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Department of Finance

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Statutory Review of the *Data Availability and Transparency Act 2022* – Draft Findings and Recommendations

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Statutory Review of the Data Availability and Transparency Act

On 20 March 2025, the Minister for Finance, Senator the Hon. Katy Gallagher initiated a statutory review on the operation of the *Data Availability and Transparency Act 2022* (DAT Act) and appointed an independent reviewer to lead it.

On 30 April 2025, an Issues Paper was released to support public consultation. The submission period closed on 30 May 2025. The DAT Act Review Secretariat and the independent reviewer also undertook targeted bilateral engagement with key stakeholders.

Consultation on draft findings and recommendations

This paper summarises the draft findings based on the initial consultation and seeks feedback on draft recommendations. While this paper includes key points in respect of the draft findings and recommendations, greater levels of detail will be included in the final report. The positions outlined in this paper are to inform upcoming discussions to settle findings and recommendations and do not reflect the final view of the review team.

How to provide feedback

Interested parties are invited to comment on the draft findings and recommendations outlined in this paper by Friday 8 August 2025. Focus questions have been included, but responses need not be limited to those questions.

Submissions may be logged electronically or by post (electronic lodgement is preferred). Please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in formal submissions will be made available to the public on the Department of Finance website, unless you indicate you would like all or part of your submission to remain confidential with sufficient reasons. Automatically generated confidentiality statements in e-mails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked as such in a separate attachment, together with the reasons the relevant material should remain confidential. Parties are encouraged to contact the DAT Act Review Secretariat in the Department of Finance for further information and advice before submitting such material.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Submissions should be sent to the following address.

Email: DATActReview@finance.gov.au

Mail: Taylor Black, 1 Canberra Ave, Forrest ACT 2603

Enquiries should be initially directed to DATActReview@finance.gov.au or 1 Canberra Ave, Forrest ACT 2603. Media enquiries should be directed to mediaenquiries@finance.gov.au.

Introduction

Effective use of public sector data can secure better outcomes through greater productivity and efficiency, and improved research, products and services. The DAT Act authorises Commonwealth bodies to share public sector data with accredited users, and accredited users to collect and use the data, in a controlled way.

Commonwealth bodies, state and territory bodies, and Australian universities can become accredited under the DAT Act, and the sharing, collection and use of data must be part of a project that is done for one or more approved data sharing purposes. These purposes are delivering government services, informing government policy and programs, and research and development.

For the purposes of the DAT Act, public sector data encompasses all data lawfully collected, created, or held by a Commonwealth body, or on its behalf. This includes data provided to a Commonwealth body by bodies outside of the Commonwealth such as from state or territory Governments, or the private or non-profit sectors. Data includes facts, statistics, and other information capable of being communicated, analysed or processed via physical or electronic means.

The National Data Commissioner (the Commissioner) is the independent statutory office holder responsible for overseeing data sharing under the DAT Act. Their functions include providing advice on the operation of the DAT Act and education to support best practice data handling and sharing. The Office of the National Data Commissioner (ONDC) assists the Commissioner to carry out their functions.

The DAT Act is not the only framework that authorises the sharing, collection and use of public sector data.[1] Commonwealth bodies routinely share data to a range of users, including researchers or organisations not eligible to be accredited under the DAT Act. In doing so, they often utilise agency specific frameworks, including to publish open data, provide access to data through secure environments, or to transfer data to users.

The statutory review of the DAT Act (the Review) is assessing the effectiveness of the DAT Act and the extent to which it has achieved its objects of improving public sector data availability and transparency. Consistent with its terms of reference, the Review is also considering how the operation of the DAT Act compares and interacts with other existing data sharing frameworks and other relevant matters including how to support system-level data sharing outcomes. As part of this process, the Review is considering whether the DAT Act should remain in force unchanged, be amended (and if so, how), or be allowed to sunset.

To date, the Review has undertaken an initial public consultation process supported by an issues paper, and targeted engagements with key stakeholders and interested parties. During the initial consultation period, the Review received substantial material through 63 public submissions, 25 stakeholder meetings, research and other feedback.

The initial consultation process has revealed broad support for the DAT Act's objectives, but also that the DAT Act has not successfully achieved its aims. This is the case despite best

[1] For example, in June 2024, a survey of 19 Commonwealth entities showed those agencies had over 11,000 data sharing agreements outside of the DAT Act (noting that some of these agreements may go back further than the 3 years the DAT Act's operation).

efforts and dedicated resourcing by the Commissioner and the ONDC, and considerable investment and commitment from data custodians, data users and service providers.

The Draft findings section documents several recurring issues with operation of the DAT Act. The Review has also heard consistent examples of obstacles encountered in attempting to use the DAT Act. The following are emblematic of the limitations that have been raised:

- While the DAT Act was explicitly intended to authorise data sharing for the delivery of government services, key service delivery agencies that have investigated the DAT Act have concluded it does not authorise their proposed uses.
- Use of the DAT Act has contributed to, rather than reduced, complexity in establishing an enduring national linked data asset intended to be used to improve the lives of people with disability and the broader disability community.
- The DAT Act has not materially improved access to public sector data for research or policy development, including in circumstances where state or territory jurisdictions are seeking access to data they have provided to the Commonwealth or where researchers require timely access to data due to timeframes and funding constraints.

The Draft recommendations section proposes improvements to the operation of the DAT Act to address these issues and enable it to play a more effective role in contributing to public benefit through greater use of public sector data.

The Review's draft view is that the ongoing limitations and obstacles inhibiting access to public sector data are more likely to be overcome by reforming the DAT Act than by allowing it to sunset, but that substantial reforms are necessary to justify the DAT Act's continued operation. In particular, the DAT Act needs to be stripped back to its essential elements with significant parts reformed or moved to other legislation and policy mechanisms. It needs to be simple and flexible with a clear authorising pathway for sharing data for approved purposes.

The Review's interim assessment is that reforms to the DAT Act should prioritise:

- clarifying the role of the DAT Act as an effective enabling pathway that complements, rather than replaces, other pathways in the broader data sharing ecosystem.
- adjusting the DAT Act's authorising framework to promote greater flexibility, and to strike a more proportionate balance of safeguards against risks.
- adopting a more facilitative rather than regulatory structure to support participants sharing data in an effective and efficient manner.

