



Our Ref: MIN250888

Mr Taylor Black
Assistant Secretary, Data Availability and Transparency Act Review Team
Department of Finance
By email: DATAActReview@finance.gov.au

Dear Mr Black

I refer to Ms Natalia Kacperek, WA Chief Data Officer's previous correspondence dated 3 June 2025, in which she provided an informal submission to the statutory review of the *Data Availability and Transparency Act 2022* (Cth) (DAT Act) (the Review). I am pleased to see that the recommendations provided by Western Australia's (WA) Department of the Premier and Cabinet (DPC) in this informal submission are reflected in the Draft Findings and Recommendations report (the Interim Report).

Please see **below** comments, provided as a formal submission to the Review on behalf of the WA Government, in response to the draft recommendations articulated in the Interim Report. This submission is provided to inform the Review's final report. I note that WA is generally supportive of the recommendations made in the Interim Report and endorses the position that national data sharing challenges are more likely to be overcome by amending the DAT Act than allowing it to sunset, but that significant reform is required.

It is WA's position that the existence of permissible national data sharing legislation, enabling the use of Commonwealth data, is of great importance. Commonwealth data is essential to the WA Government as it allows us to gain a full picture of our population. Access to Commonwealth data is fundamental to improving WA Government service delivery and enabling better informed decision making and policy development by providing a holistic view of the experiences of Western Australians.

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

Supported

- This recommendation addresses WA's concern that the DAT Act has not yet enabled key national data sharing initiatives.
- A key issue with the DAT Act in WA's experience is the difficulty of its practical application. For example, the Australian Government Solicitor was unable to develop a workable legal authorisation pathway under the DAT Act to enable data sharing for the National Disability Data Asset (NDDA).
- It is WA's position that the DAT Act should provide an ongoing feasible legal authorisation framework to support data sharing.



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?

Supported

- WA supports the recommendation that the DAT Act should be principles-based and high-level, allowing for additional guidance in delegated legislation and standards. This approach is demonstrated in the Privacy and Responsible Information Sharing Act 2024 (WA) (PRIS Act), where the legislation outlines the outcomes to be achieved by WA Government agencies. Guidance on the method of achieving these outcomes is to be provided in guidelines issued by the Chief Data Officer or Information Commissioner.
- WA agrees that data sharing agreements need not always be mandatory and requirements should be simplified.
- In terms of principles for inclusion in the legislation, it is WA's position that these should reflect the Five Safes framework, an international best practice standard adopted by the PRIS Act in WA and by other Australian jurisdictions' legislation. In regard to appropriate transparency mechanisms, WA supports measures such as recording data sharing agreements on Dataplace and providing information on what data is being shared and for what purpose.

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?

Supported

- WA supports the recommendations that requirements should be more adjustable to the relative risk of data sharing and that there is a need for improved interoperability with other data sharing frameworks to support data exiting from the DAT Act.
- WA agrees that it is sufficient for requirements, regarding linked data assets for example, to be dealt with in subordinate legislation, standards and guidance. This allows for the necessary flexibility to respond to developments in technology and the data environment. By enabling the Office of the National Data Commissioner (ONDC) to exercise its regulatory function in this space, regulations can reflect requirements appropriate to the immediate risk. A similar approach is demonstrated in the PRIS Act, where the legislation dictates high-level principles and supporting guidance will provide the detailed requirements for responsible information sharing.



- 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?*

Supported

- WA endorses the focus on enabling and encouraging data sharing, subject to appropriate conditions. This recommendation aligns with WA's position that Commonwealth data custodians should be required to share data with accredited states and territories, unless there is a legitimate reason not to do so.
 - WA is supportive of the suggestion that decisions on data sharing requests could have a defined timeframe and agrees that clear requirements for timeliness of responses are needed. WA supports a mediation mechanism for data sharing requests made under the DAT Act and recommends that this function be performed by the ONDC.
- 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?*

Supported in-principle

- WA is not opposed to a legislated Ministerial power to authorise data sharing in the national interest, however this would require further consultation with the community and relevant stakeholders.
- 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?*



Supported

- This recommendation aligns with WA's position that the ONDC should act as an enabler and facilitator for data sharing under the DAT Act. The PRIS Act exemplifies a similar approach, where the Chief Data Officer's role focusses on promoting responsible data sharing.¹
 - In regard to the National Data Commissioner's general support, educational and capability building functions, WA argues that these do not necessarily need to be relocated to other Commonwealth agencies. Rather, the ONDC should not be the only source of educational support and capability uplift initiatives and other agencies, such as the Department of Finance, should be delivering such functions concurrently.
 - WA holds no view on whether the Commissioner should have a power to inquire into, review and make recommendations about data sharing projects, except to the extent that any such powers should be limited to data sharing under the DAT Act.
 - Should such powers to make recommendations exist, WA is of the opinion that these should be able to inform a Ministerial authorisation, should such an authority exist.
- 7. The DAT Act should establish a permissions-basis for accreditation which replaces the current strict 'user' and 'data service provider' accreditation designations.**

Supported

- WA has found the accreditation process to be excessively burdensome and ineffective in enabling access to data. As such, WA supports reform of the accreditation system.
- 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?*

Supported

- As noted above, WA supports reform of the accreditation process under the DAT Act, however it considers that the introduction of more 'tiers' of accreditation may make the process more complex.
- It is WA's position that the accreditation framework should support an avenue for streamlined data sharing in appropriate circumstances.

