



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

Feedback on the draft findings

The Commonwealth Department of Education (the department) welcomes the opportunity to provide feedback on the draft findings and recommendations of the Statutory Review of the *Data Availability and Transparency Act 2022* (the DAT Act).

The department is broadly supportive of the findings and recommendations. There are, however, some specific recommendations where the department would like to suggest further revisions.

The department also considers that the final report would benefit significantly from more detail around proposed next steps. This is particularly important with respect to the approach to developing legislative amendments suggested by the recommendations.

Feedback regarding the recommendations

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

The department supports the recommendation that highly detailed data sharing agreements should not be the default for any data sharing exercise. However, the department would like to emphasise that a strong legislative framework helps to build trust with data sharing partners and the general public.

The department agrees that simplifying the authorisation framework may assist in reducing complexity. However, after our experience in using the scheme, the department believes that using Dataplace is far more complex than the legislation.

Caution should be taken to ensure that simplifying the authorisation framework does not create uncertainty or a lack of clarity around expectations and obligations. It is also suggested that guidance

material is developed to assist with applying the suggested principles. This guidance material should not go beyond the legislative intent.

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

The department agrees with the default posture to share data. However, the department opposes any further restriction to the level of control or autonomy afforded to a data custodian to make decisions to share data.

The scheme already contains mechanisms for escalation. Maintaining rights for refusal on any grounds provides security and trust for data custodians looking to share data within the DATA Scheme.

Data custodians act consistently with government policy and the intention of the DAT Act and will accommodate data requests where lawful and appropriate. In most circumstances, the data custodian is best placed to determine whether a particular request should be refused. This recommendation reduces the rights of data custodians under the DAT Act and therefore the trust in the system.

The department believes that given the complexity around data sharing and custodianship, any attempts to limit the reasons for refusal would likely lead to increased administrative burden and a lack of willingness to proactively engage with the Scheme.

Further, working through arrangements for sharing data can be resource intensive and take time. This is particularly relevant where briefing or legal advice is required, or multiple data custodians/agencies are involved. As such, if any timeframes were to be imposed on data custodians, the department recommends that they should be sufficiently flexible to accommodate extensions.

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

The department recommends caution around this recommendation, particularly around how such a power interacts with the trust of the scheme by the broader Australian public.

If this recommendation is enacted, further consideration around the appropriate safeguards and controls must be undertaken. This includes considering advice from data custodians.

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

The department broadly agrees with this recommendation, with the caveat that any use of power should be limited to the operations of the DAT Act. Any recommendations made by the Commissioner to the Minister should incorporate the advice of data custodians.

This centralised ONDC arrangement would require significant cross-governmental resourcing to make decisions based on legislation in all different cases of data sharing in different environments.

Exclusively making decisions based on the DAT Act may create problems of ignoring other significant legislation and safeguards, or data custodians and stakeholders not recognised under the DAT Act. In its current form, the ONDC likely does not have the expertise or resourcing to have its functions and powers expanded in this way.

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

The department is broadly supportive of the recommendation. However, the department believes that an appropriate application of the Data Sharing Principles is the most important part of assessment of partners in any data sharing project. As such, care should be taken to determine how much of the "people principle" is determined by an initial ONDC assessment and how much is determined on a case-by-case basis.

Some consideration should be also given to downstream use by those who onshare data, and what levels of accreditation they will require.

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 department supports further transparency around the accreditation process, including publishing brief summaries for accredited entities. However, the department does not believe that publishing approved full forms for applications is a necessary step in the process given some information in the accreditation process is sensitive.

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)

The entities that can seek accreditation to request and use data under the DAT Act should be further expanded. The department strongly supports the DAT Act allowing non-government bodies to become accredited users to facilitate improvements to data flows in the education domain. The department would appreciate if the non-government school sector were specifically mentioned. Any limitations of access for these bodies may have impacts for their willingness to share data both inside the scheme and outside, which may impact the education evidence base.

Ideally, work would be undertaken to investigate whether state and territory entities and non-government bodies could become custodians under the DAT Act or DATA Scheme, potentially via parallel legislation. This would make the DATA Scheme a more attractive mechanism for the sharing of education data, where there can be multiple custodians at different levels of government, in turn improving the efficiency and effectiveness of data sharing in the education sector.

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

The department opposes any potential changes to the prohibition of sharing for enforcement related purposes. This will likely have a significant impact on trust on government sector data sharing.

The Implementation approach is lacking in information

The department would strongly recommend that more information be provided on the recommended approach to implementation, such as who will action the recommendations and how any legislative amendments will be drafted. While the department recognises that this is only the draft report, a firmer outline of proposed next steps would strengthen the recommendations.