To this effect, the Draft Review includes recommendations for:

- a more principled basis for data sharing
- settings for securing appropriate data sharing outcomes
- revisions to the accreditation framework
- a more focussed role of the National Data Commissioner
- improving the existing data sharing purposes, and
- greater recognition of First Nations and states and territories in data sharing.

The Review also identifies areas where ongoing investment and attention are needed to support improved data sharing outcomes under both the DAT Act and other existing channels.

Draft findings

Effectiveness of the DAT Act and Commonwealth data sharing

Finding 1

The DAT Act has not achieved its objectives.

Key points

The DAT Act was introduced to overcome barriers to sharing Commonwealth data, including as a response to the Productivity Commission's 2017 review into improving data availability and use (PC Review). The PC Review found Australia is not making the most of its valuable public data, and as a result, not maximising its utility as a driver of community and productivity outcomes.

The DAT Act's objects are to:

- serve the public interest by promoting better availability of public sector data
- enable the sharing of public sector data consistently with the *Privacy Act 1988* (Privacy Act) and appropriate security safeguards
- enhance integrity and transparency in sharing public sector data
- build confidence in the use of public sector data, and
- establish institutional arrangements for sharing public sector data.

The first three years of the DAT Act has seen the Office of the National Data Commissioner (ONDC) establish the foundations of the DAT Act through the accreditation process, development of frameworks, guidance, templates, education offerings, and platforms like Dataplace. The ONDC has also adopted an intentionally 'facilitative' posture to encourage use of the DAT Act.

Despite this, the DAT Act has not yet driven material additional sharing of public sector data, and substantial challenges persist with Commonwealth data sharing more generally.

As of 1 July 2025, 17 Australian Government entities, 10 state and territory entities, and 10 Australian universities have been accredited as a user or data service provider, and there have been 34 requests for data under the DAT Act. While 8 data sharing agreements have been registered under the DAT Act, all of these have been between Commonwealth

agencies for the purposes of building the National Disability Data Asset (NDDA).[2] To date no other requests for data under the DAT Act have been agreed to.

Participants in the NDDA project have reported difficulties in utilising the DAT Act. While some issues likely relate to the inherently challenging scope of the NDDA project, others are attributable to complexity and design of the DAT Act.

Uptake of the DAT Act has been impeded by the following challenges:

- The DAT Act is too complex and prescriptive, which creates a high barrier for utilising it, particularly for new participants.
- The intended role of the DAT Act is unclear.
    - Some features (such as its framing as a secrecy override) indicate it is to be as an authorising pathway of 'last resort'. Others indicate that it is intended to provide a comprehensive system for all Commonwealth data sharing.
- Commonwealth data custodians prioritise their own authorising frameworks and systems.
    - Some Commonwealth data custodians with established enabling legislation and processes see limited need for the DAT Act to facilitate data sharing and find it easier and simpler to continue to use the established frameworks.
    - Requests for data under the DAT Act have been consistently redirected by data custodians to other established frameworks, even when the request can be more fully met under the DAT Act relative to the other framework.
- These issues are compounded by the voluntary nature of the DAT Act.
    - Being an accredited data user does not guarantee access to data, as custodians can refuse requests for data under the DAT Act for any reason. Further, where data has multiple custodians, refusal by any custodian prevents data access.
    - Noting the small size of requests under the DAT Act, there have been cases of requests for data being rejected without clear reasoning or engagement from the custodian, resulting in inconsistent outcomes and uncertainty for accredited users.

These issues are discussed in further detail below, as are other matters relating to the DAT Act and data sharing by the Commonwealth more generally.

Finding 2

Issues with Commonwealth data processes continue to impede data sharing.

Key points

Since the PC Review, there have been improvements in Commonwealth data sharing using existing legislation (non-DAT Act mechanisms) and initiatives to enhance the broader data ecosystem (e.g. development of enduring linked data assets and uplifts in data maturity).

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[2] The NDDA connects de-identified public sector data, across all jurisdictions, about people with a disability. The NDDA will give a more comprehensive picture of the life experiences of people with a disability so governments can improve support and services for people with a disability, their carers and families.

- Improvements have been driven by a greater appreciation of the importance of better access to public data across the APS and have resulted in initiatives like the Intergovernmental Agreement on Data Sharing (IGA).
- The development of data assets like the Person Level Integrated Data Asset (PLIDA), the Business Longitudinal Analysis Data Environment (BLADE) and the National Health Data Hub have greatly enhanced the utility and access to Commonwealth, State and Territory, and private sector administrative data in a safe and secure way.
- The Australian Government's Data and Digital Government Strategy includes numerous initiatives that support greater data availability and use.
    - These have included the Data Maturity Assessment, Data Inventory Pilot, SES Accountabilities for Data, and the Data Ethics Framework.

Despite these developments, challenges persist with Commonwealth data sharing (non-DAT Act).

- There is limited visibility of data being shared, and data requestors continue to face challenges sourcing data held across the Commonwealth.
    - There is no central register of data sharing arrangements, Commonwealth agencies use a range of IT systems to track and administer their sharing to various degrees, including informal or ad hoc systems such as Microsoft Excel or Word.
    - Many agencies have limited visibility of their data holdings. For example, the 2024 APS Data Maturity Report found the lowest scoring focus area was Data Quality, Reference & Metadata, which impacts the ability to manage and utilise data assets.
- There continues to be a reluctance to share data, and constraints on deciding requests for data in a timely way. These may be due to:
    - increased risk aversion that is more heightened now than at the time of the PC Review
    - competing priorities for Commonwealth agencies, which limits the resources available to consider and meet requests
    - complex or novel issues related to individual requests, or
    - a lack of confidence in the robustness of the data.
- There is little consistency in process or expectations across agencies, which imposes costs on requestors when navigating multiple and different systems.
    - Requestors generally have no or limited redress when requests are rejected or are not responded to in a timely manner.

Finding 3

There is a role for the DAT Act in making Commonwealth data more available, but substantial modifications are required.

Key points

While non-DAT Act data sharing has improved since the PC Review there are still significant obstacles that the DAT Act can assist in overcoming. In particular there is utility in a generally

available authorising pathway, consistency in processes and expectations for requestors and data custodians, and the accreditation framework.

