THE UNIVERSITY OF MELBOURNE

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

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List of contributors

The following staff members within The University of Melbourne contributed to this submission via direct feedback to this document or via email in response to circulation of the published Draft Findings and Recommendations.

Associate Professor Zoe Aitken, Principal Research Fellow, Melbourne School of Population and Global Health

Professor Douglas IR Boyle, Academic Director, Digital Research Academic Convenorship (DRAC)

Dr Fanqi Liu, Project Officer, Research Data Management, Research, Innovation and Commercialisation

Professor Ivan Marusic, Pro Vice-Chancellor (Research Infrastructure)

Professor A. Abigail Payne, Professor, Melbourne Institute of Applied Economic and Social Research

Dr Rajeev Samarage, Senior Research Fellow (Data & Analytics), Melbourne Institute of Applied Economic and Social Research

Mr Jared Winton, Program Manager, Research Data Management, Research, Innovation and Commercialisation

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Response from The University of Melbourne | Statutory Review of the Data Availability
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Executive Summary

The University of Melbourne welcomes the opportunity to provide further feedback on the Draft Findings and Recommendations of the Statutory Review of the Data Availability and Transparency Act 2022 (DAT Act).

This feedback builds upon our submission during the initial consultation period of the review. We strongly support the Review's decision to recommend reform rather than discontinuation of the DAT Act. The University of Melbourne believes that the DAT Act should be amended to fulfill its potential as a key enabler for greater and more effective use of public sector data.

We are pleased to note that the Draft Findings and Recommendations broadly align with the key positions and suggestions outlined in our initial submission. This alignment underscores the shared vision for a more efficient and accessible data sharing framework.

While we recognise that the recommendations aim to make the DAT Act more effective and deliver on its initial goals, we emphasise that successful implementation will require clarity and alignment with the capabilities and processes of participants in the DAT Act, including universities and data service providers. We urge that focus not be lost on the importance of external stakeholders and the value they bring to enable better and increased use of data.

In this context, we suggest that just as there are recommendations about state/territory bodies in data sharing (Recommendation 15), consideration should be given to a specific recommendation related to university engagement with the DAT Act. Universities play a crucial role in research, innovation, and policy development, and their unique position in the data ecosystem should be explicitly recognised and leveraged. The DAT Act should explicitly enable and encourage research and development activities that deliver clear and direct public benefits. This would ensure that the DAT Act contributes to evidence-based policy innovation and societal progress.

The University of Melbourne remains committed to contributing to the evolution of the DAT Act and looks forward to seeing these recommendations implemented in a way that maximises the potential of public sector data for the benefit of all Australians.

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Responses to selected recommendations in Draft Findings

Recommendation 1

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

We endorse a principles-based authorisation framework. We welcome the DAT Act to move away from overly prescriptive rules, and the ONDC should continue its work to build simplified, integrated, outcomes-focused mechanisms to enable data sharing.

To balance ease of use, safeguards and transparency, we recommend the DAT Act to distinguish between consolidated data and sensitive (or protected) data. The distinction of data sensitivity will allow the DAT Act to set out principles that tailor the degree of data sharing agreement requirements. Consolidated data may not be treated as in need of protection, and simplified mechanisms can be set in place to reduce complexity and support ease of use. For sensitive data, the DAT Act should work towards enabling collaboration between data custodians and accredited data service providers (both government-based and university-based) to easing access to sensitive data.

Recommendation 3

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

We support the Review's recommendation to work towards more flexible and proportionate DAT Act's settings. The DAT Act serves the public interest in enabling academic researchers at Australian Universities to better access public sector data; we remain very supportive of the vision behind the DAT Act. Research is typically conducted through fixed and time-constrained budgets. Therefore, the DAT Act should not prescribe specific requirements for creating enduring linked data assets, as this would hinder linkage that is funded by research grants.

We recommend the DAT Act's settings should also enable the creation of curated data that could potentially become an enduring dataset for researchers. While some data are necessary for one-off or limited-term projects, there is value in having readily accessible (and readily usable) data for researchers. In some instances, these data sharing activities are often fit-for-purpose to suit larger themes of research. It would be beneficial to establish a mechanism through data service providers that supports converting research datasets of national significance into enduring datasets.

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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."

We strongly support this recommendation, viewing it as critical for improving data sharing outcomes. We particularly endorse the shift towards a default posture of agreeing to share data and the introduction of clear requirements and parameters for data sharing decisions.

Specifically with respect to the following 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?"

We propose enhancing the escalation and mediation mechanism by involving a combination of stakeholders. While we agree that the Commissioner should play a key role, we suggest including relevant stakeholders and external participants, such as those from the research community, in the mediation process. Accredited data service providers can also play a role in the mediation process, working with data custodians' risk and privacy teams to provide options and mitigating controls to risks of data sharing. This multi-stakeholder approach would support a more comprehensive, balanced, and successful resolution of issues raised by data custodians.

We support the consideration of a legislated Ministerial power to direct data sharing, subject to the proposed safeguards. This power could serve as a final recourse in cases where all other avenues have been exhausted, ensuring that valuable data sharing opportunities are not indefinitely blocked.

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."

We acknowledge the potential merit of this recommendation, but we have concerns about its practical implementation. The notion of "national interest" is potentially too vague and could be interpreted either narrowly or broadly, leading to inconsistent application of this power.

While we recognise the value of having a mechanism to address exceptional circumstances, we believe that any such power must be accompanied by robust oversight, governance, and transparency measures to ensure accountability in decision-making. Good oversight, governance, and transparency are crucial so that there is accountability in the decisions made under this power.

