Statutory Review of the *Data Availability and Transparency Act 2022* (Cth)

Submission

Population Health Research Network

May 2025

ABOUT THE PHRN

The Population Health Research Network (PHRN) is one of Australia's premier national research infrastructures, advancing innovation through the secure linkage, management and use of high-quality health and human services data. By partnering with researchers, government, industry and the community, PHRN equips Australian researchers with a competitive edge to conduct transformative, data-driven research. Hosted by the University of Western Australia, the PHRN plays a critical role in driving health and social research excellence nationwide. The PHRN is funded by the Australian Government's National Collaborative Research Infrastructure Strategy (NCRIS).

Our Roles

- We are a respected, independent and trusted broker, valued for bringing governments, organisations, individuals and data together securely.
- We collaborate to enhance and maintain significant, innovative research infrastructure to improve the nation's data linkage capability.
- We facilitate and grow the use of linked data in the areas of health and human services.
- We advocate for an improved authorising environment for better access, use and sharing of data.
- We support the whole of government focus on accessing, sharing and using data for the national good.

Our Vision

Linking life data to improve the wellbeing of all Australians

Our Mission

To lead and enable the linking of data for world class, action-oriented research

Acknowledgments

The PHRN acknowledges the valuable input received from our PHRN Participant Council Members and Managers during the course of preparing this submission.

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PHRN RESPONSE TO THE STATUTORY REVIEW

Overview

The PHRN welcomes the opportunity to contribute to the Statutory Review of the *Data Availability and Transparency Act 2022* (the DAT Act). The PHRN funds, supports and coordinates a national research infrastructure that links and shares person-level health and human services data for research in the public interest. Such research is critical to improving the health outcomes of everyday Australians and supports governments in making informed decisions regarding health care priorities and the delivery of services.

The PHRN has participated extensively in previous inquiries and consultations concerning data availability and use in Australia. Most recently, our organisation made submissions to the Senate Finance and Public Administration Legislation Committee supporting the introduction of the *Data Availability and Transparency Bill 2021.* The PHRN continues to support the need for legislation which promotes the increased availability of public sector data for research in a transparent, accountable way. However, the PHRN holds concerns that the current iteration of the DAT Act does not achieve these objects and does not facilitate or significantly increase public trust in data sharing as a practice.

The PHRN's concerns primarily centre around the uncertainty created by the legislative complexity of the DAT Act, which may have contributed to its slow uptake, and to the administrative burden placed on entities seeking the release of data, which reduces the efficiency of the Scheme.

An effective Data Scheme is necessary to deliver the benefits of greater data availability identified by the Productivity Commission in 2017.[1] In the PHRN's view, this Review presents an invaluable opportunity to implement critical revisions that will increase the accessibility of public sector data, and the overall efficiency and transparency of the DAT Act.

Response to the Terms of Reference and Consultation Points

Does the DAT Act improve information flows between public sector bodies and accredited entities? Does the DAT Act support improved public sector data availability and transparency, including sharing public sector data in a controlled way?

Increased availability of public sector data

The DAT Act does not appear to have facilitated a particularly strong increase in the availability or use of public sector data to date. A review of the registers administrated by the Office of the National Data Commissioner (ONDC) reveals that only 2 of the 35 accredited entities[2] have entered into or been involved in data sharing agreements (DSAs) under the DAT Act, with only 8 DSAs registered and in effect. Even accounting for its relative infancy, this suggests underutilisation of core aspects of the Scheme and a poor flow of information between most accredited users and data custodians.