Ongoing limitations and obstacles inhibiting access to public sector data are more likely to be overcome by reforming the DAT Act than by allowing it to sunset, but substantial reforms are necessary to justify the DAT Act's continued operation. In particular, the DAT Act needs to be stripped back to its essential elements with significant parts reformed or removed. It needs to be simple and flexible with a clear authorising pathway for sharing data for approved purposes.

The authorising pathway in the DAT Act should complement other pathways for data sharing (including where there is no safe, secure pathway) and be simple enough so that it can be used as a viable alternative to existing pathways, where appropriate.

Engagements and submissions from stakeholders have demonstrated:

- almost universal support for the objects of the DAT Act and its continuation, albeit with amendments due to issues with its complexity and prescriptive approach
- cases where data sharing that would meet the DAT Act's public interest requirements have not been authorised
- ongoing frustration by accredited users in not having requests for data adequately met under the DAT Act or through alternative pathways
- a strong desire from organisations currently precluded from being accredited (for example, not-for-profit research institutes and the private sector) for expanded accreditation eligibility, indicating ongoing unmet demand for public sector data
- broad support for greater transparency and consistency in data sharing practices
- broad support for the accreditation process as an assurance mechanism, and for its role uplifting the data maturity of entities seeking accreditation.

Settings and regulatory function

Complexity and settings

Finding 4

The DAT Act is difficult to use because it is too complex, prescriptive and inflexible.

Key points

- The DAT Act's process for authorising data sharing is complex and highly prescriptive.
- The DAT Act takes a monolithic, linear view of data sharing – specifically of a data sharing project – that is not easily adaptable or calibrated to different use cases.
- Many of the protective settings imposed by the DAT Act are disproportionate for lower-risk instances of data sharing.

- For example, the provisions dealing with access to output restrict the ability to make use of data outside of the DAT Act framework, except in prescribed circumstances (this relates to the 'exit' of output from the DAT Act).
- Similarly, limits on the use of personal information without person-by-person consent for specific types of service delivery are restrictive and have proven to be prohibitive, even where individuals might expect that the data about them would be used to improve the services they receive.

- The level of prescription and specificity in the DAT Act results in retrofitting of data sharing activities (for example, roles and data flows) to fit the legislation.
  - This is particularly the case for complex arrangements, which are not clearly accommodated by the Act. This creates additional complexity in applying the Act which ultimately inhibits willingness to share data using the DAT Act's framework.

Regulatory role of the National Data Commissioner

Finding 5

The National Data Commissioner's (the Commissioner) regulatory functions and powers do not effectively allow the DAT Act's data sharing framework to play an enabling role or empower the Commissioner to substantively improve the broader data sharing system.

Key points

- While intended to enable effective oversight of the DAT Act, the Commissioner's regulatory powers (other than the accreditation function) do not adequately empower the Commissioner to facilitate and encourage more sharing of public sector data.
  - Specifically, the Commissioner's regulatory powers focus on compliance and enforcement in relation to sharing activities.

- The current scope of the Commissioner's functions is too broad to effectively enable them to either support uptake of the DAT Act or support public sector data capability and practice uplift. For example, although the Commissioner's advice, education and support functions can in theory facilitate greater access to public sector data, these powers do not afford the Commissioner any explicit avenue to mediate decisions or compel data sharing either under the DAT Act or using another pathway.

- Actions that the ONDC has taken to facilitate and mediate data sharing requests between requestors and data custodians have added greater value than the regulatory monitoring of data sharing activity (noting the benefit of this facilitative role from an assurance perspective).[3]

- The Commissioner's education and support functions apply to any sharing of public sector data (including outside of the DAT Act). Though many of the efforts in this area have been valuable (e.g. the Australian Government Data Catalogue, Guide on Metadata Attributes,

[3] For example, the ONDC has adopted a facilitative posture to assist data users and data custodians to use the DAT Act and support the establishment of data sharing projects.

and Data Inventory Pilot Program), they have not contributed to material utilisation of the DAT Act for data sharing.

Accreditation framework

Finding 6

The DAT Act accreditation framework is well designed, providing assurance to data custodians about data capability and adds value to the data sharing ecosystem. However, the framework can be improved to make it more effective.

Key points

- DAT Act accreditation provides valuable assurance to data custodians (including for sharing outside of the DAT Act) and has supported entities in understanding and uplifting their data maturity.
- Obtaining accreditation under the DAT Act is resource intensive, which can undermine its attractiveness given the uncertainty attached to accessing data post-accreditation.
    - Entities accredited as data service providers are required to meet higher capability thresholds but cannot be granted user status automatically.
- DAT Act accreditation is viewed as one-size-fits-all, which disincentivises applicants in instances where they consider they do not meet the high capability thresholds for accreditation, and the costs attached to becoming accredited outweigh the potential future benefits of data sharing with respect to defined (or narrow) use-cases.
    - The National Data Commissioner routinely applies conditions to accredit entities on a more limited basis which can make the accreditation process more efficient. Nevertheless, the application of conditions is not obvious in the structure of the DAT Act or on the basis of existing public information.
- Accreditation applies at the organisation-level, which is unduly restrictive.
    - Some entities have functionally separate units that should be able to be assessed independently of one another. However, there is no administrative discretion to differentiate between such parts other than through applying conditions under a single entity-level accreditation.
    - The DAT Act does not allow for any administrative discretion to transfer accreditation between entities, which means that machinery of government or organisational restructures can require the termination of accreditation and re-accreditation of the same functions when they move between entities.
- Supporting definitions are complex and inflexible
    - The DAT Act definitions of authorised officers and eligible entities can be difficult when applying to some situations, for example when only a small unit requires access within a larger organisation, but that unit cannot be accredited independently of the larger organisation. Depending on organisation type, accreditation can assign accountabilities in ways that are not consistent with the way organisations operate potentially undermining safe and secure data access. There is no administrative flexibility to

accommodate such situations, which results in substantial time and effort to establish accreditation eligibility and authorisations.

Participation and data sharing purposes

Participation eligibility

Finding 7

Expanding eligibility for accreditation would support greater use of and value-creation from public data.

