



Australian Government

**Department of Health,
Disability and Ageing**

Feedback on the *Data Availability and Transparency Act 2022 (DAT Act)* Review Interim Report

The Department of Health, Disability and Ageing (the department) welcomes the opportunity to provide feedback on the on the draft findings and recommendations of the statutory review of the *Data Availability and Transparency Act 2022 (DAT Act)*.

The department supports the Review's interim assessment that substantial reform is essential to justify the DAT Act's continued operation. Further, the department agrees that the DAT Act should serve as an enabling pathway that complements, rather than replace, other data sharing pathways. The department agrees there is a need to adjust the authorising framework and adopt a more facilitative approach to promote greater flexibility and efficiency, while safeguarding against risks.

The department alongside the Department of Social Services (DSS) raised specific points in our submissions to the Review regarding the use of the DAT Act as the enabling legislation for the National Data Disability Asset (NDDA) project. As such the department endorses the Review's main findings and supports many, although not all, of the proposed recommendations.

The department notes that some of the greatest gains in data access and sharing are likely to be made through Recommendation 17 and investment in the broader data sharing ecosystem, rather than through the DAT Act.

The draft findings and recommendations highlight some illustrative examples of data sharing. It would be valuable to identify real-world examples that would be facilitated by changes to the DAT Act and step through how the revised DAT Act would operate to deliver tangible benefit.

The department has concerns about the scale and feasibility of the proposed changes. In particular, we believe the following issues require further consideration:

- Privacy impact and social licence – will these changes be supported by the public and promote trust and support for greater use of citizen data? How would this be tested?
- Complexity – will these changes result in the desired simplification of the DAT Act and DATA Scheme?
- Cost-benefits assessment – will the cost of these changes deliver sufficient benefits, and are there other better pathways?

- Feasibility – is there the required capacity and capability across the Australian Public Service for implementation?

Recommendations supported, or supported in principle

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

The department supports a pathway that authorises sharing in approved circumstances where no other pathway exists, or where it offers a more efficient way. The department agrees that the pathway should operate alongside existing mechanisms.

The department considers that decisions to release, share or allow access to data need to consider the specific nature of that data, including the social license for use, privacy impacts, and existing legislation.

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 streamlining the DAT Act’s data sharing framework by simplifying authorisation pathways, focusing on high-level principles in the legislation, and reducing prescriptive requirements to enhance usability and flexibility. Maintaining transparency and documentation, while scaling back mandatory data sharing requirements, ensures both efficiency and appropriate public oversight.

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

The department agrees. This would be particularly useful in differentiating the various types of requests mentioned such as one-off, ongoing and enduring linkage. For this to be successful, the enabling systems such as Dataplace need to support differing types of requests.

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 agrees in principle that reforming the Commissioner’s functions to drive increased value through supporting data custodians and requesters rather than monitoring and regulating participants of the Scheme.

Further consideration should be given to whether existing portfolio legislation and the *Privacy Act (1988)* provide sufficient enforcement for data sharing. Particularly when breaches could be in relation to unapproved use rather than a privacy breach. Having a central privacy law advisory service would assist with timeliness of legal advice to support data custodians in making data sharing decisions.

Consideration should be given to whether there is greater benefit in providing resources to data custodians and investing in data infrastructure, rather than investing in centralised support functions.

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 department agrees reducing the duplication around accreditation requirements for data users and providers would be beneficial.

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 agrees.

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 department agrees. This would enhance opportunities for data sharing between the Commonwealth, jurisdictions, and non-government entities.

In broadening the accreditation scheme, expectations of users must be managed. As noted in our submission to the Review , some accredited users have assumed accreditation alone fulfills all criteria for being approved to access data. This is contrary to the intended operation of the Scheme.

Decision-making authority remains with data custodians to ensure access decisions are informed by expert knowledge of the data, privacy considerations, and public expectations.

Accreditation is an entry point to the Scheme; it is not approval to access certain datasets without any further consideration of the project’s merits, risks involved, and appropriate controls.