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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."

We strongly support this recommendation to reform the National Data Commissioner's functions and powers. We agree that the Commissioner should be given stronger functions and powers to effectively drive the vision of the DAT Act.

We particularly endorse the idea of having a point person with relevant authority to proactively support the DAT Act's objectives and push issues forward when necessary. Empowering the Commissioner to provide direct guidance and assurance on specific instances of data sharing, as well as offering an escalation pathway for data sharing requests, would significantly enhance the effectiveness of the DAT Act.

Recommendations 7 & 8

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

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

We interpret Recommendations 7 and 8 as different approaches towards broadening and simplifying accreditation. We strongly agree with Finding 6 that the current accreditation framework is well-designed, with room for improvement to make it more effective.

We appreciate that the existing accreditation framework allows organisations to enter into multiple data sharing agreements without managing various permission levels. This system works particularly well for universities, given our numerous researchers with diverse projects and interests.

While we acknowledge that subunits of some large entities might benefit from single access or project-based assessments or as separate data user (indicated in Finding 6), we strongly prefer to maintain our current organisation-based accreditation status. For large institutions like universities, project-based permissions would introduce substantial administrative challenges due to the multitude of concurrent projects. As a data user, the University manages certain risks associated with data requests, particularly those related to cybersecurity, data breaches, and privacy, centrally. Delegating these responsibilities to specific research units is not feasible. Furthermore, it's also not feasible for these central units to manage a large number of variations in accreditation to support many different groups within the university. This would create an unsustainable administrative burden and potentially compromise the efficacy of our risk management strategies.

Regarding the possibility of subunits or teams within entities establishing long-term agreements with data custodians, we believe this should be possible but approached with caution. We suggest considering data service providers in such long-term agreements to ensure proper oversight and management.

We see merit in the concept of tiered accreditation. However, we caution that its implementation should be carefully considered to avoid inadvertently raising accreditation hurdles. The system should allow for certification of different tiers to occur over time as an organisation's capabilities evolve or its need for different tiers of data access changes.

While we support efforts to broaden and simplify accreditation, we emphasise the importance of maintaining a system that works for organisations like universities, where centralised risk management is crucial and administrative efficiency is necessary given the scale and diversity of our research activities.

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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)."

We support a cautious and phased approach to expanding data user accreditation eligibility to additional entities, such as Aboriginal Community-Controlled Organisations (ACCOs), medical research institutes and other organisations in the not-for-profit sector. It is crucial that the revised legislation provides a clearer and more flexible settings for fulfilling its potential as a key enabler for accessing public data before expanding eligibility for user accreditation.

We support ACCO participation in the DAT Act as data users. We agree with Finding 7, that "[t]he 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". ACCO participation presents a unique situation with a specific need to enable First Nations people to be heard, recognised and empowered. The Dat Act should include principles or mechanisms that align with the Framework for Governance of Indigenous Data and support Indigenous Data Sovereignty.

Expanding data user eligibility can also be specific to datasets. For example, enabling disability representative organisations to access the National Disability Data Asset would support activities such as self-assessment and evaluation of services provided, enabling advocacy and improving service innovation.

We believe that expanding data user eligibility needs to be coupled with investing in resources to build capacity in safe use of linked data.

Recommendation 12

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

The University of Melbourne strongly supports the recommendation to expand data sharing purposes to include data curation and the creation of data assets. We believe this expansion is crucial for enhancing the value and utility of public sector data.

We particularly endorse the inclusion of data curation activities such as data cleansing, quality assurance, and improving accessibility. However, we suggest broadening this definition to explicitly include data assessment, transformation, and record linkage.

Regarding record linkage, we propose that privacy-preserving record linkage, which involves linking datasets in an entirely anonymous manner without person identifiers, should be explicitly recognised as a function that can be undertaken under the DAT Act. This type of low-risk record linkage, currently performed at universities and research institutes under appropriate safeguards, could be a candidate for approval under data curation roles. There is precedence to this as evidenced by conditions placed in the accreditation of the University of Melbourne's data service provider, the Melbourne Institute Data Lab. This condition specifically allows the Melbourne Institute team to undertake 'complex data integration' activities without the use of personal identifiers.

We stress the importance of leveraging the expertise of researchers who study policy-relevant questions and test innovations in data curation. Greater engagement with the research community would significantly expand the value of the data underlying the purposes of the DAT Act, addressing the issue noted in earlier sections of the report regarding the limited engagement of data custodians in ensuring data quality.

Furthermore, we recommend that the responsibility and capability of data custodians be explicitly considered in the context of data curation. This consideration is vital to ensure that data custodians have the necessary resources and skills to effectively manage and curate their data assets, or to engage appropriate third-party expertise when needed.

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."

We support efforts to achieve national consistency and interoperability. External stakeholders, particularly universities, research bodies and First Nation peoples, should actively participate in co-designing this framework. The nationally consistent data sharing framework should also be flexible in its settings to accommodate both national integrated data assets and bespoke datasets specific to states.

Recommendation 17

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

We believe that the DAT Act can play a pivotal role in fostering a more integrated and collaborative research data ecosystem. The research sector is a vital part of the ecosystem. We emphasise universities' pivotal role in advancing the broader data-sharing ecosystem through capacity-building, methodological development and technical expertise.

We strongly recommend the DAT Act to establish dedicated funding streams and support mechanisms to facilitate university engagement in these areas. Universities are critical institutions for ensuring objective insights through state-of-the art research design and analysis and contributing to skill development for what is needed for a strong Australian Public Service workforce in the data space.

For more information

Please contact University of Melbourne Research Data Management Team on

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