Dr Stephen King
Lead, Statutory Review of the Data Availability and Transparency Act

Dear Dr King

Thank you for providing the interim summary report on the Data Availability and Transparency (DAT) Act Statutory Review. While the Australian Bureau of Statistics (ABS) will not be making a formal submission in response, I'd like to offer some reflections for the review team's consideration in shaping the final recommendations. These reflections are based on my personal experience working on the first half of the DAT Act's development process.

Overall, the recommendations would significantly expand the DAT Act's purposes for data sharing with a potential broad override to existing secrecy provisions (national interest, compliance), entity eligibility and the addition of ministerial compulsion powers. The report also recommends a shift to a principles-based approach to enhance flexibility and efficiency.

Updating the legislation with this broader remit and less prescriptive approach could help improve data sharing in Australia. However, successful delivery will be challenging, as the process for the current DAT Act has proven. A critical question emerges: what has fundamentally changed since the DAT Act was introduced, and how can we avoid repeating the implementation challenges encountered?

Since the DAT Act's initial conception, governments have improved their use of existing legislation to share data, particularly for research purposes. For example, when the Productivity Commission wrote their initial report on Data Availability and Use in 2017, the ABS' Person Level Integrated Data Asset (PLIDA, then MADIP) was not operational in its current form. Now, PLIDA has grown to support over 2,000 active users and has linked data from states and territories as well as the private sector. The Australian Institute of Health and Welfare has also made great strides during this period, with the sharing of key health data to support the National Health Data Hub.

I also note the importance of the national legislative context for data sharing. A revised DAT Act will be limited in its ability to influence outcomes if there is not commensurate action to drive reciprocal and/or complementary arrangements in the jurisdictional legislation that governs data sharing.

Public perceptions around data sharing remain challenging to gauge. The current DAT Act went through significant amendments to gain bipartisan support. Many of these amendments were aimed at addressing privacy concerns but have cruelled the intent of the legislation. It is not clear that public perceptions have moved enough to enable a broader remit for the legislation.

It is important to acknowledge that the DAT Act was originally designed to be 'principles-based', underpinned by the Five Safes framework. Ultimately, however, this approach was not implemented. The shift to a more prescriptive model was the cumulative impact of meeting competing stakeholder demands and requirements for a high degree of certainty in how controls are implemented to support broad and safe data sharing. If the Act's purposes are expanded while returning to a principles-based approach, similar tensions and outcomes will arise.

Any new team charged with updating the legislation would require a very strong government mandate to deliver a truly principles-based approach. I suspect data custodians will continue to lead the charge for increased levels of detail, which may lead to more prescriptive legislation.

These challenges may not be insurmountable, but success will require both a thorough understanding of the Act's developmental history and an appreciation of how significantly data sharing practices have evolved since its inception.

I make these points with the intention of being helpful. I am passionate about better use and sharing of data, and feel disappointed the legislation I was involved in creating has not delivered better outcomes.

I am happy to discuss in further detail with you or the review team.

Kind regards

Dr Phillip Gould
A/g Australian Statistician

13 August 2025