With respect to whether the DAT Act has facilitated a more general improvement in the availability of public sector data, the PHRN has reviewed KPIs from various participant organisations pertaining to the demand for, and release of, linked data, which includes Commonwealth data. Whilst the total

[1] Productivity Commission, *Data Availability and Use* (Inquiry Report No 82, 31 March 2017) 60 – 61, 108 – 116.
[2] That is, 22 accredited users, 4 ADSPs and 9 entities listed as both accredited users and ADSPs as at 14 May 2025: 'Accredited Entity Register', *Office of the National Data Commissioner* (Web Page) <https://www.datacommissioner.gov.au/accredited-entity-register>.

number of new project applications and projects in progress has increased overall between 2017-2018 and 2023-2024, indicating a slight uptick in the demand for Commonwealth data, the number of records released, and the number of ad hoc datasets linked in the 2023-2024 financial year fell to levels on par with or below the 2019-2020 period.[3] Given the relative paucity of DSAs, we suggest that the relatively minor statistical increase in requests for linked Commonwealth data is not indicative of improvements to data access facilitated by the DAT Act, but is reflective of a natural upward trend of requests in an increasingly data-driven modern economy using pre-existing pathways.

Increased transparency regarding the use of public sector data

Despite its apparently slow uptake, the DAT Act does promote the sharing and use of data in a relatively transparent and accountable way. The requirement for the ONDC to maintain a register of accredited entities and a register of DSAs provides an opportunity for individuals to understand, in general terms, what is being done with the data, and why. Research regarding the importance of social licence and data use indicates that there is 'an established link between this kind of transparency and institutional trust'.[4] The PHRN supports the retention of these conditions in any amendments to the DAT Act.

Has the operation of the DAT Act advanced its objects?

In the PHRN's view, the objects of the DAT Act remain largely unrealised. Part of this is attributable to the infancy of the Scheme, but other factors, such as legislative complexity, also inhibit data sharing, public confidence, and transparency.

Legislative and technical complexity

Individuals need to be able to navigate the DAT Act with a degree of confidence, so that they can understand what accredited users can legitimately do with data, and whether they have an avenue for complaint or redress. Potential users seeking to identify their obligations and/or make a value judgement as to whether the cost, time and effort involved in accreditation will be balanced by the data sharing benefits of the Act must be similarly empowered. Yet, understanding how the DAT Act applies in practice is a difficult exercise.

An illustrative example is found in the provisions concerning output and the exit of data under the Scheme. The Revised Explanatory Memorandum suggests that a data sharing agreement may permit 'an accredited user to release a copy of specified output in particular circumstances… (for example, by placing the copy on the internet)'.[5] Reviewing the Act to ascertain the circumstances in which a data sharing agreement may permit an accredited user to place a copy of output on the internet leads to some confusion. This is because data sharing agreements are required to prohibit an accredited user from providing access to or releasing output in any circumstances other than the circumstances (if any) specified in the agreement.[6] The only circumstances that may be specified in the agreement are those permitted by ss 20A, 20B, 20C or 20D.[7] Putting aside ss 20A and 20B as irrelevant in the

[3] Although this is still an upward trend in comparison to the preceding 2022-2023 financial year.
[4] Judy Allen, Carolyn Adam and Felicity Flack, 'The role of data custodians in establishing and maintaining social licence for health research' (2019) 33(4) *Bioethics* 502, 505.
[5] Revised Explanatory Memorandum, *Data Availability and Transparency Bill 2022* (Cth) 36.
[6] *Data Availability and Transparency Act 2022* (Cth) s 19(9)(c).
[7] *Data Availability and Transparency Act 2022* (Cth) s 19(10).

present context[8] both ss 20C and 20D require the data custodian of the source data to be satisfied, before access is provided or the release occurs, that the access or release will be an authorised use of the output under s 13A. One of the mandatory requirements of s 13A is that the entity collecting the data or using output of the project be an accredited user under the Act[9] (ss 74 and 9 make it clear this is restricted to a select group).[10] These provisions suggest that a data sharing agreement cannot directly permit 'an accredited user to release … output … in accordance with the agreement … by placing the copy on the internet' without that data first validly[11] exiting the Scheme (under s 20E) such that s 13A(d) does not apply.