Key points

- Current restrictions on who can be accredited are prohibitive and limit safe, secure data access by entities whose activities primarily relate to delivering public benefits.
    - This is particularly the case for Aboriginal Community-Controlled Organisations (ACCOs), not-for-profit research institutes (including independent research organisations and medical research institutes), primary health networks, and not-for-profit service delivery organisations (including approved aged care providers).
- The current exclusion of ACCOs is inconsistent with securing outcomes under the Framework for Governance of Indigenous Data, and by extension, Priority 3 and 4 of the National Agreement on Closing the Gap.
- Broad expansions to participation, beyond those entities listed above, could be considered at a later date.

Data sharing purposes

Finding 8

The current data sharing purposes authorised by the DAT Act are broadly appropriate but could be improved.

Key points

- There is broad support for the existing purposes for which data can be shared under the DAT Act.
- However, the service delivery purpose is currently impeded by extensive privacy protections in the DAT Act and interactions with the prohibition on enforcement related purposes.
- While permitting enforcement related purposes would likely require and introduce substantial additional protections and complexity, some flexibility to enable the DAT Act to assist in service delivery would improve its utility.

- In some instances, Commonwealth agencies deploy substantial resources to identify, amend or create authorising pathways to share data in response to issues of national importance (for example, in crisis response).
    - Although it operates as a central piece of Commonwealth legislation that can authorise sharing for most Commonwealth agencies, there is no flexibility to extend the DAT Act's operation to deal with new or unforeseen issues.
- The current role of data curation (including unilateral use of curation services by a data custodian to improve their data holdings) is unclear. Similarly, the DAT Act does not provide an intuitive model for creating data assets without a specific end use (and users) identified at the authorising stage.
- As noted in the earlier finding on complexity, the DAT Act applies a linear view of data sharing, and its purposes are primarily oriented towards the final use of data shared, rather than preparatory work needed to facilitate end-outcomes. Data curation (which includes data cleansing and enhancement) and the creation of enduring data assets are examples of such preparatory work.

The spectrum of data sharing interests

First Nations data sharing

Finding 9

The DAT Act does not include principles or mechanisms for specifically enabling First Nations people to be heard, recognised and empowered. This restricts the ability of the Act to contribute to Government commitments and priorities which aim to improve outcomes for First Nations communities such as the National Agreement on Closing the Gap.

Key points

- Organisations that represent First Nations communities and people are not eligible to be accredited users under the DAT Act, which means they cannot use the Act to directly access data to either generate new insights about their communities or partner with government to deliver services.
- First Nations organisations, communities and people:
    - may be restricted from drawing meaningful insights about their community due to proscriptive privacy protections which may need to be revised to better balance the protection of personal information against the ability to deliver meaningful outcomes
    - do not have rights enshrined in the DAT Act to be considered in decisions to permit sharing or access to Indigenous data
    - are, across the broader data sharing ecosystem, impacted by a lack of requirements for data users to gain consent from First Nations communities to use their data, or to understand and respect cultural protocols and Indigenous knowledge systems when interacting with Indigenous data.

State and territory recognition

Finding 10

The Act does not provide equivalence to state and territory data custodians, which limits its capacity to enable two-way data sharing between jurisdictions.

Key points

State and territory agencies:

- are not explicitly required by the DAT Act to be included in decisions on sharing Commonwealth data that contains jurisdictional data, although there is a general requirement for Commonwealth custodians to comply with applicable contractual obligations relating to data they hold[4]
- need improved data flows from the Commonwealth to understand connected information about their economy, society and population and deliver essential government services
- use a range of jurisdictional authorisations to share data with the Commonwealth to create connected national datasets
    - A lack of consistency between jurisdictions can impede co-ordinated, multi-jurisdictional initiatives.
    - Generally, Commonwealth legislation (like the DAT Act) does not authorise sharing of state and territory data (including to the Commonwealth) due to constitutional limitations on the Commonwealth's ability to authorise and regulate the activities of jurisdictions as custodians.

Broader systems and capability

Finding 11

The data ecosystem, in general, requires a capability uplift to enable better outcomes for participants.

Key points

Many effective data sharing frameworks currently operate outside the DAT Act, but these are often specific to, or dependent on, individual agencies. Ongoing and co-ordinated investment in such frameworks is needed outside of, and in conjunction with, improvements to the DAT Act. For example, data users:

- would benefit from greater clarity on how different frameworks operate and how the DAT Act framework can unlock more data or improve their user journey
- continue to place value on the availability of data and its ease of access (including as open data) and use

[4] On 16 June 2025, the National Data Commissioner made the Data Availability and Transparency Amendment (No. 1) Code 2025, which also requires particulars be included in a data sharing agreement about any conditions relating to data obtained under another contract or agreement with a State or Territory body.

- face difficulties identifying, requesting and accessing data because agencies' data holdings are not readily discoverable, or they do not understand how a particular data access framework operates
- face difficulties accessing data in a timely manner due to complex or non-standardised practices, and experience delays when custodians or data service providers have competing priorities that limit the resources available to action a data sharing request
- are required to repeat or supplement pre-existing governance steps (for example, accreditation under the DAT Act or research ethics assessments) to satisfy approval requirements of different data sharing frameworks
- encounter fluctuating response times and data sharing decisions depending on who is involved in the decision-making process, and if there are changes in decision-makers
- face refusals to access data because data custodians do not have the capacity or desire to share data
- have no clear pathway for dispute resolution or requesting a review of data sharing decisions.

Draft recommendations

The Review considers that the DAT Act should be retained, but that amendments are required to clarify its role and improve its settings.

The proposed amended legislative framework seeks to ensure that more data sharing for public benefit can occur safely and easily, and that entities with demonstrable capability and trustworthiness can more reliably access and use data in the public interest. The proposed framework seeks to achieve these aims without compromising or disrupting the operation of other legislative frameworks or the progress that has been made in the broader ecosystem of public sector data sharing.

The Review also makes recommendations to refine the scope of the National Data Commissioner's role in supporting sharing under the DAT Act and more effectively enabling broader system uplift.

Finally, the Review's recommendations consider other changes and activities that can support the broader data sharing ecosystem but are more effectively pursued outside of the DAT Act. Such improvements are of general benefit but also directly impact the ability for agencies to successfully implement frameworks like the DAT Act.

