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DAT Act Review Team
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Statutory Review of the Data Availability and Transparency Act 2022 Draft Findings and Recommendations

Dear Mr Black,

Thank you for the opportunity to review the draft findings and recommendations of the Statutory Review of the *Data Availability and Transparency Act 2022* (DAT Act).

The AIHW has reviewed the document, and our overarching view is that the DAT Act should be allowed to sunset.

In summary:

- Our understanding is that the DAT Act was intended for situations where there was no alternate legislative pathway to facilitate data sharing.
- The AIHW believes the DAT Act should be allowed to sunset and replaced by a national piece of work which develops mirror legislation and frameworks that effectively enables data to be shared between Commonwealth and State and Territory agencies.
- Some recommendations provide comment on policy in addition to legislative reform. The AIHW suggests that policy discussions about the Australian data system should be undertaken in a broader context rather than in the context of this review. For example, the report makes some statements about effectiveness of systems and agency responsibilities more broadly.
- The report infers that the solution to all data sharing should be via the DAT Act which is not supported by the AIHW. There is considerable data sharing done by the AIHW, the Australian Bureau of Statistics and others that operates very efficiently and does not need to be replaced.
- There is an underlying assumption that there is a reluctance to share data and that the purpose of the DAT Act is to encourage data sharing. Instead, the role of the DAT



Act should be to enable legally permissible data sharing and does not require agents to have powers to compel.

- The DAT Act should support a default posture of agreeing to share data, with data custodians able to refuse requests in appropriate circumstances, but there needs to be a clearer understanding available to data users of what data are in scope.
- While not the remit of the DAT Act, review team or the ONDC to resolve, there is little recognition of the costs associated with data custodians managing data sharing requests in discourse related to data sharing. The AIHW supports clarifying data roles and responsibilities for data sharing amongst Government agencies and having a national infrastructure that provides access to data in a cost effective and efficient way.

More specific advice on individual findings and recommendations is provided below.

Draft findings

Effectiveness of the DAT Act and Commonwealth data sharing

Finding 1: The DAT Act has not achieved its objectives.

The AIHW supports this finding.

While the DAT Act and the work done by the Office of the National Data Commissioner since its inception has promoted the importance of greater data availability and sharing, it has not achieved its other objectives.

Regarding the comment “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”, the AIHW is unaware of any circumstance where this has occurred in relation to AIHW data holdings.

Regarding the statement “...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.”, the AIHW is unaware of any circumstance where this has occurred in relation to AIHW data holdings.

Finding 2: Issues with Commonwealth data processes continue to impede data sharing.

The AIHW’s view is that there is room for improvement in relation to Commonwealth data sharing processes but note these are not resolved by the DAT Act.

The AIHW has clear and publicly-available:

- data catalogue listing our holdings and information that provides clear advice to potential requestors about how to access data we hold.
- metadata about our data holdings in the METEOR metadata system.
- information about the quality of our data holdings including in published reports.

Finding 3: There is a role for the DAT Act in making Commonwealth data more available, but substantial modifications are required.

The AIHW’s view is that the DAT Act in its current form does not support greater availability of Commonwealth data.

The majority of AIHW data holdings are supplied by states and territories and other non-Commonwealth entities and therefore fall outside of the scope of the DAT Act. In addition, the AIHW Act facilitates data sharing of our data holdings between the Commonwealth, states and territories, researchers and other requestors.

Settings and regulatory function

Finding 4: The DAT Act is difficult to use because it is too complex, prescriptive and inflexible.

The AIHW supports this finding and the key points included in the draft report.

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.

The AIHW's view is that the Commissioner (and the ONDC staff more broadly) is an excellent advocate for data sharing in Australia but do not believe the Commissioner requires greater legislative powers.

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.

The AIHW does not support this finding or believe it reflects the key points included in the draft report. Accreditation per se is valuable, particularly in relation to sharing of unit record data, however the framework is, as the key points highlight, overly complex and administratively burdensome.

Participation and data sharing purposes

Finding 7: Expanding eligibility for accreditation would support greater use of and value-creation from public data.

The AIHW supports this finding.

Finding 8: The current data sharing purposes authorised by the DAT Act are broadly appropriate but could be improved.

The AIHW supports this finding.

The spectrum of data sharing interests

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.

The AIHW supports this finding. Next steps should be informed by First Nations people and communities and should align with work on Governance of Indigenous Data implementation.

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.

The AIHW supports this finding.

Broader systems and capability

Finding 11: The data ecosystem, in general, requires a capability uplift to enable better outcomes for participants.

The AIHW supports this finding but would suggest that this issue requires discussion and solutions beyond the scope of the DAT Act and this review.

However, some of the key points supporting this finding imply a level of disregard by data custodians about the needs of those requesting data which the AIHW finds misleading and

counterproductive. For example, that data users "... face refusals to access data because data custodians do not have the capacity or desire to share data."

The staff of the AIHW are committed to our vision, stronger evidence, better decisions, improved health and welfare, which includes data sharing.

A number of custodians, both Commonwealth and state/territory note the limits of their legislation and the need for broader legislative reform.