This is not a comprehensive analysis of the relevant provisions, and it is not intended to be a decisive statement regarding the operation of specific sections the DAT Act. The point of the example is to illustrate that the DAT Act is not easy to understand, or to navigate, and to demonstrate the complex pathway that must be traced to obtain an answer to a relatively simple question about the release of data.[12]

A degree of complexity exists in all laws. Where prescriptive requirements are embedded alongside a principles-based approach, as they are in the DAT Act, some complexity is inevitable. However, the prevalence of interconnected cross referencing in the DAT creates avoidable confusion. As the ALRC has recognised, 'this kind of interweaving, where few provisions of an Act stand on their own, is a common symptom of complexity'[13] and 'the challenge for lawmakers is to mitigate unnecessary (or avoidable) complexity, as distinct from necessary complexity'.[14]

The Act also imposes significant technical burdens on accredited users seeking access to data. Even after these entities have undergone rigorous evaluation in the pursuit of accreditation, extensive information, documentation and justification is required to meet the conditions imposed by the legislation, including the data sharing principles. Some of this is warranted in the name of privacy protection and data risk management. However, where the processes and level of difficulty are such that it is practically obstructive, reform should be considered. This is particularly so given accredited users can spend significant time and funding on commencing the application process with no end guarantee that data custodians will share data.

Researchers are used to navigating complex systems with duplicative or onerous requirements, both legal and ethical, to gain access to data. Those regularly seeking access to cross-jurisdictional linked data are particularly adept at traversing intricate approval, access, and security preserving processes. The underutilisation of the DAT Scheme to date, and the informal feedback the PHRN has received,

[8] Section 20A enables access to specified ADSP data by the data custodian of the source data (i.e. another accredited entity) in certain circumstances. Section 20B permits access to non-accredited entities only for the purposes of validation or correction.

[9] *Data Availability and Transparency Act 2022* (Cth) s 13A(d).

[10] That is, a Commonwealth body, a State body or a Territory body, the Commonwealth, a State or a Territory, or an Australian university.

[11] Which does require the release of the output to occur in accordance with the data sharing agreement: see s 19(6), 19(9), 20A – 20D.

[12] This is not to discount the role of the ONDC, who is empowered to issue advice and guidance to assist with interpretation and application of the DAT Act. The ONDC does not, however, have limitless resources and reducing the complexity of the Act is likely to reduce the future administrative burden of the ONDC, as well as legal challenges.

[13] 'Measuring Legislative Complexity' *Australian Law Reform Commission* (Web Page, 12 December 2022) <https://www.alrc.gov.au/datahub/legislative-complexity-and-law-design/measuring-legislative-complexity/>.

[14] Australian Law Reform Commission, *Background Paper FSL2: Legislative Framework for Corporations and Financial Services Regulations: Complexity and Legislative Design* (October 2021) FSL 2-5.

suggests that even with this expertise researchers consider engaging with the requirements and provisions of the DAT Act too hard. Amendments to reduce the complexity of the Act so that more provisions are capable of standing on their own, and amendments to clarify access, use, and output requirements are necessary to encourage continued use and future uptake of the Scheme.

How does the operation of the DAT Act compare and interact with other existing mechanisms for facilitating access to, sharing and use of public sector data? How does the DAT Act add value in the wider data sharing context?

As raised above, the complexity of the DAT Act means that it is unlikely to be the preferred mechanism through which organisations decide to routinely access data. Existing avenues have their own restrictions, but their limits and parameters are generally well-understood.

A potential exception to this is large datasets or data collections not accessible through other means. The National Disability Data Asset (NDDA) is one example. Created pursuant to several DSAs between the ABS and AIHW and drawing on existing Commonwealth data and data shared by states and territories, the NDDA is a significant linked data asset that is likely to prove interesting to accredited users once fully operational.[15] The NDDA highlights one of the key benefits of the DAT Act; its facilitation of large scale data integration that would otherwise be prohibited due to secrecy and other provisions within various legislation.