There is some overlap in the overarching themes/goals to which recommendations relate. It is intended that the recommendations will, in combination, achieve these goals.

A revised authorising framework with supporting mechanisms

Role of the DAT Act

Recommendation 1

The DAT Act should provide a clear authorising pathway that enables sharing of Commonwealth data for approved purposes.

Key points

- This pathway should authorise sharing when no other pathway exists, sharing where the DAT Act provides a more efficient pathway compared to other options, and should also be capable of operating alongside other data sharing pathways.
- While participants should generally determine which authorising pathway is the most appropriate, the utility of the DAT Act would be improved through amendments to ensure it can provide an efficient, unambiguous and consistent framework. This will enable the DAT Act to be used where:
  - there is uncertainty about whether an entity is authorised to share the data under another framework, or
  - the DAT Act is simpler to use than another framework, or a combination of frameworks.
- Some changes to the DAT Act are also warranted to encourage more data sharing, and to enable it to authorise the sharing of data for matters of national significance.

Simplification, clarity and flexibility

Recommendation 2

The DAT Act's data sharing authorisation framework should be simplified and its requirements streamlined to reduce complexity and support ease of use.

Key points

- The authorisation framework should be principles-based and outcomes-focused, rather than prescriptive and rules-based. General, high-level principles should be set out in the primary legislation, supported by mechanisms in subordinate legislation and guidance for providing additional detail, as required.
- Highly detailed data sharing agreements should not be the primary mechanism to authorise sharing. Data sharing agreement requirements should be scaled back and need not be mandatory in all cases. There should be a more general requirement for documenting data sharing activities, complemented by a transparency mechanism that adequately supports public visibility of data sharing.
- The DAT Act should move away from its highly prescriptive, granular conception of data sharing projects, participants and roles to facilitate greater flexibility.

- The authorisation to share data should be recast to support an enabling and permissive, rather than proscriptive, approach to data sharing, including by framing the legislative framework as a discrete authorising pathway rather than as a legislative override.

Focus question

Does this recommendation strike the right balance between ease of use, safeguards and transparency? What principles should be retained or included in the primary legislation? What are appropriate transparency mechanisms?

Recommendation 3

The DAT Act's settings should be more flexible and proportionate, clearer and more easily adaptable to different data sharing activities.

Key points

- The DAT Act should be more flexible and clearer in the use cases it is able to authorise, and the requirements that apply to particular purposes and uses.
    - For example, it should be clear how the DAT Act can enable one-off transfers of data, ongoing access, two-way data flows, and/or large-scale enduring linkage. This should not be done through greater legislative prescription, but through clear subordinate legislation, standards and guidance for specific purposes and/or types of data.
- Requirements and protections should be more easily adjustable based on the relative risk of the data sharing activity. This should be supported by greater flexibility in relation to the accreditation framework (see further at recommendations 7, 8 and 10).
- The privacy safeguards should be carefully considered and recalibrated to ensure that they strike the correct balance of protecting privacy without unduly precluding sharing that would result in clear public benefit. This should be done in coordination with any relevant reforms to the Privacy Act.
- The DAT Act should enable greater interoperability with other data sharing frameworks to ensure that data can 'exit' the DAT Act framework and be managed under another framework, where appropriate. This will ensure that data assets and insights can be more readily reused and deployed or released to deliver greater value and public benefit.

Focus question

Should the DAT Act prescribe specific requirements for creating enduring linked assets, given the high value and potential governance complexity involved? Alternatively, is it sufficient for any requirements to be set out in subordinate legislation?

Accountability and discretion in data sharing

Recommendation 4

The DAT Act should support a default posture of agreeing to share data, with data custodians able to refuse requests in appropriate circumstances.

Key points

- Clear requirements and parameters for data sharing decisions should be introduced to ensure that data sharing requests are dealt with in a timely, reasonable and transparent manner.
- The general responsibility on data custodians to consider data sharing requests should be reframed as a positive obligation to share data for the authorised purposes, except where there are strong grounds for refusal.
    - For example, where the requestor is accredited to the highest possible level, or where the request would have a clear public benefit, the grounds for refusal should be highly limited.
- An avenue should be introduced that allows requestors to escalate refusals which may be considered unreasonable, or where the parties require a third party to mediate requests or provide guidance on whether and how data sharing can safely and legally occur.
- DAT Act should provide greater certainty and clarity to data custodians regarding the authority and accountability for decisions to share data. This could include a mechanism for identifying a 'primary' data custodian, or a unilateral discretion over data sharing decisions where there are joint custodians of data.
- Consideration should be given to a legislated Ministerial power to direct that sharing is to occur, subject to appropriate safeguards.
    - These could include that the power only be exercisable on advice from an independent office or body (such as the National Data Commissioner), where the requestor is accredited to the appropriate level, and where the appropriate escalation processes have been exhausted.

Focus questions

What requirements, including timeframes should be placed on data custodians? How should the resources to meet these timeframes be resourced?

Should an escalation or mediation mechanism be available for data sharing requests that are made under or using any Commonwealth framework, or limited to requests made under the DAT Act?

If an escalation or mediation mechanism is desirable, who should perform this role? E.g. should it be the Commissioner, or a different office holder or body?

Is a power to direct that data sharing must occur feasible or desirable, noting this power is proposed to be contingent on due process and advice?

Recommendation 5

The Minister should have an express power to authorise data sharing that is not otherwise authorised under the DAT Act where the sharing is in the national interest, subject to appropriate safeguards.

Key points

- To ensure that impediments to data sharing do not preclude sharing where there is a clear national interest or benefit, there should be a power that can be used in exceptional circumstances to extend the operation of the DAT Act to enable Commonwealth data sharing for purposes not expressly authorised by the legislation.
    - This power is intended to enable instances of discrete data sharing only. Therefore, any decisions made using this power are not expected to be generalised to apply to data sharing more broadly.
- Tying this power to a demonstrable national interest enables the Minister (or other appropriate decision-maker) to take into account and balance a broader range of matters than the existing public interest purposes, but sets an appropriately high threshold for exercising the power.
- This power should be subject to appropriate controls and safeguards.
    - For example, it could be implemented through a disallowable legislative instrument to ensure the exercise of the power is subject to parliamentary scrutiny and disallowance. The exercise of the power could also be exercisable only on the advice or recommendation of an appropriate office holder or body.