Draft recommendations

The AIHW believes the DAT Act should be allowed to sunset and replaced by a national piece of work which develops mirror legislation and frameworks that effectively enables data to be shared between Commonwealth and State and Territory agencies as recommended by multiple agencies during the review.

That said, should the decision of government be to continue the DAT Act, the AIHW has provided advice on the specific recommendations in the draft report below.

A revised authorising framework with supporting mechanisms

Recommendation 1: The DAT Act should provide a clear authorising pathway that enables sharing of Commonwealth data for approved purposes.

The AIHW supports this recommendation where, as referenced, "...when no other pathway exists".

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.

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?

The AIHW supports this recommendation and suggests less prescription in the Act itself is preferred.

Recommendation 3: The DAT Act's settings should be more flexible and proportionate, clearer and more easily adaptable to different data sharing activities.

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?

The AIHW supports this recommendation, however does not believe that the DAT Act should prescribe specific requirements for creating enduring linked assets, nor that definitions relating to the types of data being shared belong in legislation. For example, the term 'asset' is already ageing and no longer commonly used in discourse about data sharing systems.

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.

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?

The AIHW does not support this recommendation. This would set unreasonable expectations about data custodians' capacity and resources to respond to requests and about the relative priority of these requests in relation to other organisation and government priorities. The complexity of requests can vary greatly, as illustrated by the National Disability Data Asset project. Escalation mechanisms already exist if and where a data user is dissatisfied with a data custodian's response. For example, through the Secretary or Chief Executive Officer, Board and relevant Minister(s). Power to direct is not feasible, desirable or practical.

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.

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?

The AIHW does not support this recommendation. The AIHW Act already includes provisions relating to Ministerial direction.

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.

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?

The AIHW does not support changes to the National Data Commissioner's functions that would enable the power to inquire into, review and make recommendations about data sharing projects.

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.

The AIHW supports this recommendation.

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.

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?

The AIHW does not support this recommendation as it would introduce unnecessary complexity. Typically, access controls placed on shared data relate to the form and level of risk associated with the data being shared, not the use case.

Recommendation 9: Transparency and other measures which promote greater regulatory flexibility should be introduced and have consideration to broader developments in the data system.

The AIHW supports this recommendation but notes no concerns with the level of transparency about accreditation determinations currently available. The larger issue is which entities can become accredited.

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

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?

The AIHW supports this recommendation noting that all of these entities currently have pathways to access AIHW data holdings under other legislation and frameworks. The AIHW also notes risks in creating unreasonable expectations with these organisations that using the DAT Act would enable access free of charge.

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).

The AIHW supports the concept of having a streamlined process for adding additional agencies to the list of those that can become accredited but are unsure if Ministerial escalation is required.

Expand and clarify the data sharing purposes

Recommendation 12: Expand the data sharing purposes to include data curation and the creation of data assets.

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?

The AIHW supports this recommendation but notes it is not required for AIHW to undertake these functions. All of these functions are currently possible through the AIHW Act.

Recommendation 13: Improve the operation of the service delivery purpose, and particularly the interaction with the prohibition on enforcement related purposes.

The AIHW supports this recommendation.

Broader representation in data sharing

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.

The AIHW supports broadening the scope of agencies who can become accredited under the DAT Act. The DAT Act need not specify First Nations agencies but rather should describe the types of organisations (other than government) who can access the system (for example non-government and research organisations). The other key points referenced may introduce duplication and significant additional burden on data users, especially where Governance of Indigenous Data principles have already applied earlier in the data creation process.

Recommendation 15: The DAT Act should explicitly recognise the roles of states and territories in Commonwealth processes that involve jurisdictional data.

The AIHW acknowledges the need for improved mechanisms to facilitate sharing of data between commonwealth and state and territory agencies. The AIHW's view is that further work and discussion on how that should be achieved are required before specific recommendations are enacted in relation to the role of the DAT Act. Many lessons can be drawn from the experience gained from the National Disability Data Asset project which should be explored further and inform next steps.

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.

The AIHW agrees this is required but is beyond the scope of the DAT Act and review. In particular, the timing requirements relating to the review should not determine the process, mechanisms and priorities for improving data sharing nationally.

Data sharing ecosystem changes

Recommendation 17: Continued investment in the broader data sharing ecosystem is required to cultivate improved and sustained data sharing outcomes.

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?

The AIHW agrees this is required but is beyond the scope of the DAT Act review to resolve. It is unclear what is meant by "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." Strategies to improve the broader data sharing ecosystem require broader strategic discussion, engagement and planning beyond the scope of the DAT Act review. The AIHW plays a critical role in leading, developing, standardising, reporting and sharing health and welfare data in Australia.

Implementation approach

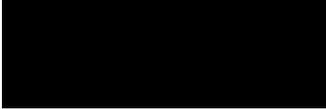
As an alternative option, would it be preferable to allow the DAT Act to sunset and for an entirely new framework to be developed?

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

Yes, the AIHW would prefer the DAT Act be allowed to sunset and a new framework be developed.

Transitional arrangements, broadly, are not required for the AIHW to continue our data sharing functions. Clarity about the impact of sunset on accreditation and the status of data shared under the DAT Act, were it to sunset, is required.

Yours sincerely



Dr Zoran Bolevich
Chief Executive Officer