Review of the NDDA Charter suggests that access to the NDDA will be provided to 'approved users' who are accredited users under the DAT Act, for specific approved projects.[16] What is not immediately clear, given that the NDDA is operational but so few DSAs have been registered, is whether access to the NDDA or other integrated datasets is or will be facilitated through new DSAs, or as 'outputs' to accredited users under the existing DSAs that have enabled the creation of the asset. The PHRN is concerned that if information sharing does occur through the authorised release of outputs by accredited users rather than directly through a DSA between the releasing entity and the receiving entity, public trust in the operation of the Scheme may be affected. As stated above, the public availability of DSAs and accredited user information promotes transparency and accountability. These disclosure requirements operate in tandem with the data sharing principles and applicable privacy protections to build confidence in the integrity of the Scheme. Where outputs are released to an accredited entity, but little to no information is publicly available about the release or the intended use (irrespective of compliance with the purpose and project description agreed under the original DSA) transparency and public trust are potentially reduced.

The PHRN also queries the manner in which the Five Safes framework has been incorporated into the DAT Scheme. The data sharing principles in s 16 of the DAT Act are based on the 'Five Safes' framework,[17] an internationally recognised risk management model that considers 'strategic, privacy, security, ethical and operational risks as part of a holistic assessment for data sharing or release'.[18] The Five Safes principles – Project, People, Setting, Data and Output – are undeniably useful in mitigating risk in a consistent but flexible way. The PHRN does however query whether the detailed inclusion of the Five Safes within primary legislation is the optimal pathway to achieving its objectives. The Five

[15] Anticipated in 2026, see: 'National Disability Data Asset' *Australian Institute of Health and Welfare* (Web Page) <https://www.aihw.gov.au/reports-data/ndda/data-scope>.

[16] National Disability Data Asset, *National Disability Data Asset Charter* (undated) Glossary. Available: <https://www.ndda.gov.au/about-ndda-guiding-principles/charter>.

[17] Commonwealth, *Parliamentary Debates,* House of Representatives, 9 December 2020, 11024 (Stuart Robert); Revised Explanatory Memorandum, *Data Availability and Transparency Bill 2022* (Cth) 22.

[18] Australian Government Australian Institute of Health and Welfare, *Accessing Data* (May 2021) 7.

Safes, being more of a 'structure and an ethos, helping to frame discussion'[19] potentially sit uneasily alongside the more prescriptive requirements of the Act. The Five Safes may be better suited to mandatory ONDC guidelines that can give space to subjective evaluations of 'appropriateness', as well as more easily reflect potential changes to the model's approach in future with the advent of new technologies. The PHRN suggests that compliance with the data sharing principles should still be a requirement for the release of data under the DAT Act,[20] but the principles, conditions and matters to be taken into account could be set out alongside non-binding guidance and examples. Having a single reference point, rather than splitting the principles between the Act and the Code, may also lend itself to easier comprehension for entities new to the Scheme.

Stakeholder satisfaction with the operation of the DAT Act as a tool for reducing barriers and enabling effective access to, sharing and re-use of public sector data.

Feedback from the PHRN's participant organisations suggests that the DAT Act does not assist with reducing the administrative burden on accredited entities applying for data. An example provided by a participant organisation concerned the release of Medicare Consumer Directory data (MCD). The organisation's accreditation status allowed them to be considered as a recipient of the MCD, but additional documentation and evidence was required. Whilst this is not an issue in itself, it forms part of a larger problem reported by accredited entities:

> *In our experience as an accredited ADSP, Commonwealth Data Custodians do not see accreditation as assurance that we are a secure and trusted service to share data with… [they often require] resupply of details relating to personnel capability, ICT security and governance processes on request proformas specific to the Commonwealth agency.*

The PHRN acknowledges that accreditation requirements are separate to release requirements, and that data custodians are bound by the DAT Act to be satisfied of certain matters before releasing data, even to accredited entities. There is, however, an opportunity to reduce the burden on accredited entities and streamline the provision of data by eliminating duplicative processes that require the provision of information that has already been supplied during the accreditation process. We suggest that data custodians work with the ONDC to enhance and streamline this process.