Focus questions

Is a proposed power to authorise data sharing in exceptional circumstances on national interest grounds desirable or appropriate?

Should this proposed power be broadened to enable sharing with or by excluded entities, and the sharing of data otherwise barred from sharing?

Are there any other mechanisms or circumstances that should be considered to enable or justify expanding the operation of the DAT Act's authorising framework?

Recommendation 6

The National Data Commissioner's functions and powers should be reformed to focus on assurance, oversight and assistance in facilitating data sharing decisions.

Key points

- To more effectively enable the Commissioner to drive increased availability and use of public sector data, the Commissioner's functions and powers should focus on enabling data sharing under the DAT Act. This could be supported by providing an avenue for data custodians and requestors to escalate data sharing requests, and providing guidance and assurance more directly on how specific instances of data sharing can occur safely and legally.

- The regulatory functions of the Commissioner should be revised, with less focus given to monitoring of participants' activities in respect of data sharing and the use of data. This reflects the fact that existing regulatory oversight has not incentivised greater activity under the DAT Act and would be costly to scale in the event of substantially increased activity.
    - Other regulatory frameworks such as the Privacy Act should be relied on for enforcement and compliance in relation to high-risk data sharing activities, particularly where sharing involves personal information.
- The existing educative and support-related functions of the Commissioner to enable best -practice sharing of public sector data generally and broader capability uplift should be the responsibility of other appropriate Commonwealth agencies (such as the Department of Finance). This will ensure greater alignment of these functions with the development of whole-of-government data policy and capability-building initiatives. Specific initiatives are outlined in recommendation 17.
- In general, there should be a clearer delineation of the responsibilities of the Commissioner in relation to the DAT Act, and the Commonwealth agencies broadly responsible for data policy and other supportive initiatives. This should be supported by adequate resourcing to enable greater efficacy for both endeavours.

Focus questions

Is an independent statutory office the appropriate mechanism to carry out the functions and powers set out above?

Should the Commissioner have a power to inquire into, review and make recommendations about data sharing projects? Should this be limited to sharing under the DAT Act or applicable to any Commonwealth data sharing? Should these recommendations by the Commissioner be able to inform a Ministerial authorisation as considered in recommendation 5?

Example under a revised DAT Act: accessing data[5]

A research organisation with funding to undertake health research is now eligible to use data under the amended DAT Act. The organisation can seek accreditation at a higher tier to demonstrate its capability to safely handle more sensitive data.

The research organisation can make a request for data under the DAT Act. This request must be dealt with in a defined timeframe. The data custodian is obliged to share the data unless it cannot be shared safely, and valid reasons must be provided. This could include, for example, that the request has been materially fulfilled under a different authorising framework.

If the data custodian is unsure that the data can be shared safely, it can obtain assistance from the ONDC to determine whether and how reasonable safeguards can

[5] This scenario primarily relates to findings 1 to 3, 5 & 6, and demonstrates the intended effects of recommendations 4 to 10.

be applied. The ONDC can mediate between the research organisation and the data custodian to work through any concerns and challenges.

There is also the potential for a recommendation to be made to the Minister to exercise their power to issue a sharing direction. This direction would be contingent on the appropriate safeguards being met, and on advice being provided by an appropriately qualified person or body.

Refined accreditation arrangements

Recommendation 7

The DAT Act should establish a permissions-basis for accreditation which replaces the current strict 'user' and 'data service provider' accreditation designations.

Key points

- A permissions-basis for accreditation would permit accredited entities to perform actions subject to the conditions of their accreditation (as opposed to accreditation to perform actions in relation to pre-defined 'project roles').
- It would also support a less linear and prescriptive project basis for data sharing, and address duplication between user and data service provider accreditation applications and regulatory requirements.

Recommendation 8

Explicit accreditation 'tiers' should be introduced to more simply reflect different accreditation standards and to facilitate alignment between accreditation and data sharing use-cases.

Key points

- Accreditation 'tiers' would better enable the assignment of 'rights' to accredited entities or 'tiers' of accredited entities.
    - Greater rights in this context could include settings that encourage or compel data custodians to share under defined circumstances, such as the accreditation 'tier' of the requesting entity, and the nature of the data requested.

Focus question

Is 'tiering' accreditation consistent with the objective of better aligning data sharing use-cases with accreditation requirements, or would it introduce unnecessary complexity for current and prospective DAT Act participants relative to current processes?

Are there recommendations on particular 'tiers', from a scale of, for example, 'highly restricted' to 'no restrictions' which would accommodate most data sharing use-cases?

What rights for data access should be associated with particular accreditation tiers?

Recommendation 9

Transparency and other measures which promote greater regulatory flexibility should be introduced and have consideration to broader developments in the data system.

Key points

- Transparency measures could include:
  - producing detailed guidance on the reasons for which accreditation decisions are based
  - publishing approved form/s for accreditation applications, or
  - creating rule(s) which prescribe evidence requirements to support the criteria for accreditation and which prescribe conditions of accreditation for classes of entities.
- Regulatory powers should be used to refine accreditation processes as they arise and mature, and as a substitute for relying on prescriptions in the DAT Act. Greater regulatory flexibility would support the efficient management of issues relating to defining entities (or parts of entities) which are eligible for accreditation, transitional accreditation arrangements, and authorisations.
- Any proposed transparency or other measures should consider ongoing developments and findings from the Data and Digital Ministers Meeting fourth National Data Sharing Work Program project '*Defining 'trusted entities' for the purposes of national data sharing*'.

Example under a revised DAT Act: accreditation tiering & transparency[6]

A research team from an accredited Australian University requests access to a dataset held by a Commonwealth data custodian under the DAT Act. The request was made under the DAT Act as the data custodian's current authorising framework is inefficient and there is no precedent for sharing with university researchers. The research team, seeking to leverage their accreditation status, also believe the use of the DAT Act may shorten negotiations with the data custodian.

Under the current DAT Act, the data custodian relies on publicly available information to investigate DAT Act accreditation. The data custodian finds the published material lacks sufficient detail on the basis for accreditation; significantly delaying negotiations with the research team.