¹ See PRIS Act pt 3 div 8 sub-div 1.



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

Partially supported

- WA supports the notion that the accreditation process should be refined through regulatory powers, rather than through provisions of the DAT Act, to endow greater regulatory flexibility.
- Whilst WA agrees that the accreditation framework requires reform, it is WA's position that proactively introducing transparency measures, such as rules prescribing evidence requirements to support accreditation criteria, may not be productive. WA proposes that consultation with Commonwealth data custodians is a crucial element of reforming the accreditation process, particularly regarding factors that impact their comfort to share data. Without consultation with data custodians to understand their concerns and matters of interest, introduction of transparency measures may have little impact on data sharing outcomes.

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?

Supported

- WA endorses the recommendation to expand eligibility to include Aboriginal Community Controlled Organisations (ACCOs), noting that this step aligns with Priority Reform Four of the National Agreement on Closing the Gap: shared access to data and information at a regional level.²
- In regard to supporting mechanisms to enable ACCO participation, WA considers this to be a question for consultation with ACCOs. Despite this, it is WA's position that any enabling mechanisms identified as critical through consultation should be implemented through guidance and subordinate legislation as opposed to through provisions of the DAT Act.
- WA endorses further expansion of eligibility to include Australian not-for-profit research organisations, primary health networks, and not-for-profit service delivery organisations.

² National Agreement on Closing the Gap (July 2020) p 13.



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).

Supported

- WA agrees that this measure would endow greater flexibility to respond to future developments.
- WA proposes that consideration be given to reporting measures, for example a requirement for the Minister to report to Parliament on the use of these powers under the DAT Act.

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?

Supported

- WA supports this recommendation, noting that inclusion of data curation purposes such as quality assurance may facilitate delivery of key national data sharing initiatives.

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

Supported

- WA supports a more flexible interpretation of service delivery purposes to improve the operation of the DAT Act and ensure that other jurisdictions are able to access and use Commonwealth data to enhance government services.

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.

Supported

- WA notes that the PRIS Act is taking key steps to support Aboriginal people and communities as custodians of their cultural information, as well as considering how information can be used to empower Aboriginal people to participate in decisions that impact on their lives.³

³ See, eg, PRIS Act s 177.



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

Supported

- WA agrees that the DAT Act should protect state and territory custodians' role in reasonably overseeing and managing their data once it enters the DATA Scheme.
- WA notes that the PRIS Act contains provisions that enable data sharing between WA Government agencies and agencies of other Australian jurisdictions which preserve a reasonable level of oversight for data custodians. Section 156(2) defines an external entity as including an 'agency or instrumentality of the Commonwealth, another State or a Territory'⁴ and the PRIS Act creates a clear and consistent framework to explicitly enable the safe sharing of government information with external entities as trusted organisations.⁵

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.

Supported in-principle

- WA supports a longer-term endeavour to develop a nationally consistent data sharing framework that supports intergovernmental data sharing. However, there is currently no appetite to amend WA's PRIS Act if legislative amendments are required to opt-in to such a framework.

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?

Supported in-principle

- WA supports the development of guidance to assist users navigating data sharing frameworks and steps to uplift custodian culture and maturity in regard to data discoverability and accessibility.
- WA endorses the development of a collaborative data sharing ecosystem and would be pleased to contribute to and participate in such a system.
- WA proposes that consideration be given to strengthening awareness of jurisdictions' needs in facilitating data sharing agreements between Commonwealth agencies, and agencies of state and territory governments.

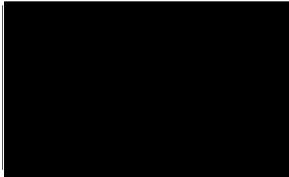
⁴ PRIS Act s 156(2).

⁵ See, eg, PRIS Act pt 3 div 4.



Thank you for the opportunity to contribute to this important review. I hope that WA's perspective offers insights that contribute to improvement of the DAT Act to enable increased availability of public sector data, a rise in confidence in the use of public sector data and strengthened integrity and transparency in sharing public sector data. I look forward to reading the Review's final report and recommendations.

Yours sincerely



Michael Carey
DIRECTOR GENERAL

29 August 2025