As a related matter, the PHRN also received feedback that the ONDC accreditation forms are somewhat Commonwealth centric, with suggested examples regarding the evidence that could be supplied to support accreditation being:

> *from the perspective of Commonwealth agencies and … challenging to interpret for [non-Commonwealth] agencies…*

Amendments to these forms to simplify the questions posed and to provide broader examples of the kinds of assurances that entities could provide to meet requirements would be helpful in reducing the accreditation burden and may increase uptake of the DAT Scheme.

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?

[19] Tanvi Desai, Felix Ritchie and Richard Welpton, 'Five Safes: Designing Data Access for Research' (2016) 1601 *Economics Working Paper Series* 1-27, 21.
[20] For example, under ss 13(1)(e), 13A(c) and 13B(c).

Purpose and Eligibility

The Review has sought feedback on whether the DAT Scheme should be extended to support more types of use cases, and whether there are benefits to expanding the scope of the DAT Scheme to allow additional participants. The PHRN supports the broadening of both the permitted uses of the data, and the inclusion of additional bodies as ADSPs and accredited users. Specifically, the PHRN submits the DAT Act be amended to:

- Include quality assurance as a data sharing purpose; and
- Extend accreditation to not-for-profit research institutions and (health-centric) quality assurance bodies.

The benefits provided by quality assurance (QA) activities conducted by QA bodies such as clinical quality registries (CQRs) are well recognised.[21] QA bodies often conduct valuable health research that provides insight into complex health conditions and the impact of interventionist measures that inform government policy. Feedback and reporting by these bodies helps implement institutional changes that increase the safety and quality of Australian health care. The particular value of CQRs has been recognised by the Australian Government with a commitment to funding the National Clinical Quality Registry Program and the release of the *National Clinical Quality Registry and Virtual Registry Strategy 2020-2030* (Strategy). One of the key tenets of the Strategy is to 'systematically integrate prioritised clinical quality outcomes data with national and jurisdictional health information systems' to, inter alia, 'help build an end-to-end, complementary view of the health system.'[22]

Including QA as a data sharing purpose, and enabling QA bodies to become accredited entities, is likely to assist with achieving this objective, as well as facilitating more general benefits associated with the increased sharing of health-related data. QA conducted using DAT Scheme data will enable nationally significant insights, and inclusion in the Scheme is likely to encourage QA bodies to contribute (or continue to contribute) valuable data to Commonwealth entities through other mechanisms. Expressly including QA as a data sharing purpose may also prevent QA bodies and researchers from inadvertently breaching the DAT Act, given the somewhat amorphous nature of QA, and the tendency of QA and research activities to overlap. As the National Health and Medical Research Council has acknowledged, sharply delineating between the two is often difficult as they 'exist on a continuum of activity and work that begins as one form of activity can evolve into another over time'.[23] If QA is included as a data sharing purpose, then uncertainty (at least in this respect) is removed.[24]

[21] See for example, Australian Commission on Safety and Quality in Health Care, *Economic Evaluation of Clinical Quality Registries* (Final report, November 2016) 3, 6; Nick Wilcox and John J McNeil, 'Clinical Quality Registries Have the Potential to Drive Improvements in the Appropriateness of Care' (2016) 205 *Medical Journal of Australia* S21; Wendy A Brown et al, 'Clinical Quality Registries: Urgent Reform is Required to Enable Best Practice and Best Care' (2022) 92 *ANZ Journal of Surgery* 23, 24; John J McNeil et al, 'Clinical-Quality Registries: Their Role in Quality Improvement' (2010) 192 *Medical Journal of Australia* 244; Peter Lee et al, 'Economic Evaluation of Clinical Quality Registries: a Systematic Review' (2019) 9 *BMJ Open* 1-10.