Under the amended DAT Act, the data custodian reviews published guidance and other material which specify the basis (including evidence prescriptions) for accreditation decisions. Further, the data custodian compares the data sharing request against the Australian University's accreditation tier, informing subsequent risk-based negotiations with the research team.

Recommendation 10

The entities that can seek accreditation to request and use data under the DAT Act should be expanded to include ACCOs, not-for-profit research institutes (including

[6] This scenario primarily relates to findings 2, 3 & 6 and demonstrates the intended effects of recommendations 1, 8 & 9.

independent research organisations and medical research institutes), primary health networks, and not-for-profit service delivery organisations (including approved aged care providers).

Key points

- Eligibility to participate in the DAT Act is directly linked to who can be accredited. The changes to the accreditation framework recommended above would facilitate the development of differentiated and targeted arrangements to accommodate different groups.
- Processes which support the co-design of mechanisms to enable ACCO participation are required.[7]
    - The Review acknowledges that accreditation eligibility is necessary but not sufficient to enable ACCO participation. The Review recommends providing ACCOs with a channel to enable the meaningful co-design of supporting mechanisms for Indigenous data sharing, which balances ACCO data capability and/or resourcing constraints with the imperative of maintaining data protection standards, and which aligns with the Framework for Governance of Indigenous Data.

Focus question

Should the Review be considering other dependencies impacting the proposed expansion of accreditation eligibility, such as for example, the consistency of data sharing use-cases of expanded entities with the data sharing purposes?

Are there other groups who should be considered for inclusion, in the national interest, at this stage, and should all the groups listed above be included?

Are there particular supporting mechanisms which would be considered as critical to enabling ACCO participation?

Recommendation 11

The DAT Act should include a power which allows the Minister to expand accreditation eligibility further, subject to advice from the National Data Commissioner (or other appropriate office or body with appropriate expertise).

Key points

- Any consideration for expanding accreditation eligibility, for example, to include specified cohorts of private sector entities, would require the use of this mechanism. Such a mechanism would enable consideration of the benefits, risks, and sensitivities attached to other entities accessing and using public sector data under the DAT Act and would also support the DAT Act's capacity to respond flexibly to future developments.

[7] Co-design is an approach which places the values, knowledges, and practices of First Nations peoples at the centre of policy design and development. See for example the Lowitja Institute's 2025 critical review on co-design practice in health policy development - Lowitija-Institute-Co-design-Review.pdf

Expand and clarify the data sharing purposes

Recommendation 12

Expand the data sharing purposes to include data curation and the creation of data assets.

Key points

- Data curation would include the sharing of data for the purposes of data cleansing, quality assurance, improving accessibility, and the preparation, structuring, combining, and preservation of data to support reuse.
    - The existing data sharing purposes are focused on the end-use of data sharing. In contrast, the additional proposed purposes could be considered either independently *or* in support of the existing data sharing purposes.
    - The effectiveness of this recommendation will be enhanced by a principles-based approach to data sharing and permissions-basis for accreditation (see recommendations 2 and 7).

Focus question

Are there other arrangements, in addition to a permission-basis for accreditation and adjustments to prescriptive data sharing requirements, which are required to enable data curation as a data sharing purpose?

Example under a revised DAT Act: data curation purpose & data asset creation[8]

A data custodian holds decades of homelessness data across multiple inconsistent datasets and aims to build an integrated data asset from these datasets to improve its usability for research and policy development. However, the data custodian faces barriers including limited in-house infrastructure and capability to build the data asset, legal ambiguity on third-party data sharing, and uncertainty on the suitability of engaging data service providers.

Under the current DAT Act, to build the data asset, the data custodian must be both accredited to access its own data, and required to develop and maintain several complex, project-based agreements involving several parties including data service provider(s) and prospective users. Such agreements would impose strict roles on participants and require early identification of the end-use purposes for sharing and the accredited entities who will access the data; with such considerations being relatively independent of the data's sensitivity or intended use.

Under an amended DAT Act, data custodians could share data with a third-party specifically for the purpose of data curation—such as cleansing, data integration, and data asset creation—without needing to define end-use or users upfront. Data sharing arrangements could be established on a risk-basis and therefore only be as

[8] This scenario primarily relates to findings 3, 4, 6 & 8 and demonstrates the intended effects of recommendations 2, 3, 7, 8 & 12.

prescriptive as necessary. A permissions-based accreditation model would allow flexible, context-specific, and access-specific arrangements based on accreditation tiers. Data custodians could share data with an accredited third-party service provider, receive curated data and, throughout this process, retain full custody and usage rights over the created data asset.

Recommendation 13

Improve the operation of the service delivery purpose, and particularly the interaction with the prohibition on enforcement related purposes.

Key points

- Amendments are required to ensure that data sharing with the primary purpose of delivering government services is not unduly precluded. What constitutes an enforcement purpose should also be reconsidered, and particularly whether inadvertent detection of misconduct should be prohibited.

Example under a revised DAT Act: sharing data between Commonwealth agencies for service delivery[9]

Several Commonwealth service delivery agencies wish to set up a data sharing mechanism to enable the maintenance of up-to-date client details across multiple service delivery programs. Using the DAT Act may be easier for the participants than authorising the activity under each agency's specific legislation.

The amended DAT Act can accommodate this by prescribing less stringent accreditation requirements for this activity. Specific requirements for sharing data for service delivery can be prescribed in subordinate legislation, and other safeguards can be determined by the parties themselves, as appropriate. This includes the ability to determine appropriate governance arrangements and documentation, provided minimum documentation requirements have been met for transparency purposes.

Multi-party and multi-way data flows can be authorised more easily. This allows the parties to take a practical approach to enabling the intended outcome. For example, the arrangements could allow any agency receiving updated contact information to share the information with all other participating agencies.

If the use of the data could give rise to incidental detection of non-compliance, this activity would not be barred. However, any use of the data to undertake compliance activities as a primary purpose would require separate legal authorisation.

Specific expectations and requirements could be instituted to consider the impact of the data sharing activity on First Nations communities and adhere to, for example, the Framework for Governance of Indigenous Data.

