



EC25-002626

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Dear Mr Black

**The National Emergency Management Agency Submission to the Department of Finance Statutory Review of the *Data Availability and Transparency Act 2022***

Thank you for the opportunity to comment as part of the Statutory Review of the *Data Availability and Transparency Act 2022* (DAT Act). As a Data Custodian under the Scheme, National Emergency Management Agency (NEMA) is yet to participate in accreditation through the Office of the National Data Commissioner (ONDC).

We have held several conversations with the ONDC to understand what is required under the DAT Act, and to explore how NEMA can meet the legislative requirements given the business focus of our operations.

Our overall observation is that there are no provisions under the DAT Act to deal with emergency management. To this end, our submission will address the following:

- background to NEMA's operations and legislation
- machinery of government changes that impacted data previously excluded under the Department of Home Affairs, including the impact of machinery of government changes on accreditation in the future
- the role of a data user under legislation and impacts of exclusion
- the role of the authorised officer and penalties
- registration of a data sharing agreements and timing
- additional input as per the Issues Paper.

**Background to NEMA's operations and legislation**

At the time the DAT Act was passed into legislation on 31 March 2022, Emergency Management Australia (EMA) was a dedicated group within the Department of Home Affairs and as such, had data that held the status of being 'operationally excluded'. The National Recovery and Resilience Agency (NRRA) was under Prime Minister and Cabinet and was not excluded from the DAT Act.

Both organisations were bought together as NEMA following machinery of government changes in September 2022.

NEMA operates under the *National Emergency Declaration Act 2020* (NED Act), which gives the federal government the authority to declare a national emergency, bypass red tape to provide quicker support and trigger additional federal powers without overriding State laws. There are provisions under Section 10 of the NED Act across a range of legislation (34 in total) to accommodate such emergency management activities.

For instance, under Part VIA of the *Privacy Act 1988* the collection, use and disclosure of personal information differs during a declared emergency.

NEMA also has two operational environments, one during higher risk weather season and the other lower risk weather season. During higher risk weather season Crisis Coordination Teams may be activated quickly, taking resources away from other parts of NEMA and requiring NEMA to coordinate the Commonwealth's response including interagency support. Our National Situation Room provides (NSR) 24/7 all hazards situational awareness, impact analysis and decision support to the Australian Government, accessing a wide range of data feeds. As a result, NEMA has significant peaks and troughs in its workload and while resourcing is established, there are instances where NEMA as a small Agency with a budget allocation of 425 Average Staffing Level employees might find it challenging to meet the obligations of the DAT Act within the timeframe.

NEMA has had over two years of operation and has been building data capability. As a data integrator, we rely on data sourced from across the Australian Government, States and Territories, and through both procurement activities and data sharing agreements to coordinate emergency management response, relief, recovery, and resilience activities.

NEMA uses data to manage and coordinate time critical operational activities that may have sensitivities attached during natural and human induced disasters. As such, the data we use during an emergency might differ from what is considered fit for purpose in everyday use. We would only want to share data used during emergencies once we have undertaken our data management practices to improve its quality – however the nature of our business means that we would need longer than the time under the Act (28 days) to ensure the data is ready for sharing and whether the data is appropriate to be shared, given some of the sensitivities of our work.

While the DAT Act offers the Australian Government a range of opportunities, legislating data sharing has created some challenges for our Agency, given the nature of our business and the type of data we hold.

#### **Machinery of Government changes – data exclusion, accreditation**

As outlined below, the DAT Act does not cater for machinery of government changes to Australian Government entities who are Data Custodians.

- The DAT Act excludes certain agencies from participating in the Scheme, primarily those involved in national security and law enforcement. This includes intelligence and law enforcement agencies like the Australian Federal Police (AFP), the Australian Security and Intelligence Organisation and the Australian Signals Directorate. Additionally, the sharing of certain types of data, such as operational data from the Australian Transaction Reports and Analysis Centre, AFP and Department of Home Affairs, is also excluded.
- No provision under the DAT Act has been made to allow for entities that were excluded prior to a machinery of government change to request a transfer of this exclusion to follow sensitive data. As such, agencies lose their exclusion status and are unable to regain that status or have that status transferred or shared with another Agency.
- This has operational impacts on NEMA. Data received by the NSR which includes sensitive, operational and sovereign data that fits within the category of national security/law enforcement – such as that collected by the National Security Hotline – was previously considered excluded operational data under the Department of Home Affairs. There are now no formal protections in place and it is unclear on NEMA's legal obligations in this regard.



- While there are provisions to reject data requests for this data, these provisions introduce a level of administrative burden onto the Agency for data which technically should be excluded. In addition, under the DAT Act the Agency must respond within 28 days to reject a request, regardless of whether the Agency has the capacity to respond during high risk weather season and/or a declared emergency under the NED Act.
- An Agency/Department can gain or lose certain data functions and, as a result, maturity levels will change. There is no provision under the DAT Act to answer:
  - Does the gaining or losing Agency retain the previous accreditation?
  - Is there a grace period to exclude gaining and losing agencies from responding to requests while new accreditation is sought?
  - How do the Memorandum of Understanding's (MOU's) for data sharing under the DAT Act transfer? Is there an administrative mechanism within DataPlace to transfer all MOU's and update the Agency details and requirements?