[22] Australian Government Department of Health and Aged Care, *National Clinical Quality Registry and Virtual Registry Strategy 2020-2030* (2020) 19.

[23] National Health and Medical Research Council, *Ethical Considerations in Quality Assurance and Evaluation Activities* (March 2014) 2.

[24] This is important given that enforcement related purposes are precluded purposes under the Act (s 15(2)-(3)) and as the Issues Paper noted, 'Using data to identify individuals for compliance review or compliance activity is … an enforcement related purpose': Australian Government Department of Finance, *Statutory Review of the Data Availability and Transparency Act 2022 – Issues Paper* (April 2025) 12.

The PHRN also recommends extending accreditation to independent research institutes, such as the Sax Institute. The Sax Institute is ISO 27001-accredited and has operated the Secure Unified Research environment (SURE) since 2011. It has an established reputation as a trusted national linkage facility, with a proven track record of safely facilitating access to data. Since its implementation, it has established 317 workspaces and been used by 1407 researchers to access sensitive, unit record-level health and human services data.

Preliminary findings from the NDDA pilot under the DAT Scheme suggest that technical infrastructure remains a challenging area:

> *the volume and complexity of data being analysed by each of the test cases has posed unanticipated challenges related to computing capabilities within the environments, which has limited the analytic approaches that can be applied within each test case.*[25]

The Sax Institute has also relevantly observed that:

> *[b]y limiting ADSP eligibility to government departments and universities, the DAT Act … may encourage a situation where large, linked datasets are held by individual universities and are not able to be shared for collaboration with other institutions…such datasets are then held at multiple universities with multiple copies, rather than a single, accredited national secure environment established by national funding to serve a national purpose*.

Enabling research institutes, such as the Sax Institute, that have the technical infrastructure and expertise managing such data to become ADSP accredited is likely to assist with combating some of these challenges and increase the effective use of the Scheme.

State and Territory Participation

The Issues Paper raised whether there may be 'opportunities to further facilitate State and Territory participation in the DATA Scheme, including embedding greater efficiency in the development of two-way data sharing arrangements'.[26] The DAT Act, as it currently stands, does not easily allow for 'two-way' data sharing involving non-Commonwealth entities, because only Commonwealth entities are permitted to be data custodians. State and territory bodies and public universities are either intermediaries (ADSPs), recipients of data (accredited users), or both and are not eligible to become data custodians of their outputs using data shared under the scheme.[27]

Despite this, the contributions of state and territory bodies are fundamental to the operation of the Scheme. Both the ABS and the AIHW hold significant amounts of data that has been shared by states and territories using alternative legislative pathways and mechanisms. This data is valuable,[28] and it is important that states and territories continue to share such data willingly. Financial incentives, such as a waiver or reduction of fees for state and territory access to DAT Act data (where for example, the integrated data set includes data from that state or territory) is one way in which state and territory

[25] Australian Government National Disability Data Asset, *Preliminary Summary of Analytical Findings: Emerging Lessons from the National Disability Data Asset Pilot* (June 2021) 5.
[26] Australian Government Department of Finance, *Statutory Review of the Data Availability and Transparency Act 2022 – Issues Paper* (April 2025) 11.
[27] *Data Availability and Transparency Act 2022* (Cth) s 11(2)(a), s 20F(2)(a).
[28] For example, recent test cases in the NDDA pilot found that 'data sourced directly from states were generally … richer and more granular sources of information': Australian Government National Disability Data Asset, *Interim Learnings from Test Care Analyses* (September 2021) 6.

contributions could be recognised and facilitated. If viable, such incentives could be opened up to other accredited users in future.

Further clarification

The PHRN has already raised the issue of legislative complexity above. The PHRN has further, specific concerns regarding the operation of s 17 of the DAT Act, which sets out the circumstances in which sharing is barred.