[9] This scenario primarily relates to findings 3, 4, 8 & 9 and demonstrates the intended effects of recommendations 1 to 3, 8, 13 & 14

Broader representation in data sharing

First Nations data governance and participation

Recommendation 14

Embed Indigenous data governance frameworks into decision-making processes and expand the participation in the DAT Act so that First Nations peoples are better heard, recognised and empowered to contribute to positive outcomes for Indigenous communities.

Key points

- Organisations that represent First Nations communities should be empowered to access data under the DAT Act (see recommendation 10).
- Greater co-design of processes and frameworks is also required to ensure that Indigenous data governance and CARE principles are incorporated into standard data sharing decision-making processes and practices:[10]
    - Establish Indigenous impact assessment processes that identify the risks or sensitivities that a data sharing project may have onto First Nations communities and set out recommendations to manage, minimise or eliminate that impact. This would apply if Indigenous data is to be used in a data sharing project, or if a data sharing project has a primary purpose related to, or may directly impact, First Nations communities and people without the need to access Indigenous data.
    - Support First Nations communities to remain active contributors to overseeing and improving the data sharing ecosystem. Consideration should be given to the most effective way to implement this, for example, whether requirements should be embedded in primary or subordinate legislation, or implemented as policy, using the Framework for the Governance of Indigenous Data as a reference.

The status of state and territory bodies in data sharing

Recommendation 15

The DAT Act should explicitly recognise the roles of states and territories in Commonwealth processes that involve jurisdictional data.

Key points

- Greater oversight and control by states and territories of jurisdictional data that is shared under the DAT Act is required to reflect their equal status relative to the Commonwealth in creating and using public sector data to deliver data sharing outcomes.
- States and territories should be empowered to co-design two-way data flows and sharing of jurisdictional under the DAT Act.

[10] The CARE principles are Collective Benefit, Authority to control, Responsibility, and Ethics: CARE Principles for Indigenous Data Governance | ARDC.

- Greater facilitation of complex, cross-jurisdictional data sharing projects is required. In part this will be better enabled through the recommendation to make the DAT Act more easily adaptable to different data sharing activities (see recommendation 3).

A nationally consistent data sharing framework

Recommendation 16

Longer term, there should be a nationally consistent data sharing framework that achieves full interoperability across jurisdictions and provides standardised pathways for users to access any Australian public sector data.

Key points

- The DAT Act could be used to establish the basis for such a framework, with jurisdictions developing mirror legislation or legislation to opt-in to the framework.
    - Such an approach would require extensive co-design with jurisdictions.

Example under a revised DAT Act: national integrated data asset[11]

A new national integrated data asset, containing structural, income, and location parameters, is planned to identify and inform households of their eligibility to receive home improvement grants. For this, several Commonwealth, state, and territory bodies entered into a DAT Act data sharing agreement that authorises the Commonwealth to integrate relevant data from all levels of government.

Having completed testing, a board representing all governments deems that the data asset is ready for use and approves the creation of new data sharing agreements which balance utility and appropriate protections. The data sharing agreements authorise a copy of the identifiable dataset to be shared to each state government data custodian, where it is hosted and operated under their respective state-based data sharing frameworks. State-held copies may be on-shared through state-based frameworks for a broad range of purposes (excluding compliance or enforcement). However, any data that exits those frameworks is limited to household address information (so the government can notify individuals of their eligibility to receive a particular grant), and the names of home residents and an assigned eligibility flag (so the government can update its customer record information).

Additional safeguards include, that state bodies must maintain an agreed-upon level of accreditation to host the data, and the applicable state-based framework must afford the data with similar protections to those in the DAT Act.

[11] This scenario primarily relates to findings 3, 4, 6 to 8 & 10 and demonstrates the intended effects of recommendations 1 to 3, 7, 8, 12, 13, 15 & 16.

Data sharing ecosystem changes

Recommendation 17

Continued investment in the broader data sharing ecosystem is required to cultivate improved and sustained data sharing outcomes.

Key points

The following initiatives would enable the DAT Act to more effectively play the role proposed in the above recommendations, as well as providing broader improvements to the data sharing ecosystem generally. Some of this work is already being undertaken by the Commonwealth and in interjurisdictional efforts.

- Develop clearer guidance to help users navigate the different data sharing schemes and when they can consider using the DAT Act.
- Support and improve data capability by uplifting data custodian's maturity and culture to support data discoverability and accessibility. This should be accompanied by efforts to uplift user proficiency of data sharing frameworks and inclusion in consultative processes to shape whole of system outcomes.
- Resource data custodians and service providers to accommodate increased demand for timely data access, including efforts to maintain the currency of key data products, and to support open data initiatives.
- Ensure consistent and effective systems and processes by uplifting and encouraging common data sharing tools and standardised processes to improve the user experience when discovering, requesting and accessing data.
    - Relocate whole of system technical work (systems and tools) to other Commonwealth data leaders, such as the Department of Finance or the Australian Bureau of Statistics.
    - Coordinate investment decisions to maximise the use of capability, skills and systems across the Commonwealth data ecosystem, including for services such as data integration and secure data access.
- Embed and encourage transparency of data activities by uplifting data custodians' data maturity to make data discoverable and accessible, and improving the consistent reporting of all Commonwealth data sharing.

Focus question

Are there other agencies that should lead whole-of-Commonwealth system technical uplift?

Are there any preferred agencies, or bodies, that should play a central role in coordinating investment decisions across the Commonwealth data ecosystem?

Are there any areas requiring uplift absent from this list? What does your organisation view as the priority area(s) for uplift?

Implementation approach

The above recommendations are aimed at clarifying the role of the DAT Act and improving its settings.

This is based on the Review's assessment that the broad objects, the purposes for which data can be shared, and the underlying structure of the DAT Act is sound.

Current issues with the DAT Act can be addressed by clarifying its role, making it simpler and more flexible, and adjusting underlying arrangements. Amending the DAT Act would maintain existing momentum, provide a degree of certainty about the existing framework, and in the opinion of the Review, would be more efficient than sunsetting the DAT Act and starting again.

The Review notes that depending on timing for implementation of recommendations, if they are adopted, it may be necessary to extend the operation of the DAT Act while amendments are made so that it does not sunset before they are implemented.

Focus question

As an alternative option, would it be preferable to allow the DAT Act to sunset and for an entirely new framework to be developed?

If so, what transitional arrangements would be appropriate to manage the sunsetting the DAT Act?