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

The department agrees in principle but notes additional agency resourcing may be required to support custodians and stewards to fulfill such duties.

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

The department agrees in principle with the intent to improve service delivery. However the department questions the proposal to review the prohibition on enforcement related purposes.

Data matching using administrative identifiers (such as Tax File Numbers) is a well-established and effective practice across Commonwealth agencies and jurisdictions. These activities operated successfully outside the framework of the DAT Act. As such, extending the Scheme to include enforcement-related data sharing does not appear to address a practical gap and may introduce unnecessary complexity.

Recommendations 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 department agrees.

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

The department agrees.

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 department agrees in principle.

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

The department strongly supports the recommendation to ensure adequate funding for data custodians to enhance their capacity and capability to share data safely and effectively. The department also strongly supports the investment in whole of government data infrastructure, with leadership from data agencies. The department notes that this recommendation will achieve considerable benefit even if the DAT Act sunsets.

Recommendations not supported**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 does not support a position where data custodians cannot apply a balanced risk, cost and benefit assessment of national and citizen interests in sharing data.

The assessment should include consideration of the social licence, ethics, security, cost, and commercial sensitivities. The department does not think that a centralised Ministerial power could give full consideration of these factors. A decision to share sensitive data should be maintained within the relevant department/agency.

Due to the sensitivities and complexities of data assets such as the Medicare Benefits Schedule and the Australian Immunisation Register, a centralised enabling function to assess and approve requests has not improved timeframes in the health context. Program specific content knowledge is required.

The Framework for the Governance of Indigenous Data and the community governance models for the National Disability Data Asset show the important role of external stakeholders in considering data sharing.

Further community consultation would be beneficial to consider the social licence for a substantive shift in use of personal and sensitive information.

To support timely processing of data requests, there are several non-legislated options that would assist:

- improving shared data infrastructure (e.g. Dataplace, the Australian National Data Integration Infrastructure)
- consolidating pathways for accessing Commonwealth data (e.g. minimising the number of integrated data assets, having data agencies like the ABS and AIHW support most research data requests).

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.”

In assessing the appropriate safeguards in place to authorise data sharing in the national interest, the relevant department / agency must also consider community, jurisdictional and/or individual interests. Therefore, the department does not support granting centralised Ministerial powers to authorise data sharing relevant to another Minister’s responsibility. Ministers (or their delegates) are best placed to make decisions about sharing of data relevant to their portfolio because they have a better understanding of the policy context of that data. For example, the Minister for Health, Disability and Ageing is responsible, and ultimately held to account, for the use of data generated through health, disability and ageing policies and programs. This recommendation could be read as suggesting that the

only considerations for data sharing are national interest and appropriate safeguards, and does not consider community, jurisdictional, or individual interests.

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 does not agree to the introduction of multiple accreditation “tiers” as this would add unnecessary complexity and confusion for participants, compared to the current process. The suggestion of data custodians being compelled to share under defined circumstances raises risks due to the loss of ownership of data sharing decisions by the data custodian.

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 department is concerned about expanding the Minister’s power to broaden eligibility for accreditation without robust safeguards, as this could reduce transparency and accountability. This is likely to reduce state data sharing, social licence and trust in the DAT Act. It is unclear what finding this recommendation is trying to address.

Conclusion

The department supports reform but emphasises the need to carefully consider the practicalities, costs, and timeframes involved. Consultation with departments and agencies is needed to ascertain whether a modified Scheme would be adopted in practice or whether existing portfolio legislation and existing sharing pathways would remain preferred.

The Review interim report does not go into detail on how the DAT Act interacts with other existing data sharing frameworks. The most pertinent finding of the Review is Finding 11 - *The data ecosystem, in general, requires a capability uplift to enable better outcomes for participants*. There is a need to direct finite government resources to the most effective endeavours. Targeted investment in the broader data sharing environment is likely to deliver more timely and impactful benefits than focusing solely on legislative changes of the DAT Act. This could include supporting interoperability across jurisdictions, enhancing technical capacity, and promoting a national culture of responsible data use.