



# Annual Regulation and Compliance Priorities 2022-23

The National Data Commissioner (Commissioner) is the regulator of the DATA Scheme, established by the *Data Availability and Transparency Act 2022* (the Act). The Commissioner has identified four regulation and compliance priorities for 2022-23. They are:

1. accreditation of data users and data service providers
2. supporting safe data sharing
3. handling complaints, and
4. minimising the risk of data breaches.

These priorities will be updated annually.

The Commissioner is supported by the Office of the National Data Commissioner.

Information on the Commissioner's regulatory approach is available on the Commissioner's website.

## 1. Accreditation of data users and data service providers

Accreditation serves as a gateway into the DATA Scheme, and ensures users are capable of handling Australian Government data safely and minimising risk of unauthorised access or use.

The Act sets out the accreditation criteria for data users and data service providers. When assessing applications for accreditation, the Minister and Commissioner look to ensure:

- the entity has in place appropriate data management and governance policies and practices as well as an appropriately qualified individual in a position with responsibility for data management and data governance
- the entity is able to minimise the risk of unauthorised access, sharing or loss of data, and
- the entity has the necessary skills and capability to ensure the privacy, protection and appropriate use of data, including the ability to manage risks in relation to those matters.

The Minister and the Commissioner are the authorities for accrediting users and data service providers and can impose conditions on accreditation if needed.



We will:

- engage with eligible entities to build awareness of the DATA Scheme, the obligations of accredited users and data service providers and the process of applying for accreditation
- assess applications for accreditation and advise applicants of decisions
- maintain a register of accredited users and data service providers, and
- monitor whether accredited users and data service providers meet accreditation obligations and any conditions imposed as part of their accreditation.

The Commissioner's focus on accreditation signals to eligible entities that they should concentrate on understanding their obligations under the DATA Scheme and meeting those obligations.

## 2. Supporting safe data sharing

Participants in the DATA Scheme (Scheme entities) must comply with certain data sharing requirements and processes in order to share and use data.

Accredited users must submit a data request to data custodians to use their data. Data custodians have no duty to share data but must respond to all data sharing requests they receive from accredited users within a reasonable timeframe.

If refusing a request, data custodians must provide reasons in writing to accredited users within 28 days of making the decision.

If a request is agreed to, Scheme entities must enter into a data sharing agreement that sets out the details of the data sharing project. The sharing of Australian Government data must be in the public interest and meet one of the three data sharing purposes. Data sharing agreements must describe how the project serves the public interest as well as how the Scheme entities will apply the data sharing principles.

To promote transparency, details from data sharing agreements are recorded on a register kept and maintained by the Commissioner. Scheme entities cannot share data until their data sharing agreement has been registered by the Commissioner.

### Data sharing requests

We will:

- work with Australian Government agencies to support them to build and develop their data inventories
- create a searchable Australian Government Data Catalogue, to help users find data
- provide the digital platform Dataplace as a service for Scheme entities to submit and respond to data requests
- engage with Scheme entities so they understand the purposes for which data can be shared, and the data sharing principles, and
- monitor responses to data sharing requests, including the time taken to respond to a request and reasons given for any refusals.



The Commissioner expects data custodians to put in place processes and procedures to ensure they respond appropriately and within a reasonable period to all data sharing requests. Data custodians should engage cooperatively with the Commissioner in cases where a complaint may be made, for example when a request is refused.

## Data sharing agreements

We will:

- engage with entities so they understand the requirements of a data sharing agreement under the DATA Scheme
- provide the digital platform Dataplace as a service for Scheme entities to develop a data sharing agreement
- support data custodians in submitting data sharing agreements to the Commissioner for timely registration, and
- assess and monitor data sharing agreements for best practice.

The Commissioner expects Scheme entities to understand their obligations in relation to data sharing agreements under the DATA Scheme, including what must be included in a data sharing agreement.

## 3. Handling complaints


Handling complaints is one of the Commissioner's regulatory functions. The DATA Scheme complaints mechanism provides a way for Scheme entities to resolve disputes with each other (scheme complaint) and for any person to raise concerns with the operation and administration of the DATA Scheme (general complaint). The complaints mechanism is a form of redress available under the DATA Scheme, and a means for the Commissioner to identify potential cases of non-compliance and areas to improve or support implementation of the DATA Scheme.

The Commissioner encourages feedback about the DATA Scheme and takes a 'no wrong door' approach to complaints.

We will:

- engage with Scheme entities and others who wish to make a complaint so they understand what they can make a complaint about, how to do so and how we can help
- provide avenues for Scheme entities and others to make a complaint
- respond to complaints in a timely manner and support those involved in the complaints mechanism to understand the process and resolve issues
- encourage the use of conciliation and alternative dispute resolution mechanisms where appropriate to deal with complaints between Scheme entities
- embrace complaints made about the Office of the National Data Commissioner as an important opportunity to improve, and
- monitor issues raised in complaints to identify potential cases of non-compliance, and improve or support the implementation, administration and operation of the DATA Scheme.





The Commissioner expects Scheme entities to approach any complaints made about them in a proactive and cooperative manner, including by providing information when requested by the Commissioner and seeking to aid in resolving complaints quickly and satisfactorily. Scheme entities are encouraged to report to the Commissioner instances of suspected non-compliance.

## 4. Minimising the risk of data breaches

A data breach occurs when there is an unauthorised access to or disclosure of scheme data or the data is lost in circumstances likely leading to such unauthorised access or disclosure.

We will:

- engage with Scheme entities to minimise the risk of a data breach occurring and support them to ready themselves for a data breach, in order to mitigate against harm
- support Scheme entities to notify the Commissioner of data breaches under the DATA Scheme
- assess whether Scheme entities have taken reasonable steps to prevent or reduce harm in the event of a data breach
- conduct investigations in the event of a data breach and where appropriate exercise regulatory powers to assist with risk mitigation, including issuing directions and gathering information, and
- engage with other relevant entities, such as the Australian Information Commissioner, including to minimise the risk of data breaches.

Scheme entities are expected to take proactive steps to minimise the risk of a data breach occurring. Scheme entities should be actively readying themselves for a data breach, including to prevent or reduce any harm resulting from a data breach. Should a Scheme entity suspect a data breach has occurred, they should report this to the Commissioner and they must take steps to mitigate against harm resulting from the breach occurring. Where an investigation is undertaken by the Commissioner, the Commissioner expects Scheme entities to cooperate fully, including through the provision of information when requested.