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# Introducing the DATA Scheme

This document and the *Data Availability and Transparency Scheme on a page* provide an introduction to the DATA Scheme.

## A Scheme for sharing Australian Government data

The *Data Availability and Transparency Act 2022* (the Act) establishes a new, best practice scheme for sharing Australian Government data – the DATA Scheme. The DATA Scheme is underpinned by strong safeguards and consistent, efficient processes. It is focused on increasing the availability and use of Australian Government data to deliver government services that are simple, effective and respectful, inform better government policies and programs, and support world-leading research and development.

The National Data Commissioner is the regulator of the DATA Scheme and provides advice and guidance about its operation. The National Data Commissioner also delivers education and support for best practice data handling and sharing.

The National Data Advisory Council provides advice on data sharing to the Commissioner on issues such as ethics, balancing data availability with privacy protections, trust and transparency, technical best practice, and industry and international developments.

## What data can be shared?

Australian Government data encompasses all data lawfully collected, created or held by a Commonwealth body, or on its behalf. Data can include a wide range of topics, from data dealing with the weather, personal and business data, through to freight and traffic movements, and agricultural yields.

For national security and other reasons, some entities are excluded from the Scheme and some types of data cannot be shared. Excluded entities include intelligence and law enforcement entities such as the Australian Federal Police and the Australian Security and Intelligence Organisation. Some data held by Home Affairs and AUSTRAC cannot be shared.

## Participants

There are three types of participants in the Scheme.

**Data custodians** are Commonwealth Government bodies who control public sector data. Data custodians do not opt-in to the DATA Scheme – they are automatically participants and do not need to apply for this role.

**Accredited users** are Commonwealth, state and territory government bodies, and Australian universities, who are accredited to obtain and use Australian Government data. Entities must apply to become accredited as a data user.

**Accredited data service providers** are Commonwealth, state and territory government bodies, and Australian universities. They provide complex data integration, de-identification

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and secure data access services to support data sharing. Entities must apply to become accredited as a data service provider.

Some entities may be all three types. Some Australian Government entities are excluded from participating. Foreign entities are unable to access data under the DATA Scheme.

## How does the Scheme operate?

Under the DATA Scheme, accredited users can request Australian Government data from a data custodian. An accredited data service provider can be used to provide data services to support the data sharing project. For example, the New South Wales Department of Health can request data from the Commonwealth Department of Social Services and the Australian Bureau of Statistics may provide secure data access services to support the sharing.

An accredited data service provider must be used if the project involves complex data integration.

## Authorisation and override

The Act overcomes barriers to data sharing through an authorisation to override Commonwealth, State or Territory laws, that would otherwise prohibit the sharing, collection and use of certain data when appropriate safeguards are in place.

The Act does not override the *Privacy Act 1988* and the sharing, collection and use of data under the Scheme must be consistent with the Privacy Act.

## DATA Scheme safeguards

### Data sharing purposes

Australian Government data can only be shared if it is for one of the three permitted purposes: government service delivery, informing government policies and programs, and research and development.

Government service delivery includes the provision of information (such as advice that the individual is eligible to receive a benefit), the provision of a service (such as assistance to a person to help restore their property after a flood), determining an eligibility for payment, or paying a payment.

Data cannot be shared for national security or enforcement related purposes.

### Accreditation

Accreditation serves as a gateway into the DATA Scheme and ensures users and data service providers are capable of handling public sector data and minimising risk of unauthorised access or use. The Minister and the Commissioner are the authorities for accrediting users and data service providers and can impose conditions on accreditation if needed.

Accreditation is one of the Commissioner's regulatory functions. The Commissioner maintains oversight of all accredited users and data service providers, collectively known as accredited entities. The Commissioner can conduct assessments or initiate investigations

about an accredited entity. The accrediting authority responsible also has the powers to suspend or cancel an entity's accreditation, and to vary existing conditions of an entity's accreditation.

## Data Requests

Data custodians must consider and respond to all requests they receive from an accredited user within a reasonable period, but they have no duty to share data. If refusing a request, data custodians have statutory obligations to provide their reasons in writing for refusing a request to the accredited user within 28 days after the refusal decision has been made.

Data custodians must maintain a record of data sharing requests received and reasons for agreement or refusal to share, as these will need to be notified to the Commissioner to assist in preparing the annual report.

## Data Sharing Principles

The data sharing principles are the risk management framework that sits at the core of the Scheme to support data custodians in deciding if it is safe to share data. The principles cover the data sharing project, people, setting, data and output. The principles must be applied in such a way that, when viewed as a whole, the risks in sharing, collecting and using data is appropriately mitigated.

The [Data Availability and Transparency Code 2022](#) sets out further guidance about the application of the data sharing principles. The [Data Availability and Transparency \(National Security Measures\) Code 2022](#) sets out additional requirements for accredited entities when individuals who are foreign nationals are able to access shared data.

## Privacy Protections

The DATA Scheme works with the Privacy Act to protect personal information.

The Act contains general privacy protections that minimise the sharing of personal information, prohibit the re-identification of data that has been de-identified, and prohibit the storage or access of personal information outside Australia. Express consent is always required to share biometric data.

The Act also contains purpose-specific privacy protections, depending on the data sharing purpose of the project.

The [Data Availability and Transparency Code 2022](#) sets out further guidance about the application of the data sharing principles.

## Data Sharing Agreements

Participants must enter into a data sharing agreement which sets out the details of the data sharing project. A data sharing agreement must describe how the participants will give effect to the data sharing principles and how the project serves the public interest.

Details from data sharing agreements will be recorded on a register, kept and maintained by the Commissioner. Data must not be shared until the data sharing agreement has been registered.

The [Data Availability and Transparency \(National Security Measures\) Code 2022](#) sets out additional requirements for accredited entities when individuals who are foreign nationals are able to access shared data.

## Transparency and Reporting

The Commissioner must keep public registers of accredited users, accredited data service providers, and data sharing agreements. The Commissioner must also prepare and give to the Minister, for presentation to Parliament, an annual report on the operation of the DATA Scheme each financial year. The annual report must include:

- details of any legislative instruments made that financial year;
- the scope of data sharing activities and regulatory actions which have occurred, including reasons for agreeing to or refusing data sharing requests; and
- staffing and financial resources made available to the Commissioner and how they were used.

## Regulation and Compliance

The Commissioner regulates and enforces the DATA Scheme through their regulatory functions. The Commissioner's regulatory functions include:

- accrediting eligible entities
- handling complaints from Scheme entities and others
- assessing and investigating Scheme entities
- taking enforcement action such as issuing infringement notices and directions, and/or seeking injunctions as well as civil and criminal penalties,
- transferring matters to another appropriate authority

The Commissioner must include information on activities undertaken in relation to their regulatory functions in an Annual Report.

The Commissioner's regulatory activities are informed by their [Regulatory Approach](#) and guided by the [Annual Regulation and Compliance Annual Priorities](#).

## Data Discovery and Dataplace

To make it easier for users to find data, the Office of the National Data Commissioner is working with Australian Government agencies to develop their data inventories and is creating a searchable Australian Government Data Catalogue.

We are also developing Dataplace – a digital platform for Scheme participants and others to manage data requests and support administration of the DATA Scheme.