



Australian Government

Office of the Australian Information Commissioner

Mr Taylor Black  
Assistant Secretary  
Department of Finance  
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By email: [DATActReview@finance.gov.au](mailto:DATActReview@finance.gov.au)

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

Dear Mr Black

The Office of the Australian Information Commissioner (OAIC) welcomes the opportunity to comment on the Department of Finance's Issues Paper on the statutory review of the *Data Availability and Transparency Act 2022* (Cth) (DAT Act).

### About the OAIC

The OAIC is an independent Commonwealth regulator, established to bring together three functions:

- privacy – protecting the privacy of individuals under the *Privacy Act 1988* (Cth) (Privacy Act)
- freedom of information – supporting access to information held by the Commonwealth Government in accordance with the *Freedom of Information Act 1982* (Cth) (FOI Act), and
- information commissioner functions – as set out in the *Australian Information Commissioner Act 2010* (Cth)).

Our role includes regulating the handling of personal information by Australian Government agencies and the sector and promoting open government through oversight of the FOI Act and the Information Publication Scheme (IPS).

The Australian Information Commissioner is a member of the National Data Advisory Council and contributes to the advancement of the Office of the National Data Commissioner in that role which involves: advice on data sharing on issues such as ethics, balancing data availability with privacy protections, trust and transparency, technical best practice, and industry and international developments.

This submission is provided by the Australian Information Commissioner to provide a whole of OAIC approach.

### **Support for responsible data sharing, transparency and accountability**

The Issues Paper seeks views on the operation of the DAT Act with respect to its objectives, including supporting improved data availability and transparency. The assessment of implementation of the Act against the objects of the Act may be informed by the functions and outputs of the Office of the National Data Commissioner.

The objects of the DAT Act particularly:

*S 3(a) serve the public interest by promoting better availability of public sector data;*

Introduces a public interest focus that is balanced with privacy protection at s3(b) of the DTA Act. This approach replicates other statutes in force within Australian jurisdictions at a state and territory level. Accordingly, the approach does not on its face reflect the role of the Commonwealth in advancing a national agenda informed by national data and that available to States and Territories under their data sharing arrangements. It is recognised that those data holdings may be subject to both restrictions and also factors that might inform the release of data, conditional or otherwise for the purposes of the DAT Act.

As the objects of the DAT Act strive to promote integrity, again a recognition of the information holdings of the Commonwealth Government might assist advancing integrity more broadly and to serve a national interest. Government data represents a source of truth in an age of mis and disinformation. Public confidence and trust would be advanced by access to government data and a clear recognition of data provenance. In circumstances where data is shared to inform decision making with the information/data not publicly available the processes implemented by government including data inputs to inform Government decisions would also advance public trust.

Australia is a member of the Open Government Partnership (OGP). The OGP is a global multi-stakeholder initiative that aims to make governments more open, transparent, accountable, and responsive to citizens. A recent focus of the OGP has been digital transformation and access to data to promote the central pillars of Open Government. The Attorney General's Department reports that:

The OGP agenda extends to a variety of issues. These include:

- digital transformation

- the use of artificial intelligence
- promoting disclosure of interests and conflicts
- freedom of information
- public ethics
- anti-corruption
- service delivery
- budgetary efficiency
- public safety
- corporate accountability.

The nexus between open government and the objects of the DAT Act is manifest. The review may wish to consider key drivers and developments in open government in the context of the current operation of the DAT Act.

In general, the OAIC is supportive of the objectives of the DAT Act to promote greater availability and use of government-held data in a manner that is secure, transparent, and consistent with privacy protections. Increasing access to government-held data can support innovation, improve service delivery, and enhance transparency and accountability.

From an information access perspective, increasing sharing of public sector data is positive from an open government perspective but also has the potential to significantly reduce the workload for the FOI system and align with the objectives of the FOI Act in general and the IPS in particular. From a privacy perspective, a legislative scheme that provides a clear framework for how agencies can share information in a way that respects privacy rights can enhance the privacy of individuals and build public trust in government information handling practices.

From an information access perspective, increasing the proactive release and sharing of government-held data aligns with the objectives of the FOI Act and the IPS. It also has the potential to reduce the administrative burden on the FOI system by making more data available upfront, thereby improving transparency and public trust.

However, the limited uptake of the DAT Act to date, evidenced by only eight data sharing agreements under the scheme, suggests that barriers may exist to the scheme reaching its full potential.

We encourage the review to explore any barriers to uptake and consider reforms that would enhance the scheme's usability and effectiveness.

The OAIC remains committed to supporting the Australian Government's data strategy through the promotion of responsible data practices that uphold privacy and information access rights. We welcome further engagement with the Office of the National Data Commissioner and Department of Finance to ensure that the DAT Act delivers on its promise of safe, streamlined and transparent data sharing.

### **Privacy protections and public confidence**

The OAIC supports increasing access to government-held data in a manner that is consistent with the privacy protections embedded in the DAT Act.

The DAT Act's strong privacy safeguards, including its alignment with the Privacy Act, the requirement for data minimisation, and prohibitions on re-identification and offshore storage of personal information are essential to maintaining public confidence in data sharing initiatives. The OAIC has heard from some stakeholders that a barrier to the Act achieving its full potential is the administrative processes associated with meeting its privacy requirements, including the work involved in conducting privacy impact assessments (PIAs).

We are aware of anecdotal reports that PIAs are taking extended periods to complete, and that agencies are outsourcing the completion of PIAs or tasking them to legal personnel, who may not always be best placed to assess privacy risks in a timely or holistic manner.

Privacy should not be perceived as a barrier to data sharing or innovation. Robust privacy practices can build community trust and confidence in the use of data for innovation and productivity. Embedding privacy by design into data sharing processes ensures that risks are identified and mitigated early, enabling data custodians to share with confidence.

Various mechanisms could streamline the assessment of privacy risks in data sharing, such as a centralised privacy assessment or PIA support unit (in the Digital Transformation Agency or elsewhere) or tailored guidance. The OAIC is well positioned to assist in this area and would welcome the opportunity to work with the National Data Commissioner and Department of Finance to address any barriers connected to privacy requirements identified through the review.

## Recommendations

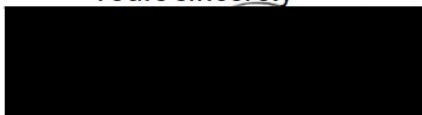
In summary, the OAIC makes the following recommendations:

1. Retain and strengthen the DAT Act beyond its current sunset date, with consideration of the national jurisdiction and information holdings, the advancement of open government and improvements to usability and uptake.
2. Ensure that data sharing is informed by extant privacy and information access rights as a foundation for public trust and responsible data use.
3. Consider opportunities to streamline the privacy assessment process to address any stakeholder concerns about how privacy requirements may impede data sharing.
4. Consider how the DAT Act may advance open government and transparency by supporting agencies to make more information publicly available.

The OAIC remains committed to supporting the responsible sharing of government-held data in a way that upholds privacy and information access rights.

Please do not hesitate to contact us should you require further information or clarification on any aspect of this submission.

Yours sincerely



Elizabeth Tydd

**Australian Information Commissioner**

27 May 2025