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Dear Taylor Black

RE: STATUTORY REVIEW OF THE *DATA AVAILABILITY AND TRANSPARENCY ACT 2022*

The South Australian Department for Health and Wellbeing (DHW) welcomes the opportunity to contribute to the Statutory Review of the *Data Availability and Transparency Act 2022* (the DAT Act).

By way of background, DHW is in the process of applying for User Accreditation under the Data Availability and Transparency (DATA) Scheme to obtain and access Commonwealth data. DHW is also responsible for data linkage services for research and evaluation purposes involving South Australian and the Northern Territory, through SA NT DataLink. We anticipate applying for Accredited Data Service Provider (ADSP) status for SA NT DataLink under the DATA Scheme towards the end of the year.

Firstly, I would like to acknowledge the Office of the National Data Commissioner (ONDC) staff in assisting us to navigate the complexities of the DAT Act and DATA Scheme.

In principle, DHW agrees and welcomes the DAT Act and associated DATA Scheme in promoting increased availability of public sector data and a framework for best practice and privacy protection for the sharing of sensitive personal information.

While the intent of the DAT Act is to also facilitate an increase in data sharing of Commonwealth data, uptake has been slow. As outlined in the discussion paper, only 8 data sharing agreements are currently in place under the DATA Scheme (all related to the delivery of the National Disability Data Asset). This is likely due in part to relative newness of the DAT Act and DATA Scheme.

There are other likely inhibitors that include the inconsistent application and use between Commonwealth agencies, the imbalance in the DATA Scheme between Commonwealth and State and Territory agencies as data custodians, and the associated costs of accreditation with no guarantee of data sharing.

Please find following some further information on these issues and some specifics in relation to the DAT Act remaining in force past its current sunset date of 1 April 2027.

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Inconsistent use and application

The DAT Act prescribes current data exclusions. However, the DAT Act is not prescribed for all other agencies and data sets. Commonwealth agencies can choose to share data under the DAT Act as an enabler; they often have their own process or have additional requirements above User Accreditation and/or ADSP.

For example:

- The federal Department for Education requires a separate Privacy Impact Assessment and the use of their own data sharing agreement to enable the sharing of personal information for linkage from the Australian Early Development Census.
- The Department of Social Security (DSS) does not require use of the DAT Act for data sharing but has chosen to only supply the Medicare Consumer Directory information to ADSP agencies as a further level of protection. Access to DSS the Medicare Consumer Directory information also requires a Public Interest Certificate (PIC).

Currently a data sharing agreement template is available on ONDC's Data place ^{1 2}. DHW staff are not able to access this information without on-boarding as an organisation. Transparency of these templates for guidance and forward planning for data request may assist in their use. It is also not clear if this proforma approach is provisioned with the expectation to the Commonwealth agencies that this is sufficient to achieve the purposes of data sharing under the DAT Act with accreditation.

Differences in the Data Scheme between the Commonwealth and State and Territories

Commonwealth bodies that are data custodians are automatic participants in the DATA Scheme. State and Territory bodies that are also data custodians are not participants in the DATA Scheme.

The DAT Act is necessarily imbalanced as it cannot address outward sharing from States and Territories. This causes issues as often Commonwealth data sets are a collation of State and Territory data collections, for example as a requirement of funding agreements.

The DAT Act, from a State perspective, is about facilitating sharing of Commonwealth data with the State. For example, Medicare and Pharmaceutical Benefit Scheme data requiring either User Accreditation and/or ADSP status.

Would an amendment to the DAT Act Section 14 (4) (c) removing *"if the government concerned is or includes the Commonwealth"* improve the use of Commonwealth data via the Act for State Government benefit and bring it in line with the purpose stated in Section 15 (1) (a)?

Section 13 (4) (c) of the DAT Act states:

"the data is shared as part of a project that is for a data sharing purpose set out in paragraph 15(1)(a) (delivery of government services) or (b) (informing government policy and programs), if the government concerned is or includes the Commonwealth;"

Section 15 (1) (a) of the DAT Act states the data sharing purposes as, *"delivery of government services"*, defined as services by the Commonwealth or a State or Territory.

¹ Data Sharing Agreements | Office of the National Data Commissioner

² <https://dataplace-preprod.powerappsportals.com/>

It is also worth noting that S13 (4) (f) states, “*the data is shared to enable analysis for statistical purposes*”. Statistical purposes are not defined in the DAT Act, potentially leading to both very broad and narrow interpretations of this purpose.

Costs of accreditation and benefit of access

While the cost of applying for User Accreditation and ADSP status is burdensome, there are benefits to agencies in ensuring their data governance, security and other processes are in place for the sharing of sensitive personal information.

Having User Accreditation or ADSP status is however no guarantee of access to specific Commonwealth data.

While DHW are yet to apply for User Accreditation and data requests for Commonwealth data, we understand that information from the accreditation application is often asked for again on individual data sharing agreements, and individual agencies apply their own criteria and risk assessment of the appropriate safeguards in place for access and use of their data.

As SA DHW is yet to apply for accreditation, we have limited awareness of the instances of requests refusals under the DAT Act. If this does occur, this is potentially contrary to the intentions of the DAT Act, depending upon the basis for refusal. This would be disappointing to DHW if it were to occur following accreditation.

To ensure the maximum benefit of the DAT Act we suggest the following:

- The ONDC is notified of refusals to share data under the DAT Act (currently refusals are in writing between the data custodian and accredited user as outlined in Section 25 of the DAT Act).
- While the DAT Act allows for a repeal of any decision to be made to the data custodian, is there any oversight of this by the ONDC? Oversight of the entire process might identify changes to the process for improvement.

Sunset clause

There are significant costs associated with accreditation. If the DAT Act were to sunset, transitional provisions should be implemented that recognise existing User Accreditation and ADSP status.

DHW would like to see the DAT Act remain past its sunset clause as the DATA Scheme is still in its infancy and the intent of the DAT Act is sound. It does require streamlining and for consistency of approach from data custodians in Commonwealth agencies.

If the DAT Act remains, thought needs to be given to the ADSP renewal process. Currently ADSP status must be renewed every 5 years. Given the cost of the initial application, the ongoing cost and requirements remain unclear. DHW suggest a risk-based approach with an updated security assessment. Under Section 31 of the DAT Act all events and changes in circumstances affecting accreditation will have already been reported to the Commissioner.

Thank you for the opportunity to contribute to the statutory review. For further information please contact [REDACTED], Executive Director, Data, Analytics and Insights [REDACTED] and [REDACTED], Associate Director SA NT DataLink [REDACTED].

Yours sincerely

[REDACTED]
DR ROBYN LAWRENCE
Chief Executive

6 / 6 / 2025