Section 17(3)(a)(iii) of the DAT Act states that sharing is barred if sharing the data contravenes or infringes a common law duty or privilege. This includes the common law duty of confidentiality. Put in simple terms, the duty of confidentiality places health care providers under a general obligation to protect the confidence of their patients and to not share their information, except in certain circumstances.

Most personal health information collected from patients by health care providers will be covered by a duty of confidentiality. The duty extends to all those who have notice that the information is confidential[29] and will still apply where personal health information is collected from health care providers and forms part of a public sector data collection.[30]

Legislation, such as the *Health Insurance Act 1973* (Cth) and the *National Health Act 1953* (Cth) will often provide a clear statutory exception to the duty of confidentiality and will explicitly set the duty aside so that the data (in this example MBS and PBS data) can be handled in a manner authorised by the Act. Less clear circumstances include where an Act remains silent, but as a matter of necessary implication and careful statutory interpretation, is found to abrogate or replace the common law duty to the extent required to enable the purpose and function of the Act to be achieved.[31]

The DAT Act does neither of these things. Instead, s 17(3)(a)(iii) of the DAT Act **expressly preserves** the operation of common law duties and bars data custodians from sharing data when doing so may infringe a common law duty or privilege. This suggests that health data that is subject to a duty of confidentiality cannot be shared under the Scheme without breaching the Act. Section 23 does not assist, because the sharing is not in accordance with a s 13 authorisation, which requires compliance with s 17.

At best, s 17(3)(a)(iii) creates uncertainty regarding data custodian compliance with common law obligations, potentially impacting the willingness of health and other information providers to be involved in the Scheme. At worst, it operates as a barrier to disclosure and exposes data custodians to civil action and legal penalties. The PHRN strongly recommends amendment of this provision given the legal uncertainty and risk it creates.

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[29] *Johns v Australian Securities Commission* (1993) 178 CLR 408, 460 (Gaudron J); *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199, 224 [34] – [36] (Gleeson CJ); *AMI Australia Holdings Pty Ltd v Fairfax Media Publications Pty Ltd* [2010] NSWSC 1395 [28] (Brereton J).

[30] Such data collections will often include, for example, public hospital admission and discharge records, but could also include information from health registries and MBS and PBS data.

[31] Noting that whether a statute prevails depends on a range of issues, including for example, whether the statute was intended to sit alongside and complement existing common law rules or to 'cover the field' and to replace the common law rules in a particular context. It is necessary to consider the particular legislative provisions in detail to determine whether a statute overrides a common law duty or privilege.

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

The DAT Act has several positive features, including its incorporation of privacy protections, but it is far from the streamlined data sharing mechanism envisioned by the 2017 Productivity Commission Review. As submitted above, technical complexity and the administrative burden placed on entities seeking data reduce its current usefulness as a streamlined data sharing mechanism.

Despite these criticisms, the PHRN submits that the DAT Act should remain in force past its current sunset date of 1 April 2027. The objects of the Act are laudable, and it is imperative that Australia continue to work towards implementing an effective data sharing and data linkage environment. Amendments could resolve many of the tensions in the Act, and with further clarity and streamlining the Act could become an effective, efficient data sharing mechanism. Section 23, the provision that overrides secrecy laws, is particularly useful in enabling the creation of large datasets, whilst the requirement to document which laws have been overridden keeps entities accountable and the use of data transparent.

The PHRN also notes that significant time, effort, and expense has gone into the DAT Act. Sunsetting the Act, and passing a new Act, which the PHRN submits should occur if the current DAT Act is allowed to sunset, is likely to be a similarly lengthy and intensive process. The PHRN also notes the significant efforts undertaken by many entities to become accredited. If the DAT Act is allowed to sunset, transitional provisions should be implemented which preserve and recognise the accreditation status of ADSPs and accredited users.

Conclusion

We are pleased to have the opportunity to contribute to this Review and hope that our submission has been of some assistance. Should you wish to discuss this submission or should you require any further information please do not hesitate to contact our office.