and Torres Strait Islander people, incorporating the CARE Principles and the Priority Reforms from the outset. Ongoing and transitional arrangements during the sunset period should include meaningful consultations with Aboriginal and Torres Strait Islander stakeholders, capacity-building initiatives, and interim measures to protect Indigenous data rights and interests until a new, culturally appropriate data governance framework is established.

Regards,



Professor Marcia Langton

Chair - Indigenous Data Network
Associate Provost
Redmond Barry Distinguished Professor
Chair of Australian Indigenous Studies
Director, Indigenous Studies Unit
Onemda: Aboriginal and Torres Strait Islander Health
Melbourne School of Population and Global Health
The University of Melbourne, Victoria 3010, AUSTRALIA