#### **Role of a data user under the legislation requires further consideration**

NEMA would be supportive of the expansion of the DAT Act to allow for an Agency, like NEMA, to be a data user while still retaining exclusion on data sharing. Data sharing is critical to our operations and currently we use several legal mechanisms to facilitate access to the data the Agency needs, as follows:

- The *Intergovernmental Agreement on Data Sharing*, which was signed by State and Federal Data and Digital Ministers in July 2021 and then reviewed with amendments in September 2023.
- NEMA specific data sharing MOU's and letters of exchange across the Australian Government and with States and Territories.
- Private data sourced through commercial contracts to procure a wide range of differing data sets.

As a data integrator, NEMA uses these arrangements to lead and coordinate national action and assistance across the emergency management continuum. This includes building scalable, coordinated emergency management capability for nationally significant, cross jurisdictional and international crises. The scale and complexity of these operations and our stakeholder reach is significant.

If NEMA was to become 'accredited' under the Scheme, this would create a financial pressure on our limited agency resources as our current data sharing arrangements would need to change under the DAT Act.

The advice from the ONDC is that the benefit of relying on the DAT Act (Section 17(3)) for the Agency to refuse data requests versus securing data exclusion (as discussed earlier) is that NEMA can still apply to be an accredited data user under the Scheme. ONDC has advised that this may be needed to authorise NEMA's collection of certain data from other Commonwealth agencies to feed into future policy, program and research work.

If we are unable to access the Scheme as a Data User because we seek exclusion of our data holdings due to sensitivity of the data and the volume of stakeholders we manage for data sharing requests, this will limit the effectiveness of both NEMA and the DAT Act to data share by default. It's important to note that NEMA is still in the process of building the Agency's data needs.

#### **The role of the Authorised Officer**

We note that there are penalties on Authorised Officers for not meeting the formal 'requirements' under the Scheme for data sharing within certain timeframes. Given the nature of our work in emergency management, we take the view that NEMA's Authorised Officers – such as the role of the Coordinator-General and the Chief Data Officer – should be protected from these penalties when data sharing requests are not met due to operational tempo, denied on the grounds of either a declared emergency under the NED Act or when NEMA is responding to an emergency.

### Registration of a data sharing agreement

It should also be noted that under the Scheme, data cannot be shared until the data sharing agreement has been registered with the ONDC. Given the nature of emergencies, such a clause will slow down data sharing for NEMA during what could be considered critical time periods where new data may be required to facilitate emergency management decision making.

### Additional input as per the Issues Paper

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

The construct of accreditation confirms the high value of data management and governance policies within the entities that are data sharing and supports the push across government to improve data maturity. This is important for the management of data security, data quality and for data readiness for the introduction of artificial intelligence.

However, the DAT Act in itself is not the only mechanism to improve data maturity nor facilitate data sharing across all levels of government. The *Intergovernmental Agreement on Data Sharing* facilitates data sharing by default and the annual data maturity assessments conducted by the Department of Finance is an excellent tool to encourage Agencies to uplift their data capability, management and governance.

*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?*

Flexibility in the type of role a data custodian has to access data and consideration for the changes that occur within government due to machinery of government.

*Should the DAT Act be allowed to sunset?*

NEMA does not have a view on the sunset clause. Given NEMA's current maturity levels and concerns around sensitive data holdings, it is anticipated that NEMA may be ready for accreditation in 2026, noting that the sunset clause is for April 2027. As such, the administrative burden to joining the Scheme for a limited period of time with no changes to the roles or exclusions required for our data would suggest that the Act will not meet NEMA's needs over the longer term.

### NEMA's position

At this stage, the value of the DAT Act is low for the Agency as it will only impose additional administrative burden on a very small Agency that manages a critical function and handles data that may need to be excluded regardless.

For the DAT Scheme to be of value to NEMA as legislation moving forward, the following is suggested:

- A similar clause to that within the *Privacy Act 1988* (Part VIA)- which provisions for emergency management however is broadened to encompass all information NEMA might wish to collect, collate and share - to be added to ensure NEMA has the relevant protections during an emergency response, or through activation of the NED Act.
- ONDC should provide guidance for NEMA and other agencies on the interaction between the DAT Act and the *Archives Act 1983*.
- The ONDC should consider producing a guide for smaller agencies to assist them with data maturity uplift and support so they are better able to participate in the scheme.
- NEMA's data holdings should be excluded through a formal mechanism – this could be co-signed between the ONDC Commissioner and the Coordinator-General.
- The inclusion of provisions to ensure a machinery of government change can include accreditation transfer, continuation of data protections, MOUs are not adversely impacted and protections from penalties for Administered Officers for a set period of time when re-establishing the data function.



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- The function of NEMA as a data user to access new data should be included if the data exclusions are also implemented.
- Penalties should be removed from NEMA's Authorised Officers – this could be limited, as agreed, for when the Agency does not have the bandwidth to respond to legislated timeframes during an emergency response.

It would be beneficial for the DAT Act to account for the nature of emergency responses and the data sharing requirements under such circumstances.

**Further information**

I would welcome the opportunity to meet with the Reviewers to discuss NEMA's position and how best this legislation and subsequent regulations could be amended to better meet our requirements for emergency management.

Please do not hesitate to contact NEMA's Chief Data officer, Mr Paul Gloyne, at [REDACTED] should you wish to discuss our response.

Yours Sincerely,

[REDACTED]

Mr Brendan Moon  
**Coordinator-General**

